

MINING CONFLICT, INDIGENOUS PEOPLES AND  
ENVIRONMENTAL JUSTICE: THE CASE OF THE PHULBARI  
COAL PROJECT IN BANGLADESH

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## ABSTRACT

My doctoral dissertation, an in-depth case study of the Phulbari Coal Project in Bangladesh, accentuates the interests and engagements of Indigenous peoples (Adibasi people) in the decision-making process in resource extractive industries through an environmental justice framework. My primary aim is to observe how and to what extent Indigenous peoples' interests are reflected in official environmental decision-making processes versus how they frame their own claims in a mining conflict situation. I employ extensive qualitative research in the project area to demonstrate how Adibasi communities articulate and implement their claims through raising their voices and ultimately stimulating a movement that stopped the development of a 'perilous' open-pit mining project. The resistance movement began more than a decade ago in 2006, but Adibasis, other farming communities and activists are still bearing the spirit of the movement, which they shared in the interviews I conducted. This research analyzes their motivations for fighting a multinational corporation and identifies how their movement articulates with national and transnational activists' conceptions of environmental justice in the global South. I explore how these ideals play out in practice on the ground, in a context where the development is highly contested, and disparities of power are prevalent. I anticipate that this empirical research will attract other ethnographic research on the environment, Indigenous peoples, resource extractive industries and sustainable economic development in the global South.

**Keywords:** Environmental justice; procedural justice; participatory rights; recognition; Indigenous peoples; Adibasi; multinational corporation; transnational corporation; transnational justice groups; resource extractive industries; EIA; mining conflict; resistance movement; Indigenous environmental justice movement; global South; open-pit coal mine; environmental activists; Phulbari coal project; Bangladesh.

## DEDICATION

*To my Father Mohammad Hasel Uddin, whose only dream to see me as a Dr. is finally fulfilled*

&

*To my Mother Sufia Begum, who is not that educated but her dedication for educating her children was amazing*

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## LIST OF ABBREVIATION

ADB- The Asian Development Bank  
AIM- Alternative Investment Market  
BAPA- Bangladesh Paribesh Andolon  
BAPEX- Bangladesh Petroleum Exploration and Production Company  
BEN- Bangladesh Environment Network  
BHP- Broken Hill Proprietary  
BIC-The Bank Information Centre  
BMD- Bureau of Mineral Development  
BNP- Bangladesh Nationalist Party  
BTMCL- Barapukuria Coal Mine Company Limited  
CBD- The Convention on Biological Diversity  
CHT- Chattogram Hill Tracts  
CONACAMI- National Confederation of Peruvian Communities Affected by Mining  
DoE- Department of Environment  
ECA- Environmental Clearance Certificate  
ECOSOC- Economic and Social Council  
EIA- Environmental Impact Assessment  
EJOLT- Environmental Justice Organizations, Liabilities and Trade  
EPA- The Environmental Protection Agency  
ESC- Environmental Site Clearance  
ESIA- Environmental and Social Impact Assessment  
FAO- Food and Agriculture Organization  
FPIC- Free, Prior and Informed Consent  
GCM- Global Coal Management  
GD- General Diary  
GDP- Gross Domestic Product  
GoV- Government of Bangladesh  
GSB- Geological Survey of Bangladesh  
IAP- International Accountability Project  
ICCPR- International Covenant on Civil and Political Rights

ICERD- International Convention on the Elimination of Racial Discrimination  
ICESCR- International Covenant on Economic, Social, and Cultural Rights  
ICSID- International Centre for Settlement of Investment Dispute  
IEE- Initial Environmental Examination  
IFC- International Finance Corporation  
IFIs- International Financial Institutions  
ILO- International Labour Organization  
IPDP- Indigenous Peoples Development Plan  
IUCN- International Union for Conservation of Nature (IUCN)  
JACSES- Japan Centre for a Sustainable Environment and Society  
JAP- Jatiyo Adibasi Parishad  
LMN- London Mining Network  
MAC- Mines and Communities (MAC)  
MAPL- Mining Associates Private Limited  
MMR- Mines and Mineral Rules  
MNC- Multi-national Corporation  
NCBD- National Committee to Protect Oil, Gas, Mineral Resources, Power and Ports of Bangladesh  
NGO- Non-governmental Organizations  
OCMAL- Latin American Observatory of Mining Conflicts  
PBS- Phulbari Byabosai Somitee  
PCDP- Public Consultation and Disclosure Plan  
PRC- Phulbari Rokkha Committee  
PSG- Phulbari Solidarity Group  
PSRC- Phulbari Shohor Rokkha Committee  
PSOD- Private Sector Operations Department  
REDD- Rio Declaration on Environment and Development  
RP- Resettlement Plan  
RS- Resettlement Survey  
SEGCI- Small Ethnic Groups Cultural Institution  
SEHD- Society for the Environment and Human Development

SEIA- Summary of Environmental Impact Assessment

TEK- Traditional Ecological Knowledge

TNC- Transnational Organization

TEJOs- Transnational Environmental Justice Organizations

UDHR- The Universal Declaration of Human Rights

UN- The United Nations

UNDRIP- United Nations Declaration on the Rights of Indigenous Peoples

UNPFII- United Nations Permanent Forum on Indigenous Issues

WB- The World Bank

WCIP- World Council of Indigenous Peoples

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# CHAPTER I

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## INTRODUCTION

### 1.1. Introduction

The dissertation is about resistance to coal mining in Bangladesh. The proposed ‘Phulbari Coal Project’ in Dinajpur district would establish one of the largest open-pit or surface coal mines in the world. If established, this large-scale development project would present several environmental degradation risks, including economic and social problems like any other extractive resource project. Tension first rose in the local communities when the minerals were discovered in 1998, and it was declared that the project proponent would extract coal through the open-pit mining process. Local people, including a large number of Adibasi communities,<sup>1</sup> protested the decision beginning a resistance movement called *Phulbari Koyla Kkoni Anodolon* in Bangla language and Phulbari Coal Mine Movement in English language that would spur violence by 2006. ‘Khoni’ is a Bangla word means ‘mine’ and ‘andolon’ means ‘movement’. The movement is popularly called as *Phulbari Khoni Andolon* by local people which I use throughout the dissertation.

I take Adibasi communities or Indigenous peoples of the mining region as the ‘subject’ of my research and examine whether they have experienced a lack of recognition, limited or insignificant consultation, and participation in the decision-making process of the project proposal. The study explores and documents how Adibasi communities mobilize arguments based on human rights, compensation, recognition, distributive justice, and procedural justice in the course of their

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<sup>1</sup> Adibasi communities are self declared Indigenous peoples in Bangladesh. As the term ‘Indigenous peoples’ is not commonly used in the local context, throughout the dissertation, I use ‘Adibasi’ in the Bangladesh context to mean Indigenous peoples. Although ‘Adivasi’ term is popularly used in India, I use ‘Adibasi’ to keep consistent how Bangladeshi people pronounce the term.

resistance. This research aims to explore the rationale of meaningful integration of the rights of Adibasi communities into development decisions: how affected peoples understand and how they react to a development process conducted by a multinational company. I examine the resistance of Adibasi communities to the Phulbari Coal Project with an environmental justice lens. I ask: what lessons about environmental justice can we draw from observing the resistance of Adibasi communities to halt the Phulbari Coal Project in Bangladesh? Do the protesters' actions reflect concerns primarily about the distribution of risks and benefits, or instead, do they focus primarily on ideas about recognition and procedural justice, or both? Is there something distinctive about environmental justice movements as they emerge in the global South?

I begin by investigating the interests of Adibasi communities, as they would be affected by the open-pit coal project, emphasizing the socio-economic and environmental impacts. I consider whether they are 'Indigenous peoples' under international law and if their claims form a new dimension of the environmental justice movement from the global South. I found much research conducted on the *Phulbari Khoni Andolon*, but an environmental justice lens and Adibasi accounts were not taken into consideration in those researches. My research fills this gap by intensifying the Adibasi voices as they struggle for recognition as 'Indigenous peoples.' Since self-identified Adibasi communities around the Bangladeshi open-pit coal mine and throughout Bangladesh are not recognized as 'Indigenous peoples' or 'Adibasi' by the government, I examine how the surrounding Adibasi communities attempt to establish their identity as Indigenous peoples according to international law through qualitative research conducted in the mining region. The purpose of this effort is to demonstrate the recognizable legal and political character of Adibasi communities so that their voices are adequately heard in every stage of development decision in their traditional territories and lands.

Moreover, threats to rights, lands, and cultures of Indigenous peoples have triggered resistance against multinational and transnational corporations (MNCs and TNCs), governments, and international financial institutes (IFIs) in the process of protecting land rights, sacred sites, food security, climate change, and traditional ecological knowledge around the globe.<sup>2</sup> Through their struggles against powerful actors who continuously threaten to displace them from their traditional lands and drive them away towards assimilation into mainstream majority communities, Indigenous groups have embraced diverse notions of environmental justice.<sup>3</sup> The resistance of Indigenous peoples and other marginalized communities who traditionally lived and worked closest to the land is a central strand of the environmental justice movement.

Adibasi communities and other local people of the Phulbari coalmine area threatened with dislocation, vastly depend upon agriculture since the land is fertile enough for three seasons' crops. The air, soil, and water of the surrounding area of the project are likely to be contaminated by the mining. Critics argue that the contaminated water, air, and soil would significantly affect the fertility of agricultural lands, the health of workers and local people near the project area and that the local bio-diversity and ecosystem would be destroyed permanently.<sup>4</sup> Furthermore, extracted coal would be transported by vessels for export to the Mongla Seaport through the Sundarbans, the largest mangrove forest in the world, which is the habitat of many wild animals, including the Royal Bengal Tigers and a UNESCO World Heritage Site.<sup>5</sup>

A mine development project can minimize the impact of its activities on the neighboring communities and the surrounding environment by careful pre-planning, and policy

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<sup>2</sup> David Schlosberg and David Carruthers, "Indigenous Struggles, Environmental Justice, and Community Capabilities" (2010) 10:4 *Glob Environmental Politics*.

<sup>3</sup> *Ibid.*

<sup>4</sup> Manaranajan Pegu, "The Phulbari Movement: Resisting Neo-liberalism in Bangladesh." In *Sustainability and Ownership in People Centred Advocacy in South Asia* (Dhaka: National Centre for Advocacy Studies, 2011).

<sup>5</sup> Mangrove Action Project, "Save the Sundarbans- Stop The Phulbari Coal Mine: Mangrove Action Plan" (2012), Online: <http://mangroveactionproject.org/save-the-sundarbans-stop-the-phulbari-coal-mine/>

implementation, through environmental impact assessment (EIA), social impact assessment (SIA), and pollution control measures, and by monitoring the effects of mining and rehabilitating the mined areas.<sup>6</sup> In line with these expectations, the Department of Environment (DoE) of Bangladesh granted an Environmental Clearance Certificate (ECA) in September 2005 and approved the Environmental and Social Impact Assessment (ESIA) prepared and published by Asia Energy<sup>7</sup> in 2006 for the Phulbari Coal Project.<sup>8</sup>

The people of Phulbari and the surrounding areas, however, formed movements to protest the company and the open-pit coal project for the sake of the affected people and the country's economic and environmental interests. Protesters were not convinced that coal extracted from the open-pit mine would create a benefit surpassing the overall human losses and environmental impacts. They disagreed with the company's claims about the damage and the number of people to be displaced. For that reason, local opposition against the project was strong. A group of local politicians took the initiative by forming a committee to protest Asia Energy that later became weaker due to political influences. However, a national interest protection group consisting civil society and left-wing politicians called the National Committee to Protect Oil, Gas, Mineral Resources, Power and Ports of Bangladesh (also known as the National Committee of Bangladesh or NCBD) emerged and organized a mass protest on August 26<sup>th</sup>, 2006. The protest was locally called the *Asia Energy Office Gherao Kormosuchi*<sup>9</sup> (Occupy the Asia Energy Office). The popular *Phulbari Khoni Andolon* has multiple layers. The movement was the result of eighteen months of

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<sup>6</sup> Irene Sosa and Karyn Keenan, *Impact Benefit Agreements Between Aboriginal Communities and Mining Companies: Their Use in Canada*, (Ottawa: Canadian Environmental Law Association, 2001).

<sup>7</sup> Asia Energy PLC is a British owned multinational company. Although the company changed their name from Asia Energy to GCM Resources Plc, I use the former term because the name is familiar to local and national protesters.

<sup>8</sup> Asia Energy PLC, *Environmental and Social Impact Assessment for Phulbari Coal Project: Executive Summary*, (NSW: Asia Energy Corporation (Bangladesh) Pty Ltd, 2006).

<sup>9</sup> Bangla words 'Gherao Kormosuchi' are used more often in political movement in Bangladesh to mean encircling or surrounding of politicians or office buildings until the protestors' demands are met.

campaigns, networks, meetings, assemblies, and discussions among local and national activists and Adibasi leaders. Their goal was to increase awareness of the potential negative impacts of mining and to help local farming and low-income communities to organize protests against the company and the open-pit mining method.<sup>10</sup>

On the 26<sup>th</sup> of August 2006, thousands of people from surrounding sub-districts started gathering in Phulbari town to express their grievances. Adibasi and local Bangalee farming communities, teachers, students, small entrepreneurs, women, children, public interest groups, civil society members, and solidarity groups from Dhaka and other parts of Bangladesh gathered at the outskirts of Phulbari to send a message to the government, the company, and international financial institutions (IFSs) that they did not want the open-pit mine. As the demonstration concluded, security forces opened fire on the rally. Three young men were killed, and as many as three hundred people were injured. This incident heightened public sentiment against Asia Energy.

Another reason for the mass protest was the contract between the Government of Bangladesh and the foreign company, which was perceived as going against the interests of the country, though the government looked forward to economic gain from the project. The low royalty percentage on the project, which is only 6% for Bangladesh, angered local people and motivated them to raise voice against the foreign company.<sup>11</sup> The protesters assumed that the government would not benefit from the project since the company would export most of the extracted coal. They asserted that the government did not consider national and local interests during signing the contract because the project would destroy local dwellers, economy, biodiversity, sacred and religious sites, and environment. The protesters' frustrations could be 'justified' in the sense that if the project

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<sup>10</sup> Sadid A. Nuremowla, *Resistance, rootedness and mining protest in Phulbari*, DPhil Thesis. University of Sussex, (2012) at 170.

<sup>11</sup> Asia Energy Plc., "The Phulbari Coal Project" (2004). Online: [http://www.gcmlc.com/sites/default/files/2017-09/Asia\\_Energy\\_19th\\_MineSite.pdf](http://www.gcmlc.com/sites/default/files/2017-09/Asia_Energy_19th_MineSite.pdf)

proceeded, their households and livelihoods would be destroyed, and local people in the project area would be displaced, which would ultimately make them environmental refugees.

Soon more people, especially women and children, joined the mass protest. They gathered in Phulbari town and blocked all major roads during four days of protests. The protestors disconnected communication among major cities. During this period, activists faced several obstacles. The company employed powerful people as their agents (locally called *Dalal*)<sup>12</sup> to threaten movement activists. Security forces raided and arrested some activists after the company filed criminal charges. Government representatives finally sat with the protest leaders to negotiate. They agreed to meet all the demands of Phulbari demonstrators and signed a social contract. The contract stated clearly, among other things, that the government agreed to the expulsion of Asia Energy from Bangladesh and to dropping the open-pit mining method everywhere in the country.

The *Phulbari Khoni Andolon* was one of the most widely publicized local resistances against the extractive industry in Asia in the last decade. The movement became the focus of national and international media, public interest groups, civil society members, non-government organizations (NGOs), national and transnational environmental justice organizations (TEJOs), and many studies were conducted throughout the period. It has been 13 years since the project was suspended. Although the company had wound up their activities in Phulbari and shut down their offices in Bangladesh, they have been continuing their business on the London Stock Exchange in the name of the Phulbari Coal Project. The resistance is still going on. Local people observe ‘Phulbari Day’ on 26<sup>th</sup> August every year and vow to fight until the project is ultimately canceled.

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<sup>12</sup> The word ‘Dalal’ is popularly used in Phulbari to mean agents who were appointed by Asia Energy to manipulate local people and protesters to work in favor of the company. They take repressive measures to force local people to transfer their lands for the project and are supported by local administration.

Although the ESIA of the Phulbari Coal Project provides special provisions for ‘Indigenous peoples’<sup>13</sup> as has become the norm in these procedures, the document identifies only three Adibasi communities (Santal, Munda, and Mahili) as ‘Indigenous peoples.’<sup>14</sup> But Jatiyo Adibasi Parishad (JAP), a national Indigenous NGO,<sup>15</sup> claims that some other ethnic communities who are not included in the document should also be regarded as Indigenous peoples.<sup>16</sup> According to different environmental and Indigenous organizations in Bangladesh, the ESIA of the Phulbari Coal Project does not accurately describe Adibasi or Indigenous peoples’ participation in the decision-making process.<sup>17</sup> They claim that the documentation of the company consultations with Adibasi communities is also grossly inadequate, and some Adibasis are excluded from the process.<sup>18</sup> The company’s explanation for not holding satisfactory consultation was “our communication and consultation process in the project area was interrupted in 2006, due to political instability and protests in the project area,” but critics complain that they still have not completed the process to date.<sup>19</sup>

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<sup>13</sup> Indigenous People’s Development Plan (IPDP) Volume 4.1, Section 4 of the ESIA. In this document, three Adibasi communities are as ‘Indigenous peoples,’ although they are not recognized by the government as ‘Indigenous peoples.’

<sup>14</sup> Section 3.2 of the IPDP, “Indigenous Groups in the Project Area,” states that 7.3% of all households to be displaced are Indigenous. However, a footnote reveals that this estimate excludes households from groups that “are more appropriately classified as ‘small ethnic minority’ groups rather than ‘Indigenous,’ given their historic past, their social structure, religious practices and non-agricultural livelihoods.”

Also see: Kate Hoshour, “The Indigenous Peoples Development Plan for the Phulbari Project, Bangladesh” (2012) International Accountability Project.

<sup>15</sup> Jatiyo Adibasi Parishad (National Indigenous Union in English) was formed in 1993 for helping Indigenous peoples/Adibasis of North Bengal. Furthermore, as the government was mis-recognizing the existence of Adibasis in the country, the land grabbers would get more chances to take possession of Adibasi properties illegally. The NGO had 9 demands when they had started the journey. The first demand was to get/achieve constitutional recognition as Adibasi/Indigenous peoples. They also stated that Adibasis must have a separate land commission which would deal land alienation and dispossession issue.

<sup>16</sup> Hoshour, *supra* note 14.

<sup>17</sup> Jennifer Kalafut, “Phulbari Coal Project: A Displacement Disaster in the Name of Development” in Jennifer Kalafut and Roger Moody. *Phulbari Coal Project: Studies on Displacement, Resettlement, Environmental, and Social Impact*. (Dhaka: Samhati Publications, 2008).

<sup>18</sup> Hoshour, *supra* note 14.

<sup>19</sup> *Ibid*.

## 1.2. Adibasi and the Politics of Recognition in Bangladesh



Figure 1: Concentration of Adibasis in Bangladesh

Source: UNDP

Bangladeshi Indigenous leaders who are vocal for their rights prefer the term ‘Indigenous peoples’ in English and ‘Adibasi’ in Bangla,<sup>20</sup> arguing that there is no difference between the two terms. The Sanskrit word ‘Adibasi’ is comprised of the phrase ‘Adi’ and ‘Basi’; the former means ‘original or earliest times’ and later means ‘residents or inhabitants.’<sup>21</sup> In this sense, Adibasis are original or earliest residents or inhabitants in a particular region. These groups are believed to be descendants of a ‘pre-Dravidian race’,

who are considered as the oldest inhabitants of the Indian sub-continent.<sup>22</sup> According to Joseph Dineker, the Dravidian race is mixed of both the Indonesian and Australian which is prevalent

<sup>20</sup> Bangladeshi Indigenous peoples, both from the CHT and the plains, have started to refer themselves as Indigenous in English and as Adibasi in Bangla when the International Year of the Indigenous Peoples was declared by the United Nations.

See also: Raja Devasish Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review*, Project to Promote the ILO Policy on Indigenous and Tribal Peoples and the ILO Office, Dhaka, Bangladesh, July, 2009.

<sup>21</sup> Mesbah Kamal, “Introduction” eds Mesbah Kamal, Jahidul Islam and Sugata Chakma, *Adibasi Communities* Bangladesh Asiatic Society, Dhaka: 2007, at xiii. Also see: David Hardiman, *The Coming of the Devi: Adivasi Assertion in Western India* (Delhi : Oxford University Press, 1987).

<sup>22</sup> *Ibid.*

among the peoples of Southern India speaking the Dravidian tongues and some other people of India.<sup>23</sup> He mentions that most of Indian race are mixed of the Afghans, the Rajputs, the Brahmins and crosses with Assyroid, Dravidian, Mongol, Turkish, Arab and other elements.<sup>24</sup>

It is assumed that Tibeto-Burman language-speaking tribal groups belong to social groups who have been inhabiting the region before the coming of the dominant sections of the current Indian society, such as, the Aryans. The Bangalees, Gujaratis, Ariyas are said to the descendants of the Aryans.<sup>25</sup> The tribal groups have generally been described as Adibasis or the original people by scholars, social workers, missionaries, and some administrators since the beginning of the present century.<sup>26</sup> The term ‘Adibasis’ was being used to identify and differentiate a group of people different in physical features, language, religion, custom, and social organization.<sup>27</sup> However, critics argue that the identity of Adibasis which was forced upon them from outside to differentiate them from the dominant community has now been internalized by Adibasis themselves.<sup>28</sup> Prathama Bannerjee also makes a similar argument to Xaxa about original inhabitants or earlier settlers. She argues that “the term Adivasi was an emphatically historicist, nationalist category—literally meaning ‘original’, perhaps true inhabitant of the country.”<sup>29</sup> According to her, the use of the term ‘Adibasi’ is a historical claim which is not easily established within Indian politics like Indian nationalism itself, rather the claim often turned into a culturalist approach where Indigenous identity was reduced to maintenance of the autonomy of tribal traditions.<sup>30</sup> Given the situation in

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<sup>23</sup> Joseph Dineker, *The Races of Man: An Outline of Anthropology and Ethnography*. (Charles Scribner's and Sons: London, 1900) at 498.

<sup>24</sup> *Ibid.*

<sup>25</sup> Virginius Xaxa, “Tribes as Indigenous People of India.” (1999) *Economic and political weekly*, at 3589

<sup>26</sup> *Ibid.* at 3591.

<sup>27</sup> *Ibid.* at 3590.

<sup>28</sup> *Ibid.* at 3589.

<sup>29</sup> Prathama Banerjee, “Culture/Politics: The irresoluble double-bind of the Indian Adivasi.” (2006) 33.1 *Indian Historical Review*, at 105.

<sup>30</sup> *Ibid.*

the Indian sub-continent, the name ‘Adivasi’ is a political statement of distinctiveness and autonomy originating from colonial anthropological categories such as ‘tribe’ and ‘aborigine’ that cast them forever as low and backward.<sup>31</sup>

Virginius Xaxa has contributed to the scholarly debate about ‘original inhabitants’ in the Indian context. He explains that it is certainly difficult to say that all self-identified tribal people in Indian sub-continent are earlier settlers than Aryans, and therefore, they are Indigenous, and others are not.<sup>32</sup> Some argue that the non-tribal groups like the Bangalees, Gujaratis, and Oriyas have a much longer history of settlement than these tribes.<sup>33</sup> If ‘who came first’ is taken foremost consideration for being Indigenous, many Tibeto-Burman speaking tribal groups in India would not be considered as Indigenous peoples because Aryans settled earlier than them.<sup>34</sup> According to Xaxa, then, for the purpose of identifying the existence of Indigenous peoples, there is no need to make a distinction between settlement in the country as a whole, and settlement within its parts or regions.<sup>35</sup> The author explains that the settlement of the Mizos, who are one of the Adivasi groups live in the North-east India, may have been a later development than those of the Gujaratis or Bengalis, but the fact is that they are the original settlers of the place where they live now. The Mizo people are said to have settled in the territory where they live only in the 16th century.

Similarly, the Santals may have settled in the territory where they live now later than the Bengalis, but it cannot be said that their settlement in India is prior to that of the groups commonly

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<sup>31</sup> *Ibid.* at 113.

<sup>32</sup> Xaxa, *supra* note 25 at 3592.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.* at 3591.

<sup>35</sup> *Ibid.*

referred to as the Aryans.<sup>36</sup> Therefore, to claim Indigenous status on this ground, a group can say they are the original settlers of the area they live now from the time immemorial.

In the Indian sub-continent, especially in India and Bangladesh, self-defined Indigenous peoples call themselves and prefer to be called ‘Adibasi’, but they are neither recognized by the state Constitution nor other legal instruments exclusively. The Indian government classified ‘all ethnic communities who are calling themselves Indigenous peoples’ into three categories in its Constitution: ‘scheduled tribes’, ‘scheduled castes or forward castes’, and ‘other backward classes’.<sup>37</sup> As Pooja Parmar points out in the Indian context, “the claims of Adivasis as original inhabitants were thus effectively written out of the Constitution, foreclosing any possibility of a future recognition in the country's law. Since there are no recognized Adivasis, there is no legal basis for any claim as an original inhabitant.”<sup>38</sup>

Adibasis are also not recognized in Bangladesh, and there are no such categorizations. However, some ethnic groups are generally recognized as ‘tribes,’ ‘minor races,’ ‘ethnic sects’ and ‘communities,’ ‘small ethnic groups,’ ‘upojati,’ etc., and some are not recognized at all. For example, the 1991 official census data identified and recognized only 27 ‘tribal’ communities in Bangladesh, as reflected in the Small Ethnic Groups Cultural Institution Act 2010 (SEGCI Act). There are around 1.6 million people amounting to 1.7% of the total population Bangladesh are Adibasis. . However, Adibasi leaders and researchers came up with almost double that number.<sup>39</sup> Surprisingly, the 2001 and 2011 official censuses did not categorize any Indigenous groups and

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<sup>36</sup> *Ibid.* at 3592.

<sup>37</sup> The complete list of Scheduled Tribes and Scheduled Castes was made through two subsequent Presidential Orders: The Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950.

<sup>38</sup> Pooja Parmar, “Undoing Historical Wrongs: Law and Indigeneity in India.” (2011) 49 *Osgoode Hall Law Journal* at 516.

<sup>39</sup> Philip Gain, *Survival on the Fringe: Adibasis of Bangladesh*, (Society for Environment and Human Development (SEHD), Dhaka: 2011).

their numbers, because both the censuses have considered the religious base of the population.<sup>40</sup> Although Chattogram<sup>41</sup> Hill Tracts (CHT) (the Southern hill districts) have the largest concentration of Adibasis comprising of eleven Adibasi groups of which the Chakma people is the largest in number, the North-western region /North Bengal, North-central part, North-eastern region, and coastal regions have a large number of Adibasis. The Santal is the most populous Adibasi community in the North Bengal followed by the Oraon. The Garo, Hajong, Koch, Rajbangshi and Dalu are Adibasi communities live in the North-central part of Bangladesh, of which the Garo is the largest ethnic group. Many Garos live in North-eastern states of India. There are some Adibasi groups live in the North-eastern region of Bangladesh such as Khasi and Monipuri.<sup>42</sup> Rakhine is the lone Adibasi community live in the coastal areas of Bangladesh. Most of the Bangladeshi Adibasi communities are concentrated in the borders of neighboring countries such as India and Myanmar. More demographic information about Bangladeshi Adibasi communities are set out in the table 1.

*Table 1 Adibasis of Bangladesh*

Adibasi Groups	Regions	Divisions and Districts	Relevant demographic information
Chakma, Marma, Tripura, Mru, Khumi, Lusai, Bawm, Pankhua, Tanchangya, Chak, and Khyang	Chattogram Hill Tracts (Southern-East)	Bandarban, Rangamati, Khagrachhari	These 11 Adibasi communities of the CHT are collectively called as ‘Jumma people’. The Chakma is the largest in number (239417 according to 1991 census). Each community group has distinct features regarding language, culture, and social settings.
Santal, Oraon, Koch, Munda, Paharia, Mahili,	North-western region/North Bengal	Rajshahi and Rangpur Divisions	According to Bangladesh Statistics Bureau in their Population Census estimates that Adibasis in this region

<sup>40</sup> *Ibid.*

<sup>41</sup> It was Chittagong before; the government recently changed the spelling officially into Chattogram to comply with Bengali pronunciation. Chattogram is one of the eight administrative Divisions (bivag) of Bangladesh. In Bangladesh, 64 district administrations are divided into different Divisions. Source: <https://www.dhakatribune.com/bangladesh/2018/04/02/english-spellings-chittagong-comilla-barisal-jessore-bogra-changed/>

<sup>42</sup> Gain, *supra* note 39.

Mahato, Malo, Kol, Karmakar, Robidas, Bhumij, Musohor, Lohar.		(Concentrated in all 16 districts)	constitute 1.5% of the total population and represent 26% of the entire Adibasi groups of Bangladesh. They are also regarded as Adibasis or Indigenous peoples of the plains. Santal is the largest Adibasi community in Bangladesh, and throughout their history, they are one of the most marginalized, persecuted, and disadvantaged communities in Bangladesh.
Garo, Hajong, Koch, Rajbangshi and Dalu.	North-central	Dhaka and Mymensingh	Garo is the largest in this region (64,280 according to 1991 census). The Garos are popularly known for their matrilineal nature of society structure Their language is unique in Bangladesh which is called Tibeto-Burman. Most Garos are converted into Christianity. The second largest Adibasi group of this region is Koch (16, 567, according to 1991 census).
Manipuri and Khasi	North-east	Sylhet (Sylhet, Sunamgonj, Moulavibazar, Habigonj districts)	According to 2001 census, 1.13% of total population of this region belong to the Manipuri and Khasi people. There is a considerable number of Garo live in this region too.
Rakhine	Coastal	Chattogram and Barisal (Cox's Bazar, Barguna and Pautakhali districts)	2001 census indicates that Rakhines constitutes 5.58% of total Adibasi communities in Bangladesh. They are Mongoloid and follow Buddhism. They have their own scripts and language. Some Marmas are found in the region too. The Rakhine and Marma have similarities regarding their social matters.

Source: Indigenous Peoples Framework, Ministry of Information of the Government of Bangladesh and Philip Gain, *Survival on the Fringe: Adibasis of Bangladesh*, (Society for Environment and Human Development (SEHD), Dhaka: 2011)

As Pooja Parmar has demonstrated, considering the literal meaning, government authorities of the Indian sub-continent have tried to argue that ‘Scheduled tribes’, ‘Tribal’ or ‘Ethnic groups’ are not ‘Adibasi’ or ‘Indigenous peoples.’<sup>43</sup> Some regard them as ethno-occupational groups.<sup>44</sup> The

<sup>43</sup> Pooja Parmar, *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings*. (New York: Cambridge University Press, 2015).

<sup>44</sup> Gain, *supra* note 39.

Bangladeshi government contends that the entire Bangalee community of Bangladesh had ‘coexisted’ with other ethnic groups before the geographical divisions by British administrators, and therefore, “all Bangalee people are Indigenous or Adibasi.”<sup>45</sup> In various diplomatic discussions, government officials have rejected the claim of the existence of Indigenous peoples in Bangladesh, though the United Nations (UN) acknowledges that the recognition of Indigenous peoples should not be dependent on whether national governments recognize them as Indigenous or not.<sup>46</sup> Moreover, various international legal instruments and scholars emphasize ‘self-identification’ as a significant criterion. However, instead of taking the self-identification principle as the basis of recognizing Indigenous peoples, the Bangladesh government took ‘historical continuity’ as the primary basis. During the discussion with foreign diplomats and UN agencies representatives in 2011, Bangladeshi former Foreign Minister Dipu Moni insisted, “‘tribal people’ of the CHT did not exist before the 16th century, and they were not regarded as ‘Indigenous peoples’ in historical reference books or legal documents; instead, they have been identified as a ‘tribal’ population.”<sup>47</sup> When the UN Special Rapporteur Lars Anders Baer presented a study titled “Status of implementation of the CHT Accord of 1997” in 2011, Iqbal Ahmed, the First Secretary of the Bangladesh Mission in New York, said, “Bangladesh does not have any Indigenous population.”<sup>48</sup> He also added, “we urged upon the UN forum for not wasting time on politically fictitious issues in Bangladesh.”<sup>49</sup> Furthermore, Bangladesh countered that ‘Indigenous peoples’ refers only to “those countries where racially distinct people coming from overseas established

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<sup>45</sup> *Ibid.*

<sup>46</sup> FAO (Food and Agriculture Organization), *Free, Prior and Informed Consent: An Indigenous Peoples’ Right and a Good Practice for Local Communities, Manual for Project Practitioners* (Paris, 2015) at 12. Online: <http://www.fao.org/3/a-i6190e.pdf>

<sup>47</sup> The Daily Star, “Ethnic Minority, not indigenous people,” July 27, 2011. Online: < <http://www.thedailystar.net/news-detail-195963>>

<sup>48</sup> The Daily Star, “No indigenous people in Bangladesh! Govt official tells UN” May 28, 2011. Online: <http://archive.thedailystar.net/newDesign/news-details.php?nid=187527>

<sup>49</sup> *Ibid.*

colonies and subjugated the Indigenous populations.”<sup>50</sup> The government authority also contends that the CHT has more dominant Bangalee population than ‘tribal people,’ but they do not want to recognize the enormous population migration from various parts of Bangladesh who settled in Indigenous lands in the late 1970s, which is still continuing. Indigenous territorial lands were occupied by Bangalee settlers and legally registered for ownership.<sup>51</sup> Against the backdrop of much debate over constitutional recognition of Adibasi communities in Bangladesh, the Law Minister Shafique Ahmed stated in 2011, “they are tribal people, not Indigenous.”<sup>52</sup> He further explained the issue, “there are two criteria in the ILO Convention No. 169: the first criterion which defines ‘tribal people’ is applicable for Bangladesh, but the second criterion that defines ‘Indigenous peoples’ is not applicable for Bangladesh.”<sup>53</sup> Eventually, the executive body took a few initiatives to bolster their claims of the non-existence of Indigenous peoples in Bangladesh.<sup>54</sup> For example, on March 2012, the Ministry of Local Government and Rural Development issued and circulated a letter to all levels of administrative bodies of the government stating that “in Bangladesh, there are tribal people, not Indigenous peoples” and urged people to stop celebration of “International Day of the World’s Indigenous Peoples.”<sup>55</sup> The Ministry of Information of the

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<sup>50</sup> *Ibid.*

<sup>51</sup> In 1947 the Indigenous constituted more than 98% of the population of the CHT, the Bangalees less than 2%. In the period 1951 to 1974, the Indigenous numbers increased by 71.7% while the Bangalees increased by 125.1%. Bangalee population in the Hill Tracts rose to 9% in 1951, 12% in 1961, and 40% in 1981. Between 1980 and early 1984, 4,00,000 Bangalees were settled in the CHT which accounted for almost 50% of the total population of the CHT. Since the government could not provide lands for Bangalee settlers it promised, settlers started to grab Indigenous lands with the help of military which is still continuing. See: Syed Aziz-al Ahsan and Bhumitra Chakma, “Problems of National Integration in Bangladesh: The Chittagong Hill Tracts.” (1989) 29.10 Asian Survey. Also see: Bhumitra Chakma, “Structural Roots of Violence in the Chittagong Hill Tracts.” (2010) Economic and Political Weekly.

<sup>52</sup> The Daily Star, “Indigenous Issues Draws Arguments,” published on August 8, 2011, Online: <<http://archive.thedailystar.net/newDesign/cache/cached-news-details-197739.html>>

<sup>53</sup> *Ibid.*

<sup>54</sup> Binota Moy Dhamai and Pallab Chakma, “Bangladesh” in The Indigenous World-2015, (Copenhagen: IWGIA, 2015) at 299.

<sup>55</sup> Farhat Jahan, “Indigenous Identity Disputes in Democratic Bangladesh” (2015), Southern Papers Series: Working Paper No. 26, at 11.

Government of Bangladesh on 18 October 2018 published and circulated a notice to the media to stop using the term ‘Adibasi’, and requested them to follow the terms used in the Constitution.<sup>56</sup> The government has disregarded demands for upholding Adibasi rights as well as inserting Adibasi/Indigenous peoples/Indigenous hill-men/Indigenous tribes as terms in the Constitution.<sup>57</sup> Instead, the 15<sup>th</sup> Amendment to Article 23(A) of the Constitution that took place in 2011 refers to Adibasi or Indigenous peoples of Bangladesh as ‘tribes,’ ‘minor races,’ ‘ethnic sects and communities,’<sup>58</sup> which becomes challenging for people who are demanding to be recognized internationally as Indigenous peoples.<sup>59</sup> Furthermore, only cultural aspects are mentioned in the amended provision, whereas issues related to ‘Indigenous peoples’ economic and political rights, not just their land rights, remain ignored.<sup>60</sup> Before the Constitutional amendment in 2011, these communities were only regarded as a ‘backward section of people’ in the Constitution under Article 28 that provides that “the state shall take necessary steps for the advancement of ‘any’ backward section of citizens.”<sup>61</sup> The issues or questions raised in this discussion are taken up in detail in Chapter IV.

### **1.3. The Conceptual and Theoretical Framework of the Dissertation**

The theoretical framework adopted in my dissertation allows me to explore aspects of recognizing Indigenous peoples, and their rights over traditional lands and development projects, in the context of the global environmental justice movement. The framework helps to explore the case study and answer some questions: How do the affected Adibasi communities articulate their

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<sup>56</sup> Dhamai and Chakma, *supra* note 54.

<sup>57</sup> *Ibid.*

<sup>58</sup> Article 23A states “The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.”

<sup>59</sup> Binota Moy Dhamai and Sanib Drong, “Bangladesh” in *The Indigenous World-2014*, (Copenhagen: IWGIA, 2015) at 322.

<sup>60</sup> *Ibid.*

<sup>61</sup> Article 28 of the Constitution of the Peoples’ Republic of Bangladesh.

claims to environmental justice? Do they primarily claim a right to be heard? Or do they make a distributional claim? Why do they resist against the coal mine project? Do they want to get involved in the decision-making process or do they want to share in the benefits? Or do they want both? Why do national and transnational solidarity groups get involved in the process of resistance?

The study observes how Indigenous peoples in the global South draw a connection between procedural justice and distributive justice, gleaned through field interviews. Moreover, since the ethnic groups around the project area and throughout Bangladesh are not recognized as ‘Indigenous peoples’ by the government, I observe and document how they frame their claims in order to be heard. The company through the ESIA of the Phulbari Coal Project provides special provisions for Indigenous peoples like any other resource extraction industry does, which identifies a list of communities to be recognized as ‘Indigenous peoples’. Against this backdrop, I also examine whether the rights and interests of the surrounding ethnic communities should be established according to international law, and how their claims impact the struggle in the Phulbari project area. I also ask whether self-defined Indigenous communities who are widely known as ‘Adibasi’ need to be recognized under the global term ‘Indigenous peoples’ in order to participate (be consulted and be entitled to free, prior, and informed consent) in the decision-making process and to achieve environmental justice.

### **1.3.1. Extraction on Indigenous Territories**

Many Indigenous communities around the world delineate their identity as ‘people of forests, of the plains, of the buffalo, or of the seal,’<sup>62</sup> because they have strong ties with lands and wildlife

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<sup>62</sup> Brian Goehring, *Indigenous Peoples of the World: An Introduction to Their Past, Present, and Future*. Purich's *Aboriginal Issues Series*. (Saskatoon: Purich Publishing, 1993) at 21.

around them. National governments often rely on the exploration of their mineral resources for economic prosperity, and for this reason, they often expand the exploration and production into traditional Indigenous territories.<sup>63</sup> The trend of increased mining activities by national states and transnational companies is escalated in the global South, i.e., Asia and the Pacific, Africa and Latin America, and the Indigenous areas of the USA and Canada.<sup>64</sup> Approximately 1200 Canadian Aboriginal communities are situated within 200 km of active mines, 36% of which are located within 50 km of a mine development project.<sup>65</sup> The Mineral Council of Australia estimates that 60% of mining operations in that country are situated in Indigenous territories.<sup>66</sup> The Environmental Justice Organizations, Liabilities and Trade (EJOLT) estimates that between 1970 and 2004, the global extraction of major metals grew by over 75%, industrial minerals by 53%, and construction materials by 106%, while world population increased by about 72%.<sup>67</sup> And while the experiences of Indigenous peoples with mining has been overwhelmingly negative, in some cases, Indigenous interests are now recognized and accommodated to various degrees by corporate policy and practice.<sup>68</sup>

Extracting minerals is not a sustainable industry, though it brings economic benefits for a country. Several experiences show that the environmental hazards of mining continue for decades

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<sup>63</sup> Macarena Gómez-Barris, *The Extractive Zone: Social Ecologies and Decolonial perspectives*. (Duke University Press, 2017).

<sup>64</sup> Gail Whiteman and Katy Mamen, *Meaningful Consultation and Participation in the Mining Sector?: A Review of the Consultation and Participation of Indigenous Peoples Within the International Mining Sector* (Ottawa: North-South Institute, 2002).

<sup>65</sup> Arn Keeling & John Sandlos, "Environmental Justice Goes Underground? Historical Notes from Canada's Northern Mining Frontier" (2009) 2:3 *Environmental Justice* at 120.

<sup>66</sup> ICMM, *Good Practice Guide: Indigenous Peoples and Mining*. (London: International Council on Mining and Metals, 2010) at 9.

<sup>67</sup> Begüm Özkaynak, et. al. *Mining Conflicts around the World: Common Grounds from Environmental Justice Perspective*, (2012) EJOLT Report No. 7 at 7.

<sup>68</sup> Ciaran O'Faircheallaigh, "Aborigines, Mining Companies and The State in Contemporary Australia: A New Political Economy or 'Business as Usual'?" (2006) 41.1 *Australian Journal of Political Science* at 3.

by undermining traditional land-use patterns.<sup>69</sup> Besides, every stage of a resource extraction project leaves behind abandoned pits and mine shafts, ore and waste rock deposits, roads, railways, heavy equipment, storage facilities, oil spills, and hazardous wastes, the garbage that can have long-term adverse effects on the environment as well as significant risks for nearby communities.<sup>70</sup> Extractive industries located in Indigenous territories tend to have more negative outcomes than other industries regarding environmental impacts, displacement, resettlement, and violation of human rights by affecting the living conditions of Indigenous peoples.<sup>71</sup> And while some argue that resource extractive industries near Indigenous communities are more incidental than intentional, because mining companies operate where they find significant deposits of natural resources, others find that environmental racism impacts how companies operate.<sup>72</sup>

The negative impacts of extractive industries on Indigenous communities are often enhanced by their lack of access to traditional lands and practices. It is a common phenomenon that if a mining project is implemented, most of the people of that area would be displaced from their lands, and the situation gets even more severe in open-pit mining projects. Problems associated with the displaced people of resource extractive projects are increasingly becoming the focus of human rights organizations.<sup>73</sup> Moreover, the communities in the areas where the resources are located tend to carry a disproportionate share of the negative impacts of development through reduced access to resources and direct exposure to pollution and environmental degradation.<sup>74</sup> Forced or

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<sup>69</sup> National Aboriginal Health Organization (NAHO), “Resource Extraction and Aboriginal Communities in Northern Canada: Cultural Consideration,” Ottawa, 2008.

<sup>70</sup> *Ibid.*

<sup>71</sup> UNDESA, *State of the World's Indigenous Peoples*. Vol. 9. (United Nations Publications, 2009) at 6. Online: [http://www.un.org/esa/socdev/unpfi/documents/SOWIP/en/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfi/documents/SOWIP/en/SOWIP_web.pdf)

<sup>72</sup> Alice Kaswan, “Environmental Justice: Bridging the Gap Between Environmental Laws and ‘Justice’” (1997) 47:221 *Am Univ Law Rev* at 222.

<sup>73</sup> *Ibid.*

<sup>74</sup> Lila Barrera-Hernandez, “Indigenous Peoples, Human Rights and Natural Resource Development: Chile's Mapuche Peoples and the Right to Water” (2005) 11 *Annual Survey of International & Comparative Law* at 6.

involuntary displacement from the original habitations often means not only physical relocation but also the loss of livelihoods derived from the subsistence resources offered by the local environment.<sup>75</sup> Indigenous peoples have traditional ways of managing resources around them, but most of the conventional resources would be missing in new places. Displacement from their traditional lands and resettlement in another location may lead to a breach of individual and collective human rights such as the right to life, liberty to security, the right to non-interference with privacy, family, and home, and the right to peaceful enjoyment of possessions.<sup>76</sup>

### **1.3.2. Rights of Indigenous Peoples on Traditional Lands and Management of Natural Resources**

Various international instruments and organizations have collectively recognized Indigenous peoples' right to cultural identity, traditional lands, and territories, right to self-determination, right to meaningfully participate in the decision-making process and respect their way of development and traditional knowledge.<sup>77</sup> Article 14(1) of the Indigenous and Tribal Peoples Convention-1989 (the ILO Convention No. 169) affirms:

“The rights of ownership and possession of [Indigenous peoples] over the lands which they traditionally occupy shall be recognized. Also, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.”

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<sup>75</sup> Dayna Nadine Scott and Adrian A Smith, “Sacrifice Zones in the Green Energy Economy: The New Climate Refugees” (2017) 26:2 *Transnational Law & Contemporary Problem* 371.

Also see: Rodolfo Stavenhagen, “Report on the Impact of Megaprojects on the Rights of Indigenous Peoples (2003).” *Peasants, Culture and Indigenous Peoples*, (Berlin Heidelberg: Springer, 2013) 117.

<sup>76</sup> *Ibid.*

Also see: Bogumil Termanski, *Mining-induced Displacement and Resettlement: Social Problem and Human Rights Issue*. Working paper. (Vancouver: Simon Fraser University, 2012) at 4-5

<sup>77</sup> Whiteman and Mamen, *supra* note 64 at 13.

States and other international actors have legal duties and obligations to comply with those rights. Article 13 of the Convention emphasizes that states should respect the cultures and spiritual values of Indigenous peoples with distinctive importance as well as their relationship with the lands or territories. Also, Article 15 requires nation-states to safeguard Indigenous peoples' access to natural resources in their regions, including the right to participate in managing, conserving and altering. However, Article 12.1 of the Indigenous and Tribal Populations Convention- 1957 (the ILO Convention No. 107) states that Indigenous populations 'shall not be removed without their free consent from their habitual territories'—unless the government wants to develop the said territory for their own purposes. I find this provision enables nation-states to continue their oppression on Indigenous peoples.

It is relevant to note that if any government signs and ratifies a convention or an agreement, it will be legally binding or enforceable for that country. But it is observed that governments are often reluctant to implement those commitments within their national boundaries. It is evident that many governments have signed and ratified international conventions and declarations recognizing the rights of Indigenous peoples, and they have adopted national legislations accordingly. However, many states have favored multinational corporations (MNCs) and transnational corporations (TNCs) in dealing with extractive projects on Indigenous territories by overlooking international law obligations,<sup>78</sup> as power relations are decisive of the extent to which participatory instruments can be used for transformative engagement.<sup>79</sup> Nevertheless, Indigenous peoples see the recognition of their cultural and other rights as the only way for their survival and development.

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<sup>78</sup> Ciaran O'Faircheallaigh, "International Recognition of Indigenous Rights, Indigenous control of Development and Domestic Political Mobilisation." (2012) 47.4 *Australian Journal of Political Science* at 532.

<sup>79</sup> Almut Schilling-Vacaflor, "Who controls the territory and the resources? Free, prior and informed consent (FPIC) as a contested human rights practice in Bolivia" (2017) 38:5 *Third World Quarterly*, at 1061.

### 1.3.3. Right to Self-determination of Indigenous Peoples

It is well documented that environmental degradation commonly harms Indigenous peoples. It is a significant threat to their lives and culture.<sup>80</sup> By complying to establish the rights of people in international law, Article 1(2) of the UN Charter incorporated the principle of equal rights and the right to self-determination of peoples. Similarly, Article 1 (1 and 2) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) recognize:

- “1. All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”<sup>81</sup>

Again, Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that Indigenous peoples have right to exercise the right to self-determination. By that right, they can freely determine their political status and freely pursue their economic, social and cultural development. Article 4 of the same Declaration states, “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.” Therefore, Indigenous peoples should not be prevented from taking any decision (social, economic, political or cultural) of whether they want any development in their

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<sup>80</sup> Shawkat Alam, “Collective Indigenous Rights and the Environment” in Shawkat Alam et al. eds, *Routledge Handbook of International Environmental Law* (London: Routledge, 2012) at 588.

<sup>81</sup> International Covenant for Civil and Political Rights (ICCPR) and International Covenant for Economic, Social and Cultural Rights (ICESCR), GA Res 2200 (XXI) 21st sess, 1 (16 December 1966)

territory or not.

#### **1.3.4. Indigenous Peoples' Right to Free, Prior and Informed Consent (FPIC)**

James Anaya states that as part of their right to self-determination, Indigenous peoples have the right to decide whether they will allow a development project in their territory or not.<sup>82</sup> UNDRIP, the ILO Convention No. 169, and the International Convention on the Elimination of Racial Discrimination (ICERD) articulate that if any state or any corporation wants to go forward with development in Indigenous territories, FPIC must be obtained before deciding on development projects. Indigenous peoples have the irrevocable right to offer and withhold their consent to those developments before any authorization of development activities.<sup>83</sup> It empowers them to negotiate how the project will be designed, controlled, managed, implemented, monitored and evaluated.<sup>84</sup> Regarding Articles 19 and 32(2) of UNDRIP, the government must confirm “consultation in good faith through Indigenous peoples’ representative institutions, in order to obtain their FPIC before adopting or implementing legislative or administrative measures that may affect them and prior to approval of projects that may affect their lands, territories or resources.”<sup>85</sup> Article 10 states that Indigenous peoples should not be forcibly removed from their lands or territories. No relocation shall take place without the FPIC of Indigenous peoples concerned. The governments should comply with the Declaration before the approval of projects that may affect lands, territories, or resources of Indigenous peoples.

Article 7.1 of the ILO Convention No. 169 states:

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<sup>82</sup> James Anaya, “Report of the Special Rapporteur on the Rights of Indigenous Peoples.” (2012) *Human Rights Council (A/HRC/21/47)* at 7.

Online: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47_en.pdf)

<sup>83</sup> *Ibid.* Whiteman and Mamen, *supra* note 64 at 7.

<sup>84</sup> *Ibid.*

<sup>85</sup> Indigenous Navigator, “Indicators: For Monitoring the UN Declaration on the Rights of Indigenous Peoples.” Online: [http://nav.indigenoustravel.com/images/Documents/Tools/Navigator\\_UNDRIPIndicators.pdf](http://nav.indigenoustravel.com/images/Documents/Tools/Navigator_UNDRIPIndicators.pdf)

“The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”<sup>86</sup>

James Anaya argues that a nation-state must respect and protect the rights of Indigenous peoples, and it must ensure other safeguards are implemented before proceeding with an extractive project. A state must take specific steps to minimize the limitation on the rights they can obtain through impact assessments, measures of mitigation, compensation, and benefit-sharing.<sup>87</sup> Any decision by the government to construct an extractive project without the consent of Indigenous peoples that impacts them negatively should be subject to review by an impartial judicial authority.

The right to FPIC of Indigenous peoples has a secure connection to the right to self-determination. Both rights empower the community to decide their political status freely and pursue their economic, social and cultural development. FPIC requires that Indigenous peoples should have the right to access full information regarding the proposed development on their ancestral lands.<sup>88</sup> As Papillon and Rodon state, “the principle of FPIC is rooted in the recognition that Indigenous peoples, as self-determining peoples, should be empowered to make decisions over their future and that of their traditional lands.”<sup>89</sup> The consent they express must be free from any

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<sup>86</sup> Article 7, Clause 1 of the ILO Convention No. 169. Online: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)

<sup>87</sup> Anaya, *supra* note 82 at 11 & 12.

<sup>88</sup> *Ibid.*

<sup>89</sup> Martin Papillon and Thierry Rodon, *Indigenous Consent and Natural Resource Extraction: Foundations for Made-in Canada Approach*, (Ottawa: Institute for Research on Public Policy, 2017) at 7.

pressure, and they must have all relevant information regarding the proposed activity and its potential impact.<sup>90</sup> Papillon and Rodon argue that FPIC is a powerful political discourse by which Indigenous peoples can play an essential role in the natural resource economy where they freely express their identifiable priorities through an informed and collaborative process by fully engaged in decision-making.<sup>91</sup> The authors contend that FPIC must be considered as one of the criteria for project authorization, and no project should be allowed without it. Project proponents or states should apply FPIC in every case, engaging not only Indigenous peoples but also all project-affected communities unless it is exhibited that the impact of the proposed project would be minimal, and the project is in the public interest.<sup>92</sup>

Although there is much debate as to whether Indigenous peoples' participatory rights extend to veto power over the state action,<sup>93</sup> James Anaya and Shin Imai argue that in cases where Indigenous peoples are utterly and willfully ignored in a process that would have a significant impact on their lands and livelihoods, a veto right is certainly applicable.<sup>94</sup> Exercising or employing this right to FPIC does not mean that international and domestic regulations and donor policies for developing a resource extracting project are to be ignored.<sup>95</sup> Given the situation and the position of the right to self-determination and right to FPIC of Indigenous peoples, national legislation and practice seem to be particularly weak concerning implementation. Although in many cases, Indigenous peoples accept such resource extraction initiatives, research shows that

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<sup>90</sup> Anaya, *supra* note 82.

<sup>91</sup> Papillon and Rodon, *supra* note 89 at 7.

<sup>92</sup> *Ibid.* at 17.

<sup>93</sup> James Anaya, "Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction: the More Fundamental Issue of What Rights Indigenous Peoples Have" (2005) 22:1 Arizona J Int Comp Law at 7.

Shin Imai, "Consult, consent and veto: International norms and Canadian treaties." In Michael Coyle and John Borrows eds. *The Right Relationship: Reimagining the Implementation of Historical Treaties*, (Toronto, UofT Press, 2017).

<sup>94</sup> *Ibid*

<sup>95</sup> Papillon and Rodon, *supra* note 89 at 2.

Indigenous peoples are also resisting them in many more places around the world, especially in the global South.<sup>96</sup>

### **1.3.5. Engaging Indigenous Peoples in Development Decisions**

The crucial role played by Indigenous peoples and their communities in environmental management and development has received generous recognition in international law.<sup>97</sup> Significantly, most extractive projects are increasingly taking place in the territories of Indigenous peoples. States and corporations mostly advance these projects without the meaningful involvement of Indigenous peoples in the decision-making process. In most cases, states and project proponents minimally recognize rights, cultures, and traditional knowledge of Indigenous peoples. In many countries, especially in the global South, instead of seeing the interests of ‘people of the land’ and negative social and environmental impacts on lands, ecological diversity, and human health, the governments favor companies’ interests for their economic benefits. Most of the resource extractive companies and their sub-contractors are not interested in taking appropriate measures to address environmental and social impacts on Indigenous peoples. Rather, they look for how effectively they can extract mineral resources for their financial gain.

Generally, it has been observed that low-income and Indigenous communities affected by mineral development exert little influence on the decision-making processes of legislative and environmental agencies because such groups are not represented among the interest groups that lobby and litigate against environmental authorities.<sup>98</sup> Moreover, they are hardly involved in a

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<sup>96</sup> *Ibid.*

<sup>97</sup> Roda Mushkat, “Public Participation in Environmental Law Making: A Comment on the International Legal Framework and the Asia-Pacific Perspective” (2002) 1 Chinese J Int’l L 185.

<sup>98</sup> *Ibid.*

complex network of political, cultural and social relations within communities and with regional organizations. As a result, Indigenous interests persistently struggle to pursue negotiations on both fronts.<sup>99</sup> The scenario is common across the global South due to weak environmental regulations, health and safety standards, although progressive mining companies conduct partial impact assessments with essential impacts left unmitigated or ignored.<sup>100</sup> Moreover, community consultations are often restricted to discussions on immediate consequences and not on long-term effects.<sup>101</sup> Furthermore, the recognition of the vulnerability of the collective rights of many Indigenous communities to environmental degradation is essential.<sup>102</sup>

Indigenous organizations have signaled their concern about the negative impacts of major development projects on their environments, livelihoods, lifestyles, and survival. As mentioned, very often, these projects entail involuntary displacements and resettlement of Indigenous communities. As a result, Indigenous peoples resist major projects because of the violations of their civil and political, and economic, social, and cultural rights. The conflict between economic development, environmental protection, and recognition of human rights is seen in the livelihoods of Indigenous peoples.<sup>103</sup>

### **1.3.6. Struggle/ Resistance by Indigenous Peoples**

As part of exercising their rights to self-determination, freedom of expression, and participation in decision-making processes under international law, Robert Bullard and Glen Johnson argue that Indigenous peoples and grassroots groups necessarily organize themselves,

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<sup>99</sup> Ciaran O’Faircheallaigh, “Public participation and environmental impact assessment: Purposes, implications, and lessons for public policy making” (2010) 30:1 Environmental Impact Assessment Review 19 at 8.

<sup>100</sup> *Ibid.* at 18.

<sup>101</sup> *Ibid.*

<sup>102</sup> Alam, *supra* note 80 at 587.

<sup>103</sup> Terminski, *supra* note 76.

educate themselves, empower themselves, and resist in their communities.<sup>104</sup> These rights necessarily entail the ability of Indigenous peoples to pursue their own initiatives for resource extraction within their territories if they choose.

It is widely documented that mining activities have fostered ecological distribution conflicts around the world. Communities opposed to mining projects have been facing human rights violations. The Latin American Observatory of Mining Conflicts (OCMAL) reported more than 150 active mining conflicts in the region, most of which started in the 2000s.<sup>105</sup> However, Indigenous communities across Latin America are also resisting mining operations in their territories. Canadian and other multinational mining interests have been successful since most Latin American resource-rich countries adopted mining policies that favor corporations over Indigenous peoples, other marginalized communities, the environment, and labor rights.

Concerning struggles over the environmental and ecological impacts of mining activities on the lands of Indigenous peoples, Keeling and Sandlos illustrate that the efforts not only manifest themselves as local conflicts but also as global settings of capital accumulation, profit maximization, and neo-colonialism.<sup>106</sup> Indigenous communities and their leaders observe that the operation on their lands is a direct assault against their people as well as their cultural practices and beliefs. Indigenous leaders thus articulate environmental injustice as a set of conditions that remove or restrict the ability of individuals and communities to function effectively.<sup>107</sup> Brosius argues that Indigenous campaigners have frequently found support outside national borders, as the rights of Indigenous peoples have become a global concern. Such groups, legitimately concerned

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<sup>104</sup> Robert Bullard & Glen Johnson, "Environmentalism and public policy: Environmental justice: Grassroots activism and its impact on public policy decision making" (2000) 56:3 J Soc Issues 555;

See also: James Anaya, *supra* note 93 at 7.

<sup>105</sup> Leire Urkidi and Mariana Walter, "Dimensions of Environmental Justice in Anti-Gold Mining Movements in Latin America" (2011) 42:6 Geoforum at 683.

<sup>106</sup> Keeling and Sandlos, *supra* note 65 at 122.

<sup>107</sup> Schlosberg and Carruthers, *supra* note 2.

about local issues, refer to global discourses and are increasingly brought into transnational advocacy networks.<sup>108</sup> Moreover, the solidarity sectors of the global North support the self-development of Indigenous peoples to gain the degree of self-determination to control over their lands and economic conditions.<sup>109</sup>

Agyeman, Bullard, and Evans argue that MNCs and TNCs are maintaining profits by relying on unsustainable forms of production in resource extractive industries and other development projects. Corporations are making enormous financial gains using ‘neo-liberal economic policies’ that affect the society at large through higher levels of pollution, greater resource exploitation, less social security for workers, and displacement of local and Indigenous communities.<sup>110</sup> The authors claim that human inequality is dangerous for environmental quality though not all people bear these costs equally, depending on the quality of environmental regulations. The countries in the global North have higher environmental quality than the global South, and they tend to be affected less.<sup>111</sup> The above situation can be configured as ecological distribution conflicts, which was coined by Martínez-Alier and Martin O’Connor in 1996 to describe social conflicts evolving from a disproportionate share of burdens and benefits of environmental goods and bads among different actors.<sup>112</sup> Scheidel et al. argue that the unsustainable use of resources creates both environmental destruction and ecological distributional conflicts.<sup>113</sup> These conflicts put particular emphasis on distributional aspects and distributional justice claims, and therefore, sometimes “transform into

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<sup>108</sup> Peter J. Brosius, “What Counts as Local Knowledge in Global Environmental Assessments and Conventions.” In *Bridging Scales and Knowledge Systems: Concepts and Applications in Ecosystem Assessment*, (2006).

<sup>109</sup> Pedro García Hierro, “Reflection of Indigenous Self-development” in Silvia Buchi et al. eds. *Indigenous Peoples, Environment and Development* (Zurikh, 1997) at 284.

<sup>110</sup> Julian Agyeman, Robert D. Bullard & Bob Evans, “Exploring the Nexus: Bringing Together Sustainability, Environmental Justice and Equity.” (2002) 6:1 *Space and Polity* at 85.

<sup>111</sup> *Ibid.*

<sup>112</sup> Juan Martínez-Alier and Martin O’Connor “Ecological and economic distribution conflicts.” (1996) *Getting down to earth: practical applications of ecological economics*.

<sup>113</sup> Arnim Scheidel et al. “Ecological distribution conflicts as forces for sustainability: an overview and conceptual framework.” (2018) 13.3 *Sustainability science*.

collective action which becomes very powerful when they challenge current understandings of our relationship with the government.”<sup>114</sup> In other words, ecological distribution conflicts give rise to many environmental justice movements by requiring the distributional perspective; that is, the lack of participation and recognition leads to the unjust distribution of burdens and benefits.<sup>115</sup>

### **1.3.7. Environmental Justice Movement to “Just Sustainability”**

The concept of ‘environmental justice’ is used to illustrate the fact that low-income communities and communities of color bear and face greater environmental and health risks than the dominant communities in their neighborhoods and workplaces.<sup>116</sup> This disproportionate risk is linked to other injustices in economic and social conditions the disempowered communities face. The environmental justice movement emerged in the U.S.A. in the late 1980s when an African-American community in Warren County of North Carolina organized a resistance movement when the area was chosen as the state’s waste dumping site without their consent.<sup>117</sup> Although the struggle of ‘people of color’ against a government decision was unsuccessful, it gained enormous attention from both domestic and international policy and decision-makers, environmental scholars, and solidarity groups. Robert Bullard, a pioneer of the environmental justice movement in the USA who led the protest from the front, terms the condition as ‘environmental racism,’ which is one form of environmental injustice fortified by different government bodies.<sup>118</sup> David Schlosberg makes a connection between the environmental justice movement and environmental racism: both are concerned with low-income communities and the disproportionate risks they

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<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> Dayna Nadine Scott, “What is Environmental Justice?” Environmental Justice. In M. Brydon-Miller & D. Coghlan (Eds.) *The SAGE encyclopedia of action research*. (2014).

<sup>117</sup> *Ibid.*

<sup>118</sup> Bullard and Johnson, *supra* note 104 at 559.

face.<sup>119</sup> Bullard and Johnson call for the environmental justice movement to identify some firm objectives for eliminating existing unequal enforcement of environmental regulations, policies, and practices. These environmental regulations and policies often limit some individuals and groups from participation in decision-making.<sup>120</sup> Additionally, government policies also allow MNCs and TNCs complete control over development projects.<sup>121</sup> One of the fundamental goals of the environmental justice movement is to challenge the capitalist growth economy.<sup>122</sup> Dayna Scott makes a clear distinction between the environmental movement and the environmental justice movement.<sup>123</sup> Environmentalists in the environmental movement have been focusing on legal strategies to achieve social change, which she sees as problematic because law reform continues to privilege elites at the expense of people working on the ground.<sup>124</sup>

David Pellow argues that the environmental justice movement is not a sustainability movement or an environmental movement; instead, it's about the fight for social, procedural, and distributive justice.<sup>125</sup> Differentiating the environmental justice movement from the sustainability movement, Agyeman and Evans idealize Faber's argument that the struggle for environmental justice is not about sustainability because environmental justice wants to share risks and benefits equally; it does not talk about how to get rid of jeopardies at the same time.<sup>126</sup> The question of environmental justice can be addressed without solving ecological problems.<sup>127</sup> Agyeman, Bullard, and Evans

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<sup>119</sup> David Schlosberg, "The Justice of Environmental Justice: Reconciling Equity, Recognition, and Participation in a Political Movement", in Andrew Light and Avner de Shalit, (eds.), *Moral and Political Reasoning in Environmental Practice* (Cambridge, MIT Press-2003) at 78.

<sup>120</sup> Bullard and Johnson, *supra* note 104 at 559.

<sup>121</sup> Todd Gordon and Jeffery R Webber, "Imperialism and Resistance: Canadian Mining Companies in Latin America" (2008) 29:1 Third World Quarterly at 63.

<sup>122</sup> David N. Pellow, *Resisting Global Toxics: Transnational Movements for Environmental Justice*, (Cambridge: MIT Press, 2007), at 3.

<sup>123</sup> Scott, *supra* note 116.

<sup>124</sup> *Ibid.*

<sup>125</sup> Pellow, *supra* note 122 at 48.

<sup>126</sup> *Ibid.*

<sup>127</sup> Pellow, *supra* note 122 at 49.

contend that sustainability and environmental justice may conflict with each other, as the primary focus of the environmental justice movement is on the issues of social equity and equality, and the center of ‘environmental sustainability’ is on green issues.<sup>128</sup> However, scholars and policymakers have placed environmental justice within the principles of sustainability and sustainable development. Therefore, the movement on two concerns can be found in local fights for just transport, community food security, and sustainable communities and cities.<sup>129</sup> Dayna Scott states that although the environmental justice movement has focused on the health and wellbeing of people rather than protecting the natural environment, the activists of the movement started by concentrating on environmental impacts and harms to surrounding communities derived from air, water, soil contamination as well as toxic workplaces, urban planning, and transit decisions.<sup>130</sup> Scheidel et al. point out that environmental justice movements arise out of ecological distribution conflicts leading to ‘just sustainability’ that addresses both environmental quality and human equality.<sup>131</sup> The authors argue that environmental justice movements can turn from victims of environmental injustices into fighters for sustainability by articulating creative forms of mobilization and action.<sup>132</sup>

According to Agyeman and Evans, ‘sustainability’ ensures a better quality of life for all in a just and equitable manner by protecting ecosystems, whilst living within the limits of supporting ecosystems.<sup>133</sup> Their definition focuses on four main areas of concern, such as quality of life, present and future generations, justice and equity in resource allocation, and living within

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<sup>128</sup> Agyeman, Bullard and Evans, *supra* note 110 at 85.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

<sup>131</sup> Scheidel et al., *supra* note 113.

<sup>132</sup> *Ibid.*

<sup>133</sup> Jilian Agyeman and Bob Evans, ‘Just sustainability’: the emerging discourse of environmental justice in Britain? (2004) 170.2 *The Geographical Journal*, at 156.

ecological limits.<sup>134</sup> The authors single out ‘just sustainability’ and ‘environmental sustainability’, and mandate, “governments at the local, regional, national and international levels to learn from these environmental justice and progressive, or ‘just sustainability’-based organizations and to seek to embed the central principles and practical approaches of ‘just sustainability’ into sustainable development policy.”<sup>135</sup> By ‘just sustainability’, the authors mean “an equal concern with equity, justice and, ultimately, governance on the one hand, and environment on the other,”<sup>136</sup> that has an equal value of environmental justice. The justice-sustainability coalition is being addressed through transnational activism and in the policy debates of international environmental regimes.<sup>137</sup> Therefore, environmental sustainability concerns, both at the national and the global level, have become major binding constraints to development initiatives.

### **1.3.8. Conceptions of Environmental Justice**

The United States Environmental Protection Agency (EPA) has a working definition of environmental justice, which has been widely used to define environmental justice. It states, “environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, income, or national origin concerning development, implementation, and enforcement of environmental laws, policies, and regulations.”<sup>138</sup> In EPA’s definition, ‘fair treatment’ means that there should be fairness in the distribution of goods and bads among all actors resulting from industrial, governmental, or commercial activities. Again, ‘meaningful involvement’ affirms that affected communities should have the voice in the decision-making

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<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.* at 163.

<sup>136</sup> *Ibid.* at 160.

<sup>137</sup> Agyeman, Bullard and Evans, *supra* note 110 at 85

<sup>138</sup> Environmental Protection Agency, “Environmental Justice”. Online : <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

process.<sup>139</sup> The communities must be involved by the government bodies or project proponents while making decisions. EPA argues that the goal of environmental justice will not be achieved until everyone enjoys the same degree of protection from environmental harm, and equal access to the decision-making process.<sup>140</sup> According to David Schlosberg, environmental justice is the equitable and fair distribution of risks and benefits associated with any development project, meaningful participation of communities in the decision-making process, recognition of rights, local knowledge, cultural differences and distinctiveness of surrounding communities, and the capability of individuals and communities to function in society.<sup>141</sup> Therefore, environmental justice is a theory of justice and a social movement that is concerned about fair and equitable treatment towards all people regarding sharing benefits and bearing burdens of environmental harm, involvement in the decision-making process, and recognition of rights.

Seventeen principles of environmental justice were adopted to build a national and international movement of all peoples of color to fight the destruction that is occurring on their lands, especially in Indigenous territories.<sup>142</sup> All principles except the final principle include a social justice component (the seventeenth talks about environmental integrity). To sum up, environmental justice principles affirm to protect the sacredness of the ‘Mother Earth’ and maintain sustainability for protecting humans and other living things. Environmental justice confirms to uphold the fundamental right to social, political, economic, cultural, and environmental self-determination of all people, and as such, demand the right to participate as equal partners at every level of decision-making by enforcing the principle of informed consent.

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<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> Schlosberg, *supra* note 119.

<sup>142</sup> The Principles of Environmental Justice were adopted at the First National People of or Environmental Leadership Summit Washington, DC, October 24-37, 1991.

The principles of environmental justice assure the safeguarding of the rights of all victims of environmental injustice by confirming they receive full compensation for damage as well as quality healthcare. The principles of environmental justice oppose the destructive operations of multinational corporations to sustain the complete protection of human beings and the natural environment.<sup>143</sup> Robert Bullard puts forward that governments should adopt five principles of environmental justice to end unequal environmental protection: guaranteeing the right to environmental protection, preventing harm before it occurs, shifting the burden of proof to the polluters, obviating proof of intent to discriminate, and redressing existing inequities.<sup>144</sup>

According to Dayna Scott, “employing an environmental justice lens means that we take account of the sharing of costs and benefits associated with environmental policy and natural resource development decisions, and the extent to which the decision-making has meaningfully included the participation of affected communities.”<sup>145</sup> According to Schlosberg, the term environmental justice is used to cover two overlapping parts of the grassroots environmental justice movement: the anti-toxic movement and the movement against environmental racism.<sup>146</sup> According to Schlosberg, three conceptions of justice should exist in environmental justice movements such as equitable distribution, recognition, and participation. I will discuss each in turn.

### **1.3.8.1. Equitable and Fair Distribution of Risks and Benefits**

Most environmental justice movements focus on just, fair and equitable distribution of benefits

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<sup>143</sup> *Ibid.*

<sup>144</sup> Robert Bullard, “Decision Making.” in L. Westra, & B. Lawson, *Faces of Environmental Racism*, (Lanham: Rowman Littlefield, 2001).

<sup>145</sup> Dayna Nadine Scott, “The Networked Infrastructure of Fossil Capitalism: Implications of the New Pipeline Debates for Environmental Justice in Canada.” (2013) *Revue Générale De Droit*.

<sup>146</sup> Schlosberg, *supra* note 1119 at 78.

and burdens among various actors as well as the meaningful involvement of Indigenous persons and members of other marginalized communities in the environmental decision-making processes for developing resource extractive or other large-scale projects.<sup>147</sup> However, environmental degradation cannot be separated from other problems afflicting low-income communities and communities of color. Young acknowledges Rawls' 'Theory of Justice' as a useful apparatus for justice and claims that this is the most well-known and frequently applied approach to questions of justice that focus on 'fairness' of the distribution.<sup>148</sup> This theory of justice can address the question of the 'fairness' of the distribution of burdens resulting from the authority's decision.

Young claims that a distributive analysis of justice considers what risks, benefits, and responsibilities should be distributed among various organizations, corporations, state organs, state environmental agencies, municipal governments, and local communities in a development project.<sup>149</sup> Connecting to the unequal distribution of harms and disproportionate burdens, anti-mining groups frequently argue that the approval of mining projects involves the misrecognition of their material and cultural dependence on the land and ignores the concerns expressed in participatory stages.<sup>150</sup> It is crucial to intervene at the nation-state level to eliminate unequal distribution among various actors.<sup>151</sup>

According to Schlosberg, there is more to the conception of environmental justice than just this distributional aspect, and a focus solely on distribution is problematic.<sup>152</sup> The arguments and critiques of Young and Schlosberg regarding distributional justice exposed some new opinions about environmental justice. These ideals of distributive justice developed and recognized by

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<sup>147</sup> *Ibid.*

<sup>148</sup> Iris Marion Young, "Justice and Hazardous Waste." (1983) 5 *The Applied Turn in Contemporary Philosophy: Bowling Green Studies in Applied Philosophy* at 174.

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> Schlosberg, *supra* note 119 at 88.

various scholars, including Rawls, Young, and Schlosberg, are useful for extending the legal and social framework to analyze another dimension of environmental justice, e.g., procedural environmental justice.

### **1.3.8.2. Participation in the Decision-making Process**

The right to meaningful participation of local people in the decision-making process of any development project is an essential component of environmental justice. It requires respect for human rights and fundamental freedoms as part of the development process. Citizens should be the key actors in economic development, both as beneficiaries of modernization and as those affected by increasing marginalization.<sup>153</sup> Indigenous peoples' right to participate at every level of decision-making as equal partners can confirm their claim of environmental justice. Taking participatory justice into account, Richardson and Razzaque argue that public participation through community consultation is significant in the context of sustainable development.<sup>154</sup> Public participation can occur through education, information dissemination, advisory or review boards, public advocacy, public hearings and submissions, and even litigation. By these means, public participation may assist decision-makers in understanding and identifying public interest concerns while formulating environmental policies.<sup>155</sup> Emphasizing the access to environmental information, participation in administrative decision-making and access to justice, the authors claim that while these participatory reforms have improved the quality of many environmental decisions, they have hardly engendered a substantial paradigm shift to ecologically sustainable development.<sup>156</sup> The issue of justice raised by communities in the development projects calls into

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<sup>153</sup> Terminski, *supra* note 88 at 4.

<sup>154</sup> Benjamin Richardson and Jona Razzaque, "Public Participation in the Environmental Decision-making." In: Richardson, B. and Wood, S., eds. *Environmental Law for Sustainability*, (Oxford: Hart, 2006) at 166.

<sup>155</sup> *Ibid.* at 182.

<sup>156</sup> *Ibid.*

question just those institutional structures that justify some decision-making procedures. Therefore, communities, especially Indigenous and other marginalized people, should have the right to participate in the decision-making process with the power to approve or disapprove any project.

Affected communities find themselves having to struggle with nation-states, which they perceive as representing interests other than theirs,<sup>157</sup> but ideally, states are entitled to give priority to the interests of their citizens.<sup>158</sup> Although state agencies have the responsibility to make a fair and equitable decision about the distribution of risks, they favor corporations over their citizens.<sup>159</sup> Young contends that a state has a significant interest in attracting large businesses within its borders and making the conditions of their operations favorable.<sup>160</sup> The governments argue that the decision would bring the most significant benefit to the country. In many cases, where the primary conflict opposes the interests of corporations to those of residents affected by their operations, citizens rarely believe that nation-states act neutrally and impartially.

### **1.3.8.3. Recognition of Communities and their Rights**

Environmental justice activists have called for a more substantial commitment to ‘recognition’ of affected communities that are being ignored by both mainstream environmental movements and governments. In this respect, Schlosberg believes environmental justice must focus on the political process to address both the inequitable distribution of social goods and the conditions undermining social recognition.<sup>161</sup> Recognition requires that policies and programs for managing development

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<sup>157</sup> *Ibid.*

See also Eyal Benvenisti, “Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders.” (2013) 107.2 *American Journal of International Law* at 298.

<sup>158</sup> *Ibid.* at 300.

<sup>159</sup> Young, *supra* note 148.

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

projects must meet the standard reasonably, considering and representing the cultures, traditional knowledge, values, and situations of all affected parties.<sup>162</sup> Kyle Whyte emphasizes the integration of environmental heritage and recognition-based justice and argues that the heritage should be blended to the benefit of all affected parties.<sup>163</sup> Schlosberg states that “lack of recognition is harm, an injustice, as much as a lack of adequate distribution of various goods is.”<sup>164</sup> He further rationalizes Young’s claim and argues that lack of recognition is an injustice and a threat to human dignity because it harms by constraining people from their fundamental rights. Non-recognition or misrecognition can cause harm and imprisons oppressed communities in cultural and political dominance.<sup>165</sup> If someone is not recognized, he/she cannot adequately participate in any process of decision-making.<sup>166</sup> Moreover, it is also the foundation of distributive injustice.<sup>167</sup> According to Young, lack of participation of local communities in decision-making derives from a lack of recognition of the victims of environmental degradation, which then leads to environmental injustice.<sup>168</sup>

#### **1.3.8.4. Integrating Distribution, Participation, and Recognition**

Schlosberg endorses Young’s argument and claims that the concept of justice needs to focus more generally on the elimination of longstanding domination and oppression. He argues that the central focus for Young is in addressing justice both as distribution and as the recognition of the

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<sup>162</sup> Kyle Powys Whyte, “The Recognition Dimensions of Environmental Justice in Indian Country.” (2011) 4.4 Environmental Justice at 201.

<sup>163</sup> *Ibid.* at 203.

<sup>164</sup> Schlosberg, *supra* note 119 at 82.

<sup>165</sup> Young, *supra* note 148.

Charles Taylor, “The Politics of Recognition.” in Ajay Heble, Donna Palmateer Pennee, J.R. Struthers eds. *New Contexts of Canadian Criticism* (Peterborough: Broadview Press, 1997) at 98.

<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.* at 85.

<sup>168</sup> *Ibid.*

difference in decision-making structures.<sup>169</sup> Kyle Whyte claims that distributive and procedural justice cannot be integrated into laws, programs, policies, and institutions without respect for Indigenous cultures, values, and particular situations.<sup>170</sup> In this sense, increased participation can address issues of unfair distribution and misrecognition of Indigenous communities in any resource extractive development project. Arguments for procedural justice demonstrate how varied notions of justice can be incorporated into a single project. The demand for participation in the decision-making process involving Indigenous and local communities is central to the environmental justice movement by which they can be appropriately recognized.

Schlosberg puts forward the argument that unequal distribution of harm is perceived not only as an environmental injustice but also as a violation of human rights on a local as well as a global scale.<sup>171</sup> But according to Young, the emphasis on only a distributive justice paradigm is misguided. She claims that lack of recognition itself causes damage to the oppressed communities because if they are not recognized, they cannot participate effectively in any decision-making process.<sup>172</sup> Schlosberg agrees that justice requires not only an understanding of unjust distribution, and would include elements of recognition, but argues that these two are tied together in political and social processes.<sup>173</sup> These conceptions of injustice are not competing for notions, nor are they contradictory or antithetical. Unequal distribution, lack of recognition, and limited participation all work to produce injustice, and claims for justice can be integrated into a decision-making process for any development project.<sup>174</sup> This is a critical motivation. In the research, I hope to contribute insight to advance the literature on this point.

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<sup>169</sup> Schlosberg and Carruthers, *supra* note 2.

<sup>170</sup> *Ibid.* at 200.

<sup>171</sup> Schlosberg, *supra* note 119 at 78.

<sup>172</sup> Iris Marian Young, *Justice and the Politics of Difference*. (Princeton: Princeton University Press, 2011).

<sup>173</sup> *Ibid.*

<sup>174</sup> *Ibid.*

### 1.3.9. Local to Transnational Resistance in the Environmental Justice Movement

Local communities and activists or justice organizations in the global South cannot succeed alone; national and transnational justice and advocacy groups and networks join with them and tie together to resist against development projects to establish rights and justice towards them. National justice groups and civil society members maintain communication with transnational coalitions for avoiding further intervention from project proponents in the long run.<sup>175</sup> Since local protesters and right holders cannot trace a company's most recent activities, transnational justice organizations through their strong networks can contact and bargain with the company, and to some extent, with states. Therefore, the justice groups act as a mediator in this case.

Transnational networks campaign, negotiate and create pressure on states and foreign extractive companies through various means such as presenting evidence on websites, and in newspapers and social media, and by organizing events and street protests, and making companies accountable for their actions and through global attention. The campaigners also work with local communities and activists to assess needs and initiate a legal and direct campaign against corporations and governments' oppression.<sup>176</sup> The activities by the transnational and global justice organizations can be called the 'transnational or cross-border social movement.'<sup>177</sup> In other words, transnational social movements can be defined as movements involving activists from more than one country, which infiltrate from the local level (where the project is situated) to the national level (capital city or countrywide) to a transnational space (another country especially, the origin of the company).<sup>178</sup> Additionally, activists themselves may be transnational such as citizens of more than

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<sup>175</sup> *Ibid.* at 133.

<sup>176</sup> Joe Bandy, "Reterritorializing Borders: Transnational Environmental Justice Movements on the US/Mexico Border." (1997) *Race, Gender & Class*, at 90.

<sup>177</sup> *Ibid.*

<sup>178</sup> Samina Lutfu, "Transnational Ties and Reciprocal Tenacity: Resisting Mining in Bangladesh with Transnational Coalition." (2017) 51.1 *Sociology* at 128.

one country or solidarity groups supporting a movement in a foreign country. Alongside transnational methods and strategies may be applied, such as mobilization, protest, social media, or other web-based activities, and the movement requires cross-border interaction such as activism based in one or several countries where activists are located.<sup>179</sup>

I argue that Indigenous peoples around the world tend to be disproportionately affected by resource extraction activities and have fewer technical, legal, and other resources to participate in the decision-making process effectively due to their non-recognition. This lack of adequate participation can be interpreted as procedural environmental injustice. The above discussion in the process of building a theoretical framework generates a hypothesis that I intend to test: inequitable or unequal distribution, lack of recognition, and limited participation, all work to produce injustice, and claims for justice should be integrated into a decision-making process for any development project. In doing so, my primary aim is to observe how and to what extent Indigenous peoples' interests are reflected in the environmental decision-making process and how do they frame their claims by building coalitions with national and transnational environmental justice groups in a mining conflict situation by qualitative research and policy analysis.

## **1.4. My Methodological Journey**

### **1.4.1. Plan of Research**

This research study involves human participants and maintains the ethical standards of conduct required by the Research Ethics Review Board of York University. The Research Ethics Review Board of York University approved my research project in April 2015. Before going to Bangladesh for field work in December 2015, I finalized my interview questionnaires and the scope of

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<sup>179</sup> Nicola Piper and Anders Uhlin, "New Perspectives on Transnational Activism." In Nicola Piper and Anders Uhlin (eds.) *Transnational Activism in Asia: Problems of Power and Democracy*. (New York: Routledge, 2003).

interviews with the consultation of my supervisor. This research primarily utilizes a ‘case study’ approach to facilitate advanced understandings of the recognition, distribution of risks and benefits, and procedural environmental justice elements for Indigenous peoples. My case study examines Adibasi and activists’ accounts of the movement to analyze how their claims in the mining conflict fit into the environmental justice movement.

I use both primary and secondary sources in developing the case study. Bearing in mind the scope of the project, its ESIA process, and the Adibasi resistance, I focused my fieldwork primarily on participant observation and key informant interviews with Adibasi communities and some Bangalees of the mining region, core activists of the movement, local government representatives, NGO representatives and civil society members that are opposing the proposed project. The purpose of the interviews is to explore the motivation for and background history of the movement and its claims. Moreover, interviews of Adibasi members gave me a basic idea about whether they were properly consulted or not, whether the consents they have given were free or not, and why they organized and resisted against the project. I learned about their conceptions of distributive justice and procedural environmental justice and whether they have or seek recognition as Indigenous peoples. I also completed a document review, including the analysis of reports and policy documents.

#### **1.4.2. Before the Journey**

I find it crucial to share my methodological journey for conducting this research, which can be helpful for future researchers in a similar case and area setting. Before my visit to Phulabari, several researchers warned me about the local rage concerning *Dalal* of the company. I was prepared to face the situation. A Dhaka University sociology professor who had conducted ethnographic research in the Phulbari mining region told me that when local people, even after a decade of the

*Phulbari Khoni Andolon*, see any *Bohiragoto*<sup>180</sup> hanging around in their locality, “they assume that person is a *Dalal* of Asia Energy.” She offered me with a list of activists who organized the *Asia Energy Office Gherao Kormosuchi*. She also shared the experience of obstacles she had faced during her ethnographic research in Phulbari and suggested that I proceed with caution because once I am tagged as a *Dalal* of Asia Energy, I might not be able to complete my fieldwork in Phulbari. She suggested me to contact local activists and create peer relations with them before starting my field activities.

Keeping the experience in mind, I contacted the member secretary of NCBD, Professor Anu Muhammad. The central NCBD members have had a considerable impact on local activists. Since I needed to conduct interviews with key activists of the *Phulbari Khoni Andolon*, researchers who had done fieldwork in Phulbari recommended me to talk to the professor. He knew about my research, as I had previously contacted him to get consent for participating in my research. After I reiterated the purpose of my visiting Phulbari, he assured me of help in Phulbari. He said that he would introduce me to regional NCBD leaders. He explained to me why local protesters and villagers are suspicious about *Bohiragoto* and how they are still keen on protesting the company and their activities. Awareness has been maintained among activists and local villagers because of the simultaneous efforts of company personnel in the mining area. The protesters and local farmers became proactive; many of them still believe that the company might develop the opencast mining project on their lands by influencing the government. Every other month, protesters meet in Phulbari town to inform people to be aware of *Dalal*. Professor Muhammad informed the convener

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<sup>180</sup> Bohiragoto is a Bangla term meaning outsiders or strangers who have no connection or tie with anybody of a certain area. Local Adibasis and Bangalees call those people ‘bohiragoto’. Some people call them ‘refugee’ as they migrated and settled in the Khas lands of this area.

of Phulbari NCBD and requested him to help me. Although the convener could not help me in my research directly, he assured me that nobody would obstruct my field activities.

As I knew that most of the regional NCBD members and activists of the movement were also the members of leftist political parties, I contacted my friend, a central Communist Party leader, to reach his comrades to assist me in conducting field activities in Phulbari town. He reached out to Nuruzzaman, a key leader of the movement in Phulbari town.

### **1.4.3. The Journey Begins**

My field activities started in December 2016. I went to my wife's grandparents' house in Birampur sub-district, which is only ten kilometers from the mining footprint and twenty kilometers from Phulbari town. My father-in-law introduced me to the convener of the Birampur regional branch of NCBD, one of the organizers of the movement. I met the convener informally several times, and he became my local link until I moved to Phulbari town to meet other activists. The convener also gave me some names of local activists. He informed me that the current Chairman of Khanpur Union Council of the Birampur sub-district had been elected in a popular vote due to his active role in the movement. My wife's grandmother told me that the Chairman is her relative and gave me his phone number. I called and expressed my intention of visiting him and informed him that I need a place in his area for ethnographic field activities with Adibasi communities. He agreed to help me and offered a room at his office complex free of charge.

The next morning, I went to the Chairman's office in the Khanpur Union Council complex. I could not meet him, as he left the office to go to the city for the day. But he had instructed his secretary to help me. The assistant told me that most of the villages (hamlets) in this Union are Adibasi villages and most of the Adibasis were involved in the *Phulbari Khoni Andolon*. He gave me the name of Cherobin Hembrom, the head of Birampur sub-district traditional institute and a

key person motivating Adibasis and organizing the movement. He is a Santal, one of the three communities (along with the Munda and the Mahili) recognized as ‘Indigenous’ or ‘Adibasi’ by Asia Energy in their official document (ESIA). Cherobin Hembrom is a retired village doctor popularly known as ‘Cherobin Daktar/Doctor’ in the area, as he served a long time as a leprosy doctor at the nearby hospital of a Catholic Church.

Cherobin Hembrom told me about his involvement in the movement and his position in Adibasi society. I understood that he would be a very important key informant of my research. He knows all the leaders and core activists of the movement. He told me that a portion of his hamlet (mostly agricultural lands of Dhanjuri village) is included in the preliminary map of the projected mining area. After a short discussion about the social, political, and economic settings of Adibasi communities and the Phulbari movement, he invited me to enter his house made with mud and introduced me to his wife and other family members. Before leaving Cherobin’s house, I expressed my interest to stay at his house as a paying guest because I wanted to stay with an Adibasi family to understand their livelihoods more closely. He assured me to help in my research but could not confirm about keeping me at his house. However, he gave me the phone number of his younger son, Clinton Hembrom, who has been studying at a college in Dhaka. I observed that Adibasi family settings are different than non-Adibasi.

#### **1.4.4. Creating Connection in the Field**

I went to Phulbari town from Dhaka on January 10, 2016, intending to stay there for a week to create a connection with local activists. I went to the office of the chief executive of the Phulbari sub-district to inform him of my presence in the mining area and discovered he was a friend of mine from university. I described my reason for coming to Phulbari, and he agreed to help me within his official limit. He also arranged a room for me to stay in the government bungalow. I

stayed at the bungalow for seven days and observed the township. I saw many slogans of the movement written on walls throughout the town. When I was staying in Phulbari town, Nuruzzaman's home became my regular destination, and he spoke about the movement more often. He showed me his collection of newspaper reports on the *Phulbari Khoni Andolon*. I photocopied them for my research. He gave me a list of prospective interviewees among activists and their phone numbers; I interviewed most of them at the later dates, and their accounts were a great deal of help for my research.

I also shared my intention with the caretaker of the bungalow, and he convinced his son to be my guide during my stay in Phulbari town. His son accompanied me walking through the township and brought me to a neighboring Adibasi hamlet. Though most of the Adibasi adults were out of their homes working in the fields, I managed to talk to an elderly Adibasi man from the Munda community<sup>181</sup> who shared his personal experience of getting involved in the movement. I returned to Dhaka after a significant improvement in conducting field activities in Phulbari.

#### **1.4.5. Into the Field**

I met Clinton Hembrom in Dhaka and requested him to persuade his parents to keep me at their home as a paying guest. I also asked him to be my research assistant (accompany me, recruit interviewees in their language, and help me with recording and note-taking). As I mentioned earlier, I wanted to stay close to Adibasis, and to stay at an Adibasi house was my priority. Clinton convinced his family and agreed to work with me as a research assistant since he was on a study break. I stayed at their home for two and a half months. For the first few days, I roamed around

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<sup>181</sup> The Munda is also known as Pahan. All Munda people have 'Pahan' as their surnames.

the village observing Adibasi daily lives. Cherobin Hembrom gave me a list of Adibasi members



*Figure 2: My RA with the Bike we used for commuting*

from ten neighboring Adibasi hamlets and a non-Adibasi village. Talking to him at dinner became my daily task. Mr. Hembrom told stories about Adibasis' social, political, legal, and economic issues, oral and sacred history, rituals, festivals, recognition politics, religion, and the

movement. I took notes every night before sleeping. Cherobin formally gave me a three-hour interview about the recognition politics of Adibasis and protest issues on my last day at his house. It was a great experience to have such a knowledgeable person as my key informant for my research.

After spending ten days of observing Adibasi communities, mining issues, movement, and collecting potential interviewees list, I started the data collection process. My father-in-law borrowed a motorbike for me, which my research assistant drove. This vehicle helped much in getting to interviewees in various places. I relied on my research assistant as a local Adibasi person who knew the area. Understanding and speaking Adibasi languages, he convinced most Adibasi interviewees to take part in my research. Clinton took me to Phulbari town many times. I conducted most of the interviews with activists in Phulbari and Birampur during my stay at Dhanjuri hamlet.

#### **1.4.6. Get Ready for Confrontation**

“Agents of the company are roaming around. We will resist them at any cost.”  
- An Adibasi protester.

Although I was in an advantageous position entering the mining region,<sup>182</sup> I faced multiple confrontations during my field activities in the mining region. When I was walking through an Adibasi hamlet, some residents stared at me as if I were a criminal. It took me a while to understand why they were staring at me. My research assistant told me, “They think that you are a *Dalal*.” I requested my RA to inform them that I am not a *Dalal* or a company agent; instead, I would be researching for their justice and rights. Another obstacle in Phulbari town was when a man, accompanying a regional NCBD leader, asked for an explanation of why I am doing this research. I tried to explain my research agenda and informed him that I am conducting this research as part of my doctoral study. He told me there is no point in researching. He did not give any explanation, but I felt that local protesters are frustrated of dealing with *Dalal* and *Bohiragoto* and do not want people to engage in the mining and movement issue.

I also faced a confrontation at my RA’s house. My RA’s brother, the eldest Cherobin son, works for an NGO in Dinajpur town. He comes home every other two weeks. When he arrived



Figure 3: Adibasi farmers busy working in the paddy field

home, he questioned me for a whole day, trying to find links with the company. I showed him the documents required for conducting field research. I even showed him the website where I had appeared in my

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<sup>182</sup> My wife’s grandfather’s village situated only 10 kilometers far from Phulbari mining footprint.

university news for receiving scholarships for my study. He was not convinced and took a whole day to read the documents I provided to him. He talked to his father about the matter. I was worried that I would be kicked out, I would lose my RA, and I would not be able to conduct my field research in that area. I was waiting for responses from both persons. The next morning when he was leaving home for Dinajpur, he told me that I could stay at his house, but he was still confused about my roles. He later came back four to five times during my stay, and we discussed the Phulbari Coal Project, the movement, and the Adibasi lifestyle.

During my fieldwork, I struggled to find people who could talk about mining development and the resistance movement because many people were busy with cultivating. The area became green

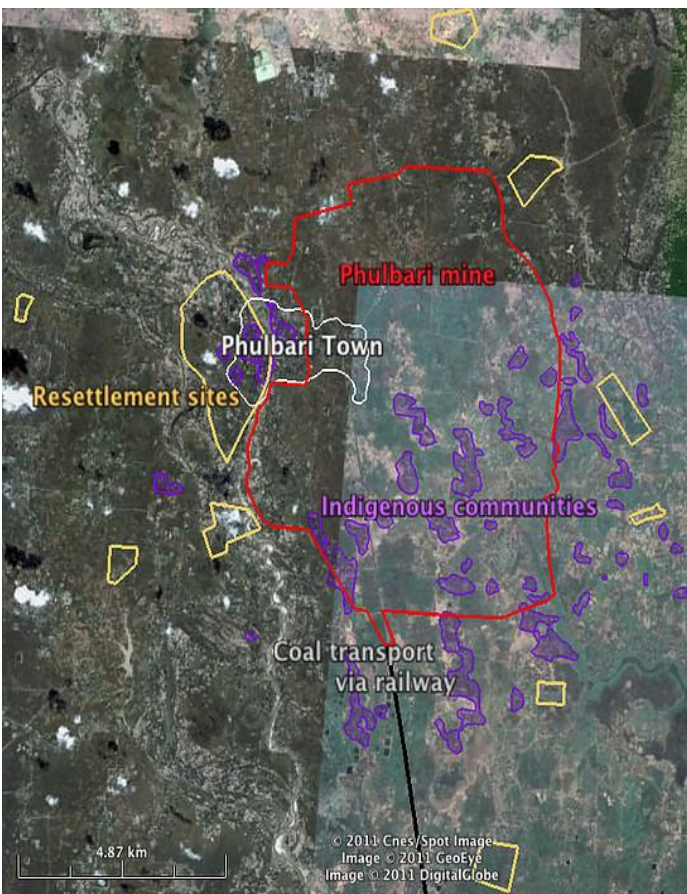


Figure 4: Adibasi hamlets in the mining footprint collected from ESIA of Asia Energy

all around with paddy fields everywhere. My landlord had 20 bighas (one bigha is equal to 1600 square yards) of cultivating lands. I felt that Adibasis in the mining area are now living in harmony with their existing agricultural practices. Though they are discriminated against socially with unequal treatment, they are happily living with their current economic settings. Although most of the people are poor, they have their own mechanisms to overcome their situation. Adibasi self-government institutions monitor if any Adibasi family is going

through financial hurdles, *Majhi Parishad*<sup>183</sup> try to help. They feel that any changes in that area would harm their livelihoods and self-governing systems

## 1.5. Methods Used

I conducted forty-two semi-structured and open-ended interviews during my field activities in the Phulbari mining area and Dhaka, Bangladesh. I interviewed Adibasi elders (mostly from the Santal community, as they are majority in that region including Adibasi people from the Munda, Karmakar, and Robidas), farmers, and teachers; Adibasi leaders and activists; local government representatives; local Bangalee people; local and national activists, civil society members; experts, and NGO spokespersons. Out of forty-two interviews, twenty interviews were conducted in ten Adibasi hamlets of Khanpur Union of the Birampur sub-district such as (Koromtoli, Ratanpur, Dhanjuri, Dhakunda, Letason, Laxipur, Sonajuri, Bukshi, Swajanpukur, Dhantola), two from Phulbari sub-district and two hamlets from Nawabgonj sub-district. Most of these hamlets are included in the map of the mining footprint.

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<sup>183</sup> Santals have Pargana Parishads (Circle councils). It is called Manjhi Parishad. Manjhi Parishad is the traditional governance institution of Santal people of Bangladesh and India. Through this institution, Santals practice their customary laws to govern the people in a hamlet. It has twelve members including a woman. Santals are known as Manjhi as well. There are four stages such as hamlet pargana hamlet circle), Union pargana (union circle), Upazilla Pargana (sub-district circle) and Zilla Pargana (district circle). In hamlets, the committee consists of 12 people under the leadership of a Mandal (chief). Mandal is responsible for all matters (land conflict, family matters, and other societal issues, small criminal matters) to resolve by discussing with other members. Santals governance system introduced to include women members in pargana system. According to their new rule, a woman can be a Mandal too. If the hamlet pargana is unable to resolve the issue, Union pargana, that also consists of 12 members under a Mandal. The issue would pass to sub-district level and then district level.

Out of twenty Adibasi interviewees, fourteen are from the Santal community, six from the



Figure 5: An Adibasi respondent signing the Informed Consent letter

Munda community, one from the Karmakar, and one from the Robidas community. Interviewees included eight farmers and four women (one interviewee is elderly, and one is a local government representative. Two of them are farmers), two schoolteachers, four

*Mandal*<sup>184</sup> of *Manjhi Parishad* from four hamlets, one Adibasi representative in a government institute, one college student, and one national leader. I also interviewed two representatives from Adibasi NGOs. I interviewed two local government heads—the Chairman of Khanpur Union Council of Birampur sub-district and the Chairman of Phulbari Sub-district Council. Both are Bangalees. I interviewed five Bangalee farmers, including a woman in the Phulbari mining region, eight protest activists from Phulbari and Birampur, and one national leader. I also interviewed two spokespersons from environmental NGOs and two civil society members. I could not manage to find any person from the Mahili community—who are recognized by the company as ‘Indigenous peoples.’ I had a plan to interview company officials, but I could not find them in Bangladesh. Because the company shut its office and wound up activities in Bangladesh. I tried to contact them by telephone in its London office but could not get any response.

I identified the locations by reading various research reports conducted on the Phulbari Coal Project and the movement. Before visiting the site, I talked to a researcher who gave me a vast

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<sup>184</sup> The heads of the traditional institution of the Santal and Munda are called ‘Mandal’.

knowledge about the area, local peoples' psychological states, and emotions about the region and minefield including the motivation about upholding the movement spirit. I got more information about local and national activists, and a few of them became my interviewees. I also talked to a researcher who was working in the area on an archeological excavation. He made me understand, for the first time, that the area is enormously valued not only because of agricultural lands but also for rich archeological sites. Moreover, Google Earth and maps used in the ESIA helped me to identify which areas would be affected most.

My interview questions were divided into two segments. In the first part, I asked some open-ended questions about Adibasi lifestyles, livelihoods, and their position in society. The reason for the division of questions is to identify the recognition and politics behind the government's non-recognition. I also asked similar questions to many interviewees from the Bangalee community and activists to locate their views about Indigenous peoples. I intended to assess 'recognition by others' criterion of defining Indigenous peoples. Various theorists suggest that to recognize Indigenous peoples, they need to be recognized by other people who live close to them.<sup>185</sup> The second segment of the questions asked to all interviewees: why did they join and how did they get involved in the resistance movement?

Most of the Adibasi interviewees gave interviews in the Bangla language. In Bangladesh, Adibasi languages have assimilated many Bangla words as their own. Many Adibasi groups speak in Bangla language because of their segregation and association of majority Bangalee people in Bangladesh. Adibasis who live close to urban areas are more likely to speak Bangla than people who live in remote hamlets. In many instances, I could not understand their Santal and Bangla mixed dialect, but my RA helped me understand the meanings. Only three interviewees spoke in

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<sup>185</sup> Benedict Kingsbury, "Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy." (1998) *American Journal of International Law*.

English; all live in Dhaka. Most of the interviews were transcribed. All participants in my research were informed in plain language about the nature of the project, condition, duration and topic of conversations, foreseeable risk, the methodology to be used, and potential benefits that may arise from research participation. I recorded most of the interviews by simple notetaking and audio tape-recorder (subject to the consent of each participant). They could ask questions before and after each interview. Each interview ranged in length from forty-five minutes to three hours depending on the situation.

During the consent process, each participant was asked if she or he would like to be assigned a pseudonym for the study; only two of them declined this option, choosing to have their real names used in any publications or presentations generated from the research. Except for those two persons, throughout the dissertation, I used initials of first names (in some cases both names) for their confidentiality. In Bangladesh, most Adibasi people are known by their first names. Their last names are almost similar. For example, all Munda people have 'Pahan' as their last/family names. Santals have twelve titles or clans, and they use twelve family names that I explained in Chapter IV. Bangalees are known by first names, family names, and nicknames. In some cases, I used initials for first names and family names when I acknowledged that a participant could be identified if I use their any name.

People who were not aware of the movement were excluded. I selected a key informant first who had extensive knowledge about the Adibasi lifestyle and took part in the *Phulbari Khoni Andolon* in 2006. He helped me to identify the key people to be interviewed. I also identified many interviewees during interview procedures. To protect participant confidentiality, original research data will be protected from third parties, stored securely, and destroyed in a timely manner after the conclusion of the study.

Participant observations are also reflected in my dissertation. Participant observation activities included attending various events, such as protests, meetings, press conferences, and Adibasi festivals, campaigning in a local government election, as well as volunteering in the office of a local Adibasi NGO and living in Adibasi communities. In this way, I learned about involved actors in the project and the concurrent demands of Adibasis and local activists of the movement. To understand the existing knowledge about environmental management, Adibasi traditional knowledge, their accounts of joining the movement, and their participation (consultation and consent) in the planned project, I conducted an informal focus group meeting comprised of four *Mandal* of the Santal' *Manjhi Parishad* from four separate hamlets whose knowledge represents the question of interest.

I attended a street protest organized by a leftist party when a government geological survey



Figure 6: Street protest in Phulbari in 2016

team arrived in Phulbari, as the leftists believed the team would start another mining activity. I attended another meeting organized by NCB in Dhaka, protesting the S. Alam project in the Banskhali sub-district of Chattogram.

The project is going to develop coal-fired powerplant in the seashore area, which will displace many fishers and farmers, and destroy the biodiversity conservation of the sea habitats. Local people protested, but the law enforcement agency fired upon them and killed six people. The meeting also discussed the Phulbari

project and the Rampal coal-fired power plant. I campaigned in a local government election of the Khanpur Union Council in favor of Cherobin's wife, who had been contesting for reserved woman seats. By taking part in the election campaign, I learned a lot about the Adibasi lifestyle.

I visited the DoE office in Dhaka several times. I used the library of the Department. I gathered first-hand information about the process of environmental clearance for a large-scale development project. I conducted an informal interview with an official who gave consent to use the information without referring to his identity. I visited two environmental NGOs in Dhaka and their libraries. Representatives from both NGOs did not respond when I requested interviews.

I collected writings, data information, and other related documents from Adibasi and environmental NGOs and TEJOs to supplement my own empirical data in my dissertation. The materials include government policy directives, national legislation, reports, environmental impact studies, press releases, company reports, leaflets, newspaper articles, televisions reports, NGO reports, and academic publications. My analysis and accounts of TEJOs accounts are based on their activities in the UK and the USA, as published on their websites. For the purpose of supporting the understanding of the impact assessment processes, environmental justice and rights of Indigenous peoples, I examined some international instruments such as the Aarhus Convention, the ILO Convention No. 169, UNDRIP, Agenda 21, the Rio Declaration on Environment and Development (REDD), the Committee on the Elimination of Racial Discrimination (CERD), the Universal Declaration of Human Rights (UDHR), the American Declaration on the Rights of Indigenous Peoples, and the Convention on Biological Diversity (CBD). I investigated national and transnational legal and policy instruments in regulating the relationship between extractive industries and Indigenous peoples.

## **1.6. Outline of the Dissertation**

My dissertation is comprised of three parts. Part I includes Chapters I, II and III. Based on the ESIA published by Asia Energy and the field data, Chapter II offers a description of the Phulbari Coal Project. Sub-sections include the neo-liberal context of resource development in Bangladesh, the location of the project, communities, livelihoods and the reservation of rights and interests for Adibasi communities in their official document. The chapter also highlights what would happen (impact of an open-pit mine) if the company were to develop it, such as the impact on livelihoods of Adibasi communities, loss of agricultural lands, destruction of cultural and religious heritage, sacred sites, and local biodiversity of the region. In this connection, Chapter II also offers a discussion about the importance of recognizing various rights of Indigenous peoples and engaging them in EIA. This part also incorporates a discussion about EIA practice in Bangladesh. I argue that access to participation and consultation for participating in the decision-making process must be incorporated in legislative and other mechanisms aimed at promoting procedural environmental justice. Based on qualitative research in the form of interview data collected from Adibasis of Phulbari, Chapter III highlights the historical and informative overview of the resistance movement of the Phulbari Coal Project following the finalization of mining operations in Bangladesh. Furthermore, the chapter accommodates national and transnational activists' conceptions of the environmental justice movement. Different layers of organizing the protest against the multinational corporation give a broader perspective of resisting neoliberal intervention in Bangladesh which are framed through the accounts of leftist protesters or activists. Moreover, Adibasi accounts in this chapter also broaden the general meaning of fighting powerful forces.

Part II includes Chapter IV, which is devoted to the recognition of Indigenous peoples in Bangladesh. Since the ethnic groups around the open-pit coal project and throughout Bangladesh are not perceived as 'Adibasi' or 'Indigenous peoples' by the government, I observe and report

how they frame their issues with a specific end goal to be heard. By analyzing various definitions and conceptions of Indigenous peoples developed by international law, experts, scholars, and accounts of surrounding Adibasi communities, I argue that the self-identified groups should be recognized as Indigenous peoples. The overall purpose of this chapter is to identify the ethnic communities of the mining footprint as a legal and political character through which they can apply their rights in the decision-making process by articulating different aspects of environmental justice.

Part III includes Chapters V and VI. By locating environmental justice in the central argument through qualitative analysis, Chapter V examines the rights and interests of Adibasis, or Indigenous peoples were reflected in the decision-making process of developing the coal mine project in Phulbari. The chapter also analyzes the features and principles of the environmental justice framework in light of the claims of Adibasi communities in the *Phulbari Khoni Andolon* they had participated in 2006 and reservation of their rights in the ESIA. In this regard, Adibasi claims and the company activities to develop the project are analyzed considering the environmental justice framework. This chapter offers a discussion about different forms of environmental justice movement and examines if the motivations and elements of the *Phulbari Khoni Andolon* that I have conversed in Chapter III form an environmental justice movement that is perceived in the global South. This chapter also advances national, transnational and international legal strategies of engaging Indigenous peoples in managing natural resources in their territories. The final chapter concludes the arguments made in the previous chapters of the dissertation.

## CHAPTER II

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# THE NEOLIBERAL CONTEXT FOR THE PHULBARI COAL PROJECT

### 2.1. Introduction

The dissertation examines one of the five principal coal mines in Bangladesh: the Phulbari Coal Project in the Dinajpur district. If opened, the proposed coal mine project would become one of the most massive open-pit or surface coal mines in the world. Thousands of local people and civil society members have protested since 2005 to stop its operation. According to the project proponent, Asia Energy Corporation (Bangladesh) Pty Ltd. (now GCM Resources PLC.), it will give a much-needed economic boost to the area, but critics fear it will also create several environmental and socio-political problems. A persistent eagerness arose in Bangladesh when it was discovered that there are vast reserves of high-quality coal in Phulbari. The media were fast to claim that extracting coal would ensure a reliable supply of energy to produce electricity, which would contribute to the economic development of Bangladesh. The media, the government, and industrialists were highlighting that the proposed coal mine would bring benefits to Bangladesh,<sup>1</sup> given the fact that the \$2 billion project would establish a 1000 MW coal-based power plant and this mine would have provided support for up to 4000 MW of power generating capacity. However, it was originally indicated in the contract that the government will receive only a 6%

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<sup>1</sup> Manoranjan Pegu, "The Phulbari movement: Resisting Neo liberalism in Bangladesh." In *Sustainability and Ownership in People Centred Advocacy in South Asia* (Dhaka: National Centre for Advocacy Studies, 2011) at 26.

royalty on the proposed project, which was increased to 10% in response to the *Phulbari Khoni Andolon*.<sup>2</sup>

Local communities, including a considerable number of ‘Adibasi’ in the project area, would be dislocated; these are people who depend upon agriculture since the lands are very fertile for crops year-round. Experts opined that local people would benefit more economically in the long run by cultivating their lands than developing an open-pit coal mine. The project would affect the productivity of agricultural lands on a large scale by contaminating the air, soil, and water in the mine area. Again, contaminated water, air, soil, and burning coal would also affect the health of Indigenous peoples and other community members.<sup>3</sup> The biodiversity and ecosystem of the Phulbari area would be destroyed permanently. Besides, the extracted coal would be transported by vessels for export to the Mongla Seaport through rivers in the Sundarbans.<sup>4</sup> According to experts, coal would be falling in the water during transportation, mixing with the water, and polluting the ecosystem of the UNESCO World Heritage Site.<sup>5</sup> Moreover, the collective impact of an open-pit coal project, such as displacement that makes local people environmental refugees, permanent loss of agricultural lands, and destruction of cultural and religious heritage, would occur.

Knowing all the impacts on the livelihoods and biodiversity of the local area and the Sundarbans, local people along with environmentalists and various activist groups began protests against the multinational company in 2005. The bloody movement was huge and attracted international media coverage; finding no other option, the company fled Phulbari, and the

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<sup>2</sup> Philip Gain, *Energy Challenges and Phulbari Crisis*, (Society for Environment and Human Development- SEHD: Dhaka, 2013), at 143.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Prof Mustafizur Rahman, *Sustainable Exploration of Bangladesh Coal Resources: An Intractable (?) Policy Dilemma*. European Report on Development (Overseas Development Institute (ODI), 2011).

government signed an agreement with local protesters assuring that the mining operation would be stopped immediately, and the company would be expelled from Bangladesh.<sup>6</sup>

Based on the company's ESIA report, legislation, my interview data, and secondary sources such as newspaper reports, working papers, books, and scholarly articles, this chapter explores in detail the Phulbari Coal Project proposal and the importance of mineral resource extraction for economic development in Bangladesh. The chapter also includes a discussion on EIA in Bangladesh and whether the rights and interests of Indigenous peoples should be incorporated in EIA. Additionally, the chapter examines the implications of neo-liberal policy on resource extraction in the context of economic development. In this regard, it considers the intervention of MNCs and TNCs for extracting minerals or development projects in Bangladesh and how foreign companies deal with the environment and local people in project developments. Furthermore, the chapter considers the role of the Asian Development Bank (ADB) dealing with companies' activities as this financial institution has policies for business negotiations between the company and the Bangladesh government.

## **2.2. Coal Mining and Energy Context in Bangladesh**

Bangladesh is one of the most densely populated (1115 persons per sq km.), poverty-stricken, and energy-starved countries in the world. The country's annual energy consumption per capita is one of the lowest in South Asia and the developing world due to its over-population with the small size of the area.<sup>7</sup> There is a significant gap between the power supply and demand in Bangladesh,

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<sup>6</sup> Pegu, *supra* note 1.

<sup>7</sup> According to World Population Review, Bangladesh has an estimated population of 166.37 million in 2018 making the country the 9<sup>th</sup> most populous country in the world. The total size of the country is 147570 sq. km. See more: <http://worldpopulationreview.com/countries/bangladesh-population/>

although the current government increased the number of power plants from 27 to 108.<sup>8</sup> This gap is due to higher demand by consumers and producers. However, the government recently claimed that 80% of the country's total population has sufficient access to electricity with daily power generation at a record high at 10084 MW.<sup>9</sup> Bangladesh will need about 13,500 MW of electricity to attain a significant annual gross domestic product (GDP) growth rate projected at 8%, which should rise to 41,900 MW by 2021.<sup>10</sup>

Natural resources are very limited in Bangladesh. Therefore, energy security is crucial for socio-economic development. The Ministry of Finance of the Bangladesh Government confirms that the share of natural resources for electricity generation in 2010 was natural gas 80%, oil 5%, coal 4%, and hydropower 3%.<sup>11</sup> Even though the natural gas reserves bring hope, the quickly depleting reserves make it essential to seek alternative ways to produce electricity, such as oil-based power plants and coal-based power plants. Since Bangladesh has a very limited oil reserve and depends on imports, expensive oil-based electricity generation is not economically viable for the country. Consequently, the five recently discovered coalfields sparked hope for the country. Since Bangladesh has significant coal reserves, its exploitation is seen as imperative for the achievement of the energy security needs.<sup>12</sup> International financial institutions such as ADB and the World Bank suggested that the government should explore using coal for electricity generation.

Coal is primarily composed of carbon, which is harmless to the environment when buried under the earth but has a wide range of environmental effects because of its extraction process.<sup>13</sup>

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<sup>8</sup> BDNEWS24, "Bangladesh's electricity generation crosses 10,000MW for first time" (20 March, 2018). Online: <https://bdnews24.com/bangladesh/2018/03/20/bangladeshs-electricity-generation-crosses-10000mw-for-first-time>

<sup>9</sup> *Ibid.*

<sup>10</sup> Rahman, *supra* note 5.

<sup>11</sup> Ministry of Finance, *Power and Energy Sector Roadmap*, (Ministry of Finance: Dhaka, 2012) at 58.

<sup>12</sup> *Ibid.* at 13

<sup>13</sup> Ananth Chikkatur, Ambuj Sagar, and T. Sankar, "Sustainable development of the Indian coal sector." (2009) 3.8 Energy, pp. 942-953.

According to Mear Angen, developed and industrialized countries can mitigate the adverse environmental impacts of extracting coal using new technologies by implementing strong regulations. After that, most of the countries are phasing out coal-based power plants because burning coal produces a massive amount of CO<sub>2</sub>, which is responsible for climate change.<sup>14</sup>

Lands over the coal reserve areas in Bangladesh are incredibly fertile and usually sustain two or three crops a year. The area provides a permanent livelihood for the farming communities, which could be irreversibly lost if over ground open-pit mining is done. The experience of the only functioning underground coal mine shows that both water flow in coal layers and temperature are higher than in some other parts of the country. Thus, coal mining is particularly problematic in Bangladesh.<sup>15</sup> Issues of the open-pit versus closed pit mining (i.e., loss of fertile agricultural land versus coal exploration, land acquisition versus displacement and resettlement of people, and water management in the coal areas versus possible environmental damage) have been extremely important for deciding on an acceptable solution for exploitation of the country's coal resources. Therefore, environmental management, human development, and sustainable development dimensions are igniting debates on the exploitation of coal resources in Bangladesh.<sup>16</sup>

Five coalfields with high-quality reserves have been discovered in the northwest region of Bangladesh. Among these five coalfields, only the Barapukuria Coal Project is in operation through underground mining in the Parbatipur sub-district of Dinajpur district, which contributes only 4% of the country's total electricity.<sup>17</sup> A government owned-company named Barapukuria Coal Mine Company Limited (BCMCL) is exploring coal from this project. Recently, the

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<sup>14</sup> Mear R. Angen, *Coal Mining in Bangladesh: Options to Mitigate Environmental Impacts*. (2008) Thesis published by Simon Fraser University, BC. At 6.

<sup>15</sup> Rahman, *supra* note 5 at 11-12.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.* at 14.

government has initiated exploration of coal from the Dighipara coalfield in the same district through an underground method and signed a 1.67 billion BDT deal for conducting a feasibility

study on a 24 sq km area for 27 months (June 2017- September 2019) with BCMCL targeting to extract 3 million metric tonnes per year.<sup>18</sup> In 1995, the Geological Survey of Bangladesh (GSB) of the Ministry of Power, Energy and Mineral Resources discovered the Dighipara coalfield, which has an estimated coal reserve of 150 million metric tonnes.<sup>19</sup> A study in 1962 found the possibility of 1053 million tonnes of coal reserve at Jamalganj, but neither its extraction nor any further

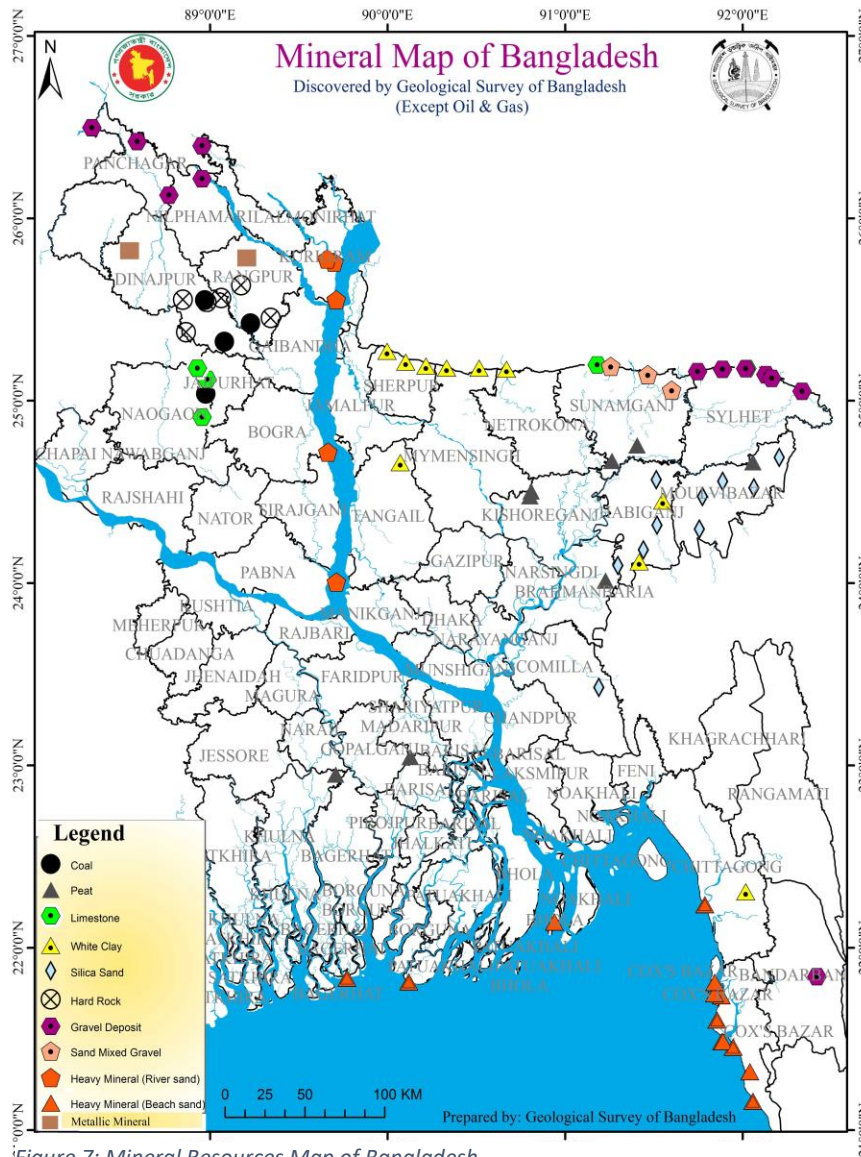


Figure 7: Mineral Resources Map of Bangladesh

exploration was conducted afterward. The government started studying this crucial depth coalfield,

<sup>18</sup> Daily Sun, "Govt to mine Dhigipara coalfield through underground method" (May 31, 2017) Online: <http://www.daily-sun.com/printversion/details/230206/Govt-to-mine-Dhigipara-coalfield-through-underground-method>

<sup>19</sup> Geological Survey of Bangladesh Website: <http://www.gsb.gov.bd/site/page/3c6dd187-a2b7-46e2-b6b6-f603d450b48f/Discovered-Minerals>. Also see: Dhaka Tribune, "Deal signing today for feasibility of Dighipara coal" (May 30, 2017) Online: <https://www.dhakatribune.com/bangladesh/power-energy/2017/05/30/deal-signing-today-feasibility-dighipara-coal>

and three wells have been drilled to explore natural gas and assess commercial viability.<sup>20</sup> In 2015, Petrobangla (the government’s natural resource department) signed a deal with India’s Mining Associates Pvt. Ltd. for studying the methane reserve in the coalfield in a 12 sq km area.<sup>21</sup> The GSB discovered the Khalashpir coalfield in 1989, but it was out of action until October 11, 2003, when the then BNP-led alliance government secretly gave Hosaf Consortium the license to explore the Khalashpir coal zone with 2,500 hectares of land. Hosaf applied for a mining lease for the area in the same year for mine development, although the company does not have previous mining experience. In July 2006, the company in association with a Chinese company named Shandong Ludi Xinwen Mining Group submitted a feasibility report to the Bureau of Mineral Development (BMD) with a plan to develop an underground mine.<sup>22</sup>

*Table 2: Coalfields in Bangladesh*

Name of the Coal Fields	District	Coal Reserve (Million Metric Tonnes)	The depth of the field (in meters)	Discovery year
Jamalganj	Joypurhat	1053	640-1100m	1962
Barapukuria	Dinajpur	300	118-509m	1985
Khalashpir	Rangpur	143	257-480m	1989
Dighipara	Dinajpur	150	328-407m	1995
Phulbari	Dinajpur	572	150-240m	1997

Source: GSB website

### **2.3. Overview of the Phulbari Coal Project**

Asia Energy submitted its initial environmental examination (IEE) on 10<sup>th</sup> February 2005 and received an environmental site clearance (ESC) on 29<sup>th</sup> May 2005. An EIA was submitted on 30<sup>th</sup>

<sup>20</sup> *Ibid.*

<sup>21</sup> BDNEWS24, “Fresh drilling at Joypurhat’s Jamalganj coal field to find gas” (January 7, 2007). Online: <https://bdnews24.com/economy/2016/01/07/fresh-drilling-at-joypurhats-jamalganj-coal-field-to-find-gas>

<sup>22</sup> The Daily Star, Khalashpir Coal Mine Project: Hosaf’s sketchy study raises questions, (August 7, 2009), Online: <https://www.thedailystar.net/news-detail-100425>

June 2005. The company conducted an EIA including three technical reports that were published in 2005 (all four volumes together are called ESIA). The Department of Environment (DoE) of Bangladesh granted an environmental clearance certificate (ECC) on 11<sup>th</sup> September 2005 and approved the ESIA later in 2006 for the Phulbari Coal Project, which was submitted by Asia Energy.<sup>23</sup> The company later published the ESIA in August 2006. Three hundred consultants from several international and national companies, Bangladeshi environmental organizations, and university academics, recruited by Asia Energy, prepared the ESIA for the project.<sup>24</sup> The ESIA is comprised of four volumes, including an executive summary. Volume 1 discusses the main report of the project consisting of 18 chapters. Volume 2 consists of 13 sections and talks about mine development, infrastructure, and coal transportation. Volume 3 consists of 14 sections and deals with environmental management. Volume 4 deals with socio-economic issues, consisting of 9 sections. Section 1 of this volume is dedicated to a report titled Public Consultation and Disclosure Plan (PCDP). Section 2 reports on resettlement plans. Section 4 deals with a report titled, “Indigenous Peoples Development Plan (IPDP)”. Asia Energy, in its ESIA report, claims that they initiated an open and informed consultation with stakeholders and affected communities to inform them of the project proposal and developments and assure their concerns would be considered in the decision-making process.<sup>25</sup> According to the executive summary of the ESIA, the company consultants conducted consultations with environment-related government officials at national and local levels, NGOs, local government representatives, and local Bangalee and Adibasi stakeholders.<sup>26</sup>

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<sup>23</sup> Asia Energy PLC, *Environmental and Social Impact Assessment for Phulbari Coal Project: Executive Summary*, (NSW: Asia Energy Corporation (Bangladesh) Pty Ltd, 2006) at 9.

<sup>24</sup> H. Withanage, Bangladesh: Phulbari coal mine -“Losses Beyond Compensation”. (2008) *Bankwatch*. Quezon City, Philippines: NGO Forum on ADB.

<sup>25</sup> Asia Energy PLC., *supra* note 23 at 9.

<sup>26</sup> *Ibid.* at 10.

Although the actual coalfield covers only 59 sq km, the project would extend over 135 sq km. Moreover, a nearly 656 sq km area would be affected directly or indirectly during the mining operation including de-watering.<sup>27</sup> It has an estimated coal reserve of 572 million tonnes which is 9<sup>th</sup> largest in the world, mainly consisting of bituminous thermal and metallurgical coal types, fossilized over 270 million years. The average thickness of the coal seam in Phulbari is 38m. An overburden ranging between 150m and 240m needs to be removed, creating a hollow of a depth of about 300m.<sup>28</sup> ESIA stated that the coal would be extracted by open-pit method for assuring maximum extraction using hydraulic excavators and trucks. The company expected to recover a variety of valuable industrial mineral co-products such as high-grade silica (sand), Modhupur clay, ceramic clay, gravels, and high-quality rocks from the overburden during the excavation.<sup>29</sup> Due to the mine development, the landscape of the area would be changed from farmlands to a hill that is 14 sq km in area and 185 feet high, also featuring a lake that would cover six sq km. Consequently, this vast area would lose fertility permanently due to open-cast mining.<sup>30</sup> The proposed large-scale project is in a red category according to domestic law and is classified as category 'A' by ADB with significant potential environmental impacts.<sup>31</sup> Asia Energy pledged that they would implement the Equator Principles, environmental and social safeguard policies (on such issues as involuntary resettlement, indigenous peoples, and cultural property) of International Finance Corporation (IFC), ADB's Environment Policy (2002) and ADB's Environmental Assessment Guidelines (2003), including the involuntary resettlement plan and Indigenous peoples

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<sup>27</sup> Anu Muhammad, *Development or Destruction: Essays on Global Hegemony and Corporate Grabbing and Bangladesh*, (Dhaka: Shrabon Prokashoni, 2007).

<sup>28</sup> Rahman, *supra* note 5 at 16.

<sup>29</sup> Asia Energy PLC., *supra* note 23.

<sup>30</sup> Asia Energy PLC., *Summary of Environmental Impact Assessment: Phulbari Coal Project*, (2006) Environmental Assessment Report submitted to Asian Development Bank (ADB), at 1.

<sup>31</sup> *Ibid.*

development plan, other guidelines of the World Bank and IFC, and proposed a new IFC performance standards on coal mining.<sup>32</sup>

The proposed Phulbari Coal Project site is located on the Barind Tract in the northwestern part of Bangladesh, close to the India-Bangladesh border, which falls within four sub-districts of Dinajpur district such as Phulbari, Birampur, Nawabganj, and Parbatipur. The Little Jamuna River, Khari Pul and Nalsissa rivers are located to the east and west of the mine site. The Kharipul River drains into Ashoorar Beel, which is considered as an important natural resource for the Adibasi communities of the area.<sup>33</sup> The mine footprint covers an area of 5,933 hectares or 59 sq km and is 11 km long and 3 km wide; it includes more than a hundred villages and thousands of acres of cropland of eight unions in four sub-districts.<sup>34</sup> Phulbari's landscape is mostly comprised of flat fields with patches of flat forests, all of which would be destroyed to establish the proposed mine. Dinajpur is a major rice-producing district of Bangladesh with the production of high-quality rice.<sup>35</sup> The Phulbari mining area has a similar pattern.

Asia Energy documents state that the population of the four subdistricts was estimated at 832,220 with an average density of 711 people per sq km. in 2001.<sup>36</sup> According to the Community Report of Bangladesh Population and Housing Census of 2011, the Phulbari sub-district has a population of 176,023 living within 152 villages. The average density of people per square km is 770. Moreover, the neighboring Birampur sub-district has a population of 170,806 with 806 people per sq km. A significant portion of the project area falls under the Khanpur Union of Birampur sub-district which has 18,318 population with a density of 496 people per sq km where Adibasi

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<sup>32</sup> *Ibid.* at 2.

<sup>33</sup> *Ibid.* at 4.

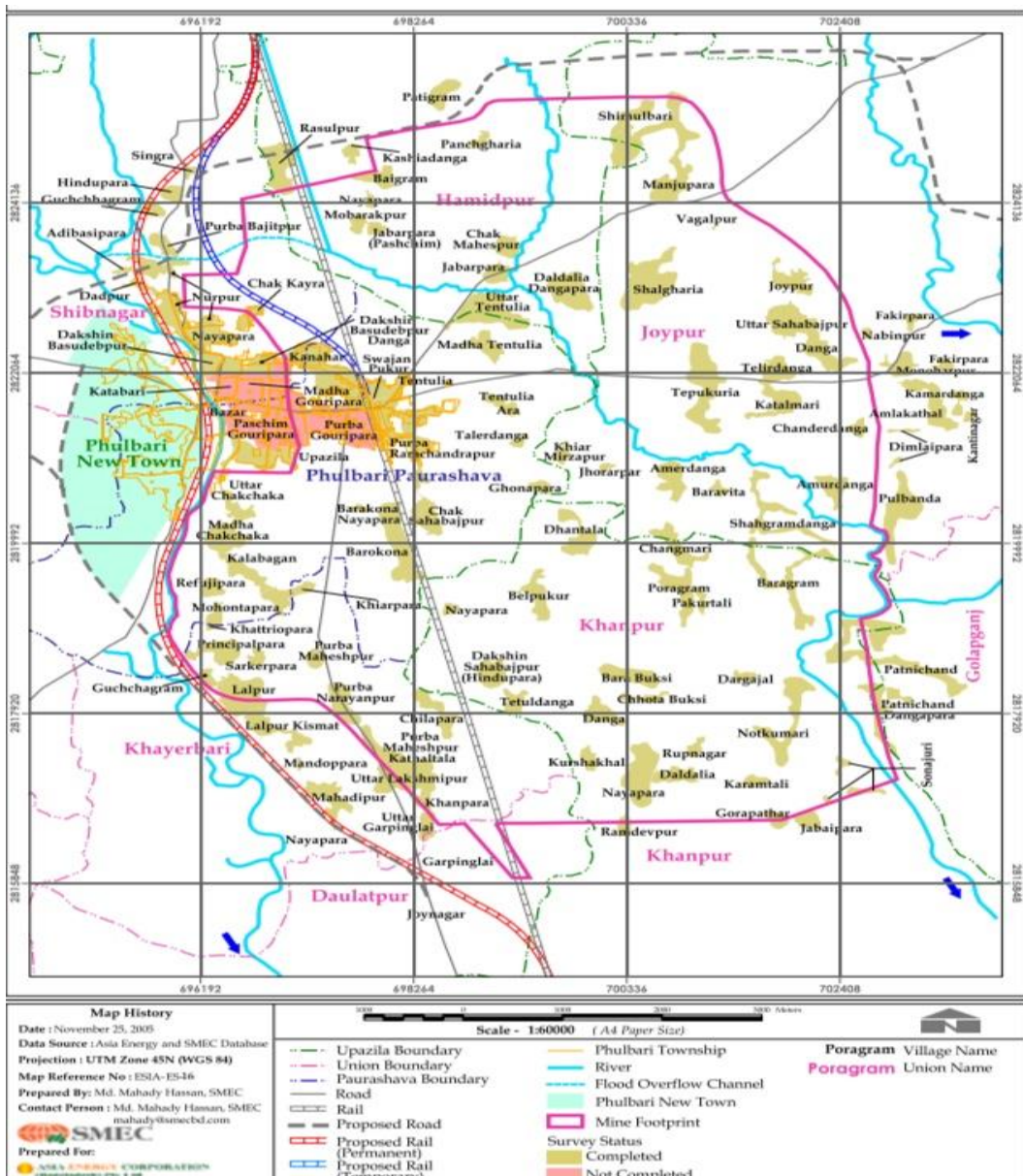
<sup>34</sup> International Accountability Project (IAP), *The Phulbari Coal Project: A Threat to People, Land and Human Rights in Bangladesh*. (San Francisco: International Accountability Project, 2012).

<sup>35</sup> Sadid Nuremowla, *Resistance, Rootedness and Mining Protest in Phulbari*. (2012) Doctoral Thesis (PhD), University of Sussex.

<sup>36</sup> Asia Energy PLC., *supra* note 30.

communities live.<sup>37</sup> The other two sub-districts such as Parbatipur and Nawabgonj have a similar or more population density. However, Phulbari township would fall under the projected plan where population density is several times (4245 per sq km.) higher than villages.<sup>38</sup>

Figure 8: Phulbari Project Map



Source: Executive Summary of the ESIA

<sup>37</sup> Bangladesh Bureau of Statistics, *Population and Housing Census 2011 "Dinajpur"* at 63.

<sup>38</sup> Muhammad, *supra* note 27.

According to the ESIA report, the development of this mine would require the company to relocate 49,487 people of 11,287 households in the mining area in different phases over a 30-year lifespan of the mine.<sup>39</sup> However, the neutral expert committee to study the feasibility of the project assigned by the government estimated that around 130,000 people would be immediately affected, and as many as 220,000 could be displaced during mining operations.<sup>40</sup> The International Accountability Project (IAP) carried out a detailed analysis of the draft Resettlement Plan (RP) that the company conducted and determined that it grossly understated the number of people the project would displace.<sup>41</sup> Consequently, thousands of families would be left homeless, become environmental refugees and destitute, and would not be protected.

Most people at the project location are farmers consisting of Adibasi communities and Bangalees, who depend on their cultivated lands for food and other subsistence. JAP estimates that the project would displace 50,000 Adibasis belonging to various groups such as Santals, Mundas, Mahili, Mahato, Rajbonshis, Oraons, Karmakar (Blacksmith), Robidas or Ravidassia, and a few more.<sup>42</sup> Although the company recognizes Adibasi of Phulbari as ‘Indigenous peoples’ through IPDP in the ESIA, as has become the norm in these procedures, they understated the number of affected people by a factor of ten.<sup>43</sup> Moreover, the document identifies only three Adibasi communities (Santal, Munda, and Mahili) as ‘Indigenous peoples’,<sup>44</sup> but JAP claims that some other ethnic communities, such as Mahato, Oraon, Karmakar, Robidas, who are not included in

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<sup>39</sup> Asia Energy PLC, *supra* note 23.

<sup>40</sup> IAP, *supra* note 33.

<sup>41</sup> *Ibid.*

<sup>42</sup> Kate Hoshour, “The Indigenous Peoples Development Plan for the Phulbari Project, Bangladesh.” (2012), International Accountability Project.

<sup>43</sup> Pegu, *supra* note 1 at 23.

<sup>44</sup> Section 3.2 of the IPDP, “Indigenous Groups in the Project Area,” states that 7.3% of all households to be displaced are Indigenous. However, a footnote reveals that this estimate excludes households from groups that “are more appropriately classified as ‘small ethnic minority’ groups rather than ‘Indigenous’, given their historic past, their social structure, religious practices and non-agricultural livelihoods.”

Also see: Hoshour, *supra* note 42.

the document should also be regarded as Indigenous peoples.<sup>45</sup> As will be discussed in more detail later, it is important to note that the Bangladesh government does not recognize them as Indigenous peoples or Adibasi.<sup>46</sup> Adibasi communities who live in the Phulbari project area have a similar race history. They have diverse cultures, language, customary laws, and traditions, which make them distinct from other communities including the majority Bangalee people (98% in Bangladesh). Regarding the Phulbari Coal Project, experts note that entire Indigenous dwellings and villages would be destroyed. Such land alienation leaves them separated from the grounding of their livelihoods, commercial interactions, and community connections.<sup>47</sup>

Agriculture plays a significant role in the economy of this region, with 85% of the total population dependent on it for their livelihood.<sup>48</sup> People of Phulbari are involved in agriculture, small business, and work as informal laborers, rickshaw pullers, and van rickshaw drivers to



supplement their income. Farmers are growing crops such as seasonal rice, wheat, mustard, potato, corn, banana, jute, chili, garlic, onions, etc. three times a year. Their livelihood also depends on forest trees and fruits, river resources, and household

Figure 9: Two Adibasi women are taking care of cattle beside the forest and crop fields. Photo: Fieldwork, 2016

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<sup>45</sup> *Ibid.*

<sup>46</sup> I have a separate chapter (Chapter III) on recognizing Adibasi of Phulbari area by analyzing international law. I have argued that although the communities are not recognized by the government, their rights on natural resources would not fail.

<sup>47</sup> Heather Bedi, “UN Special Rapporteur Human Rights Condemnation: Corporate Land Grabbing for Coal Mining in Bangladesh.” (2012) Land Grabbing II Conference: Cornell University, New York: Land Deals Politics Initiatives (LDPI) at 11.

<sup>48</sup> Asia Energy PLC. *supra* note 23.

farms of fishes and cattle. Some are farming on their lands, some are sharecroppers, but most of them work as day laborers in other people's fields, as they are landless. However, people of the area where the company planned to develop the open-pit coal project are happy with the production of crops, as this area is one of the most fertile in Bangladesh. Again, the ESIA report for the Phulbari project estimates that 78% percent of families reported having adequate water.<sup>49</sup> The flat field nature landscape of the Phulbari mining region would be destroyed by developing the proposed mine.<sup>50</sup> Local people were aware of the impact of the mining activities and they calculated the loss they would face. Since they are mostly farmers, they would not be able to purchase agricultural lands with their compensation money in another place. Consequently, they protested and resisted mining in their area.

The extraction of coal and other mineral resources would result in various negative environmental impacts around the minefield. The displacement of small-scale farmers from lands they depend on would further worsen the situation. These farmers are a group representing between 1.5 and 2 billion people worldwide, which is already marginalized and represents up to half of the people who are too poor to feed themselves.<sup>51</sup> They face numerous problems in new places of residence. Therefore, resettlement caused by the implementation of any development project is the most irreparable form of forced internal migration.<sup>52</sup> The displacement of people leads to a violation of many individuals and collective human rights. Problems associated with the displaced people with the development of mining projects are increasingly becoming the focus of human

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<sup>49</sup> *Ibid.*

<sup>50</sup> Nuremowla, *supra* note 35 at 5.

<sup>51</sup> Bedi, *supra* note 47 at 10.

<sup>52</sup> Bogumil Terminski, "Mining-induced Displacement and Resettlement: Social problems and Human Rights Issues (a Global Perspective)" (2012) Social Science Research Network.

rights organizations.<sup>53</sup> They highlight that there should be mechanisms to support people who are displaced or affected by development projects.<sup>54</sup>

The Phulbari Coal Project would have an enormous destructive impact on the environment and local communities. More than a hundred villages, croplands, forests, thousands of houses, markets, schools, colleges, mosques, temples, graveyards, forestland, and roads will be destroyed. Furthermore, the project would harm human health, destroy local biodiversity, and increase the salinity of the water. All the environmental impacts of the Phulbari project would fall on those displaced people. The people of Phulbari would also be deprived of their means of livelihood, as they would be displaced and dislocated from their land.

Some of my respondents pointed out that they are ready to compromise for the economic development of the country, but their livelihoods should be considered. Although the company has informed the community that they would build a town for the displaced for resettlement purposes, local people understand that it is impossible to get similar opportunities to what they have been getting for generations in their own homes and agricultural lands. They understand that the company would only provide one or two rooms for a family whether it is a small or large family. Most of



Figure 10: Adibasi houses in the mining footprint

Photo: Fieldwork, 2016

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<sup>53</sup> *Ibid.* at 5.

<sup>54</sup> *Ibid.*

the households have cattle, which are part and parcel of their livelihoods, and there would be no space for those in the town. They do not want to leave their ancestral graveyards and religious heritage. Moreover, the residents know that the replacement of land for lost land is not possible in land-scarce Bangladesh because of high population density. People are concerned about financial benefits, but they know instant cash compensation would not help them with similar livelihoods. ESIA recognized that the community wanted separate resettlement as a community; for example, Santals wanted a separate place for Santals so that they can live and maintain their cultural diversity. In current settings, ethnic groups are concentrated in hamlets.

According to a summary of the EIA report submitted to ADB, there are six types of ecosystems that exist in the project area such as cultivated land, roadside vegetation, Sal forests, homestead vegetation, and wetlands that would be destroyed. The ecosystem carries 512 flora species, 89 fish species, and 158 terrestrial vertebrate species.<sup>55</sup> The mining area also comprises a part of the Phulbari town with various schools, colleges, and other enterprises.<sup>56</sup> There are many permanent religious sites and graveyards.

The Phulbari Coal Project would cause massive environmental and ecological impacts. The project would pollute the soil, water, air, ecosystem and biodiversity of the local area, having a considerable adverse impact on local people including a considerable number of Adibasis. Many of the environmental issues of concern during the primary stages of the mining process continue throughout the entire process. During the reclamation stage, traffic to and from the coalfield area would be continued. The reclamation stage of mining involves restoring soil fertility, recreating the ecosystem and biological diversity, and landscape.<sup>57</sup> Concerning land disturbance, the soil is

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<sup>55</sup> Asia Energy PLC. *supra* note 30 at 6.

<sup>56</sup> Pegu, *supra* note 1 at 25

<sup>57</sup> Chikkatur, Sagar, and Sankar, *supra* note 13.

disrupted and can cause the land to be less productive after mining. The erosion of soil may lead to an increase in sediment in the surface water resulting in degradation of water quality of the Phulbari area.<sup>58</sup> The groundwater in an area covering about 500 sq km would be lowered, and water would be toxic due to waste and burning. The proposed Phulbari Coal Project would divert a river and suck an aquifer dry for more than 30 years. For de-watering the mine, the project would prevent adequate water supplies for agriculture, fisheries, local industries, and households.<sup>59</sup>

The open-pit coal project would cause noise and dust pollution due to dynamite explosions. More noise and dust will come from the trucks and trains that would haul coal away from the mine.<sup>60</sup> The coal combustion waste contains pollutants known to cause cancer, congenital disabilities, reproductive disorders, neurological damage, learning disabilities, kidney disease, and diabetes. Phulbari's 572 million tonnes of coal would generate 1.14 billion tonnes of carbon dioxide and release a substantial portion of methane gas into the air.<sup>61</sup>

The Phulbari Coal Project threatens the Sundarbans since extracted coal would be transported through a river of the forest. The Sundarbans is the largest mangrove forest in the world, containing 58 rare and threatened species including the Royal Bengal tiger.<sup>62</sup> Up to 8 million tonnes of coal per year would be transferred from the barges to the shipping vessels at a floating offshore reloading facility in the forest. The ESIA of the project rates the risk that barge fuel could contaminate the reserve as 'extremely high', which would result in severe damage to mangroves and other shoreline plant species.<sup>63</sup>

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<sup>58</sup> Angen, *supra* note 14 at 7.

<sup>59</sup> Pegu, *supra* note 1 at 26.

<sup>60</sup> *Ibid.*

<sup>61</sup> IAP, *supra* note 34 at 2.

<sup>62</sup> Mangrove Action Plan (MAP), "Save the Sundarbans—Stop The Phulbari Coal Mine" (2012). Online: <http://mangroveactionproject.org/news/action-alerts/save-the-sundarbansstop-the-phulbari-coal-mine>

<sup>63</sup> IAP, *supra* note 34.

Asia Energy assured that the extracted coal would be used in domestic power generation (two 500mw power plants) and in domestic industries such as clay brick and coal briquette production, which would be transported mainly from Phulbari by rail. However, after meeting the domestic requirements, the surplus coal would be exported to international markets by rail, river, and sea.<sup>64</sup> The company planned to build direct rail track from Phulbari to Khulna and a loading terminal at Khulna, navigation improvements to the Poshur River, a floating platform at Akram Point of the Sundarbans and

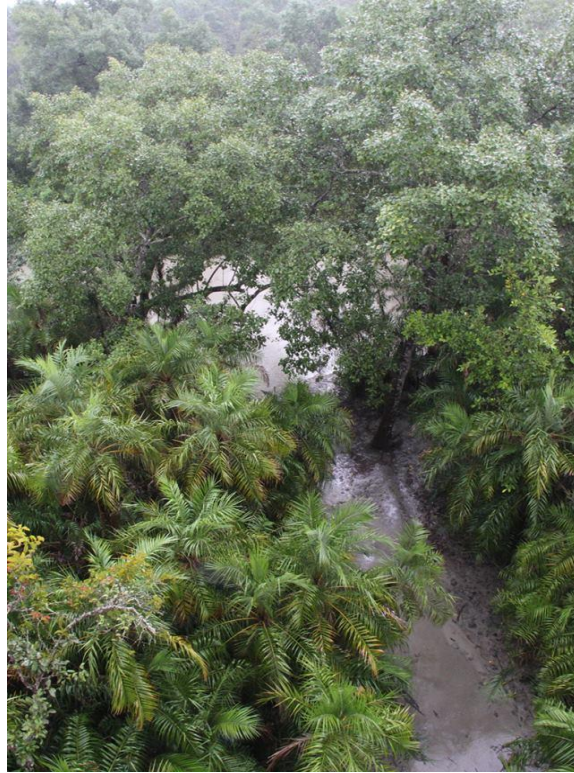


Figure 11: The Sundarbans

Photo: Khasru Chowdhury

channel dredging to the approach channel at the entrance of the Bay of Bengal. All these export processes would have a severe impact on the Sundarbans, although the company conducted a feasibility study.<sup>65</sup> Beyond economic and social rights, the environmental rights of the local communities of Phulbari are endangered as well. The effect of mining on health is an equally pressing issue of concern. The deforestation of large areas of forest causes irreversible disturbances in local habitats. The environmental consequences are noticeable by the inhabitants at a distance from the epicenter of the open-pit mines.<sup>66</sup>

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<sup>64</sup> Asia Energy PLC, *supra* note 23 at 6. In another document by Asia Energy submitted to the ADB, the company stated “At full production, about 8 million tonnes will be exported by rail and barges to an offshore reloading facility at Akram Point for export to international markets, some 4 million tonnes will be exported to India via railway, and the remaining 3 million tonnes will be used for a proposed mine-site 500 MW power plant and sold for domestic use.”

<sup>65</sup> *Ibid.*

<sup>66</sup> Terminski, *supra* note 52 at 5.

According to the project agreement, Asia Energy assured to generate more than \$21 billion in economic benefit to Bangladesh over the 36-year lifespan.<sup>67</sup> The company claimed a benefit of \$7.8 billion for Bangladesh and \$13.7 billion as multiplier benefits that would contribute to 1% per annum to the total GDP of the country.<sup>68</sup> The company further pledged that the project would bring 2,000 jobs to an impoverished area of Bangladesh and invested \$260 million in building schools and hospitals for local people.<sup>69</sup> Also, the project would spend a total of \$314 million on rail and port development to provide a reliable export route.<sup>70</sup> According to Anu Muhammad, Bangladesh would be economically more benefitted than an exploration of coal during the thirty-six-year lifespan. He explained that \$225 million per year would be generated from the production of agriculture, households, and other economic activity of local people in the planned area. On the other hand, according to the company's information, Bangladesh would get \$216 million per year by way of six percent royalty and taxes. According to the company's account, considering the adverse effect on production and economic activities, loss of coalfield and environment, the total loss for Bangladesh would be \$300 million (BDT 21 billion) per annum.<sup>71</sup> However, this loss does not include biodiversity destruction, destruction of environmental sustainability and human health, and uncertainty of current and future generations.<sup>72</sup>

## **2.4. Significance of EIA in Bangladesh**

There is no denying that local people are most affected by any development project. Since people in the close vicinity of any development project are more affected, their concerns should

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<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> Pegu, *supra* note 1 at 26.

<sup>70</sup> Asia Energy PLC, *supra* note 23 at 6.

<sup>71</sup> Anu Muhammad, *Phulbari Koyla Khoni: Kar Lav, Kar Kkhoti*.

<sup>72</sup> Interview with A.M., Dhaka, April 08, 2016.

be taken into consideration. In this regard, the project proponents and the government agencies must identify the impact of the project on local people and the local environment by adopting a proper environmental assessment plan. A large development project needs proper EIA through which social, biophysical and other effects of a development proposal are identified, predicted, evaluated and mitigated.<sup>73</sup> In other words, EIA can be an effective tool, which is seen as a route to involve people at the project level and can be used as a form of social bargaining. EIA is the proper venue where concerns of affected communities can be properly recognized through their involvement and participation. Socially marginalized groups can use EIA as a platform from which to influence the social order. In the case of Phulbari, Adibasi communities have frequently been raising the issue of their discriminatory status in society and due to their vulnerability, the project proponent and the government never considered them as ‘qualified’ in the decision-making and other processes of assessment for the open-pit coal mine project.

#### **2.4.1. What is EIA?**

EIA is defined as a systematic process of determining and managing the potential impacts of proposed human actions on the environment.<sup>74</sup> EIA has become a critical space for the evaluation and mitigation of potential environmental and social impacts of a proposed development project or plan, and sometimes it is the only space in which the public has meaningful participation through a public hearing and consultation before going ahead with the project. The USA was the first country that incorporated EIA in their national legislation for mitigating adverse environmental impacts in any development project. In the USA, the government’s actions created some major

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<sup>73</sup> International Association for Impact Assessment (IAIA), “Principles of Environmental Assessment Best Practice” (1999). Online: [http://www.iaia.org/modx/assets/files/Principles%20of%20IA\\_web.pdf](http://www.iaia.org/modx/assets/files/Principles%20of%20IA_web.pdf)

<sup>74</sup> D. P. Lawrence, “The Need for EIA Theory-building” (1997) 17:2 Environmental Impact Assessment Review at 79.

environmental problems in the 1960s, which resulted in widespread support for the National Environmental Policy Act 1969 that manifested the legislative basis for EIA. This legislation required all government agencies to consider the environmental consequences of their actions.<sup>75</sup> National EIA legislation of any country shall also include participatory provisions allowing public consultation and public participation at every stage. The 1992 Earth Summit provided additional momentum to these developments. Principle 17 of the Rio Declaration states: “Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”<sup>76</sup> Though the right of access to information has been given little formal recognition in EIAs of the global South, attempts are being made to disclose general environmental information by corresponding public participation and access to environmental justice for Indigenous communities who are largely affected by development projects.

#### **2.4.2. EIA Practice in Bangladesh**

Government legislation and rules, as well as guidelines of the donor agencies,<sup>77</sup> play significant roles in the incorporation of human elements in environmental assessment in Bangladesh. The key pieces of legislation for the environmental approval of a project in Bangladesh are the Environmental Conservation Act (ECA) 1995, and the Environmental Conservation Rule (ECR)

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<sup>75</sup> Salim Momtaz, “Environmental Impact Assessment in Bangladesh: A Critical Review.” (2002) 22.2 Environmental Impact Assessment Review at 164.

<sup>76</sup> United Nations Conference on Environment and Development (UNCED), Rio de Janeiro, 3-14 June 1992, which resulted Agenda 21, Rio Declaration on Environment and Development, the Statement of Forest principles, the UN Framework Convention on Climate Change and the UN Convention on Biological diversity.

<sup>77</sup> ‘Donor agencies’ in Bangladesh means International organizations such as the World Bank, IMF, ADB, UNDP, JICA, SIDA etc. who invest money as loans through government channel in a low interest rates for various infrastructure and large-scale development projects in Bangladesh. The government bodies then allot money to NGOs and private sectors for implementing projects. Those donor agencies have their own guidelines and NGOs must comply with them.

1997. Only industries and large-scale projects received full attention in ECR with provisions of full-scale environmental assessment to reduce the potential adverse impact on the environment. ECR contains a list of projects and industries according to the significance of impact and classifies them into four categories: Red, Amber A, Amber B, and Green.<sup>78</sup> Normally, mining and other large-scale development projects fall under the Red category, which requires EIA.

Apart from this basic legislation based on EIA, several government departments and NGOs have prepared guidelines for conducting an EIA on a specific sector or intervention.<sup>79</sup> Bangladesh Flood Action Plan (FAP) is one of the first governing authorities that incorporated EIA in Bangladesh to study ongoing and future FAP and similar flood control, drainage, irrigation, and water management projects in 1992.<sup>80</sup> The Department of Environment (DoE), under the Ministry of Environment and Forest, is the regulatory body responsible for enforcing the ECA and ECR and has prepared EIA guidelines only for large-scale development projects.<sup>81</sup> Although it is the responsibility of the company to conduct an EIA of the development proposal, the responsibility to review EIAs to issue ECC rests on DoE.<sup>82</sup>

According to the DoE Guidelines, the EIA process consists of three stages: screening, IEE, and detailed EIA.<sup>83</sup> The guidelines provide some techniques for public participation and set the structure of IEE and the EIA reports. Ahammed and Harvey note that IEE is needed before moving forward to the full-scale EIA for most development projects in Bangladesh.<sup>84</sup> Special emphasis is

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<sup>78</sup> Momtaz, *supra* note 75 at 165.

<sup>79</sup> Farhat Jahan Chowdhury and ATM Nurul Amin, "Environmental Assessment in Slum Improvement Programs: Some Evidence from a Study on Infrastructure Projects in Two Dhaka Slums." (2006) 26.6 Environmental Impact Assessment Review at 535.

<sup>80</sup> Flood Action Plan (FAP), *Guidelines for Environmental Impact Assessment*. (Dhaka: FAP, 1992)

<sup>81</sup> Department of Environment (DoE), "EIA Guidelines for Industries", Government of the People's Republic of Bangladesh, Dhaka, Bangladesh (1997).

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> Rafique Ahammed & Nick Harvey, "Evaluation of Environmental Impact Assessment Procedures and Practice in Bangladesh" (2004) 22:1 Impact Assessment Project Appraisal at 68.

placed on site selection for industries with significant potential for environmental impacts, and the respective corporations are required to consider alternative sites keeping in view the criteria put forward by DoE.<sup>85</sup> The procedure of EIAs in Bangladesh encourages the direct involvement of community leaders to gather basic data about the affected community and face-to-face engagement with community members and local NGOs working in the area of the project.<sup>86</sup>

Despite these widely accepted legal norms, one of my respondents who is also an EIA expert claimed that the EIA regime in Bangladesh is non-transparent. It is a practice in Bangladesh that an EIA can be approved if the project looks lucrative. DoE only determines whether the EIA report is prepared following national regulations and donor guidelines, they do not consider whether affected people's concerns are reflected or not.<sup>87</sup> EIA consultants are appointed by a project proponent for completing the study. The appointed consultants are told that "we will develop the project here and you have to prepare EIA accordingly so that we get ECC from the DoE."<sup>88</sup> They must prepare the EIA report following the project proponent's dictation because not only the project proponent instruct them to do so, but also the government agencies direct them to prepare a 'sound' EIA so that there is no bar to starting the project. Another EIA expert, who has been working on the water sector for more than twenty years, told me during the interview that donor agencies impliedly create pressure on the government so that the project is taken place. According to him, consultants followed donor guidelines properly, but local peoples' voices are not reflected in the final study of the Phulbari Coal Project.<sup>89</sup> Although an EIA report, what consultants prepare for the project proponent, is not final, because the report is reviewed, monitored, and passed by

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<sup>85</sup> Momtaz, *supra* note 75 at 165.

<sup>86</sup> Jona Razzaque, "Environmental human rights in South Asia: towards stronger participatory mechanisms." (2004) in UNEP and Geneva Environment Network, at 33.

<sup>87</sup> Interview with S.R.H, Dhaka, April 17, 2016.

<sup>88</sup> Interview with S.R.H, Dhaka, April 17, 2016.

<sup>89</sup> Interview with D.S., Dhaka, April 18, 2016.

decision-makers of DoE. Consultants are planners, they prepare the report. They are not decision-makers. There is an opportunity to check transparency in reviewing the report.<sup>90</sup> In Bangladesh, decisions are given by technocrats or by bureaucrats in the decision-making process. Since decision-makers are part of the government, they are bound to follow the government's order regardless of the question of feasibility. Even if the project is not feasible, even if local people do not want the project in their area, the decision-makers often allow the project anyway.<sup>91</sup> In almost all cases, if the government says 'yes' to a project, the DoE also approves that project and issues environment clearance certificate. There are hardly any instances where the DoE has taken a stance that is against the stance of any other government agency.<sup>92</sup>

Further, my interviews indicate that the EIA report is never pro-actively disclosed in Bangladesh. The EIA report is often not reviewed by people who are qualified. It is not presented to the public at any stage. However, there are cases where affected people object on their own. Since there is no provision on public hearing in the EIA process and the environmental clearance process, those objections are not taken into consideration. Hence, the DoE is just serving as a clearing agent for other government departments.<sup>93</sup>

The only NGO that is directly associated with the EIA activities in Bangladesh is the National EIA Association of Bangladesh, which was formed in late 1997. It provides a manifesto for the EIA planners, practitioners and enforcing agencies in Bangladesh.<sup>94</sup> Having been a development partner of Bangladesh for a long time, the World Bank has developed its own EIA procedures for the projects it funds. The Bank has effectively incorporated EIA provisions into its project cycle

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<sup>90</sup> Interview with D.S., Dhaka, April 18, 2016.

<sup>91</sup> Interview with Z.K., Dhaka, April 12, 2016.

<sup>92</sup> Interview with S.R.H., Dhaka, April 17, 2016.

<sup>93</sup> Interview with S.R.H., Dhaka, April 17, 2016.

<sup>94</sup> Ahammed & Harvey, *supra* note 84 at 67.

and the organizations implementing concerned projects must conduct an EIA. Also, the World Bank has an environmental section that examines EIAs for approval.<sup>95</sup> ADB has developed a new environment operational strategy for Bangladesh to address the major environmental problems. In addition to IEE and EIA, an initial social impact assessment is required for every development project in order to identify its consequences on people of the project area.<sup>96</sup> The Bangladesh government introduced the ‘Equator Principles’ in 2006 as a financial industry benchmark for determining, evaluating and managing social and environmental risk in project financing.<sup>97</sup> Equator Principles Financial Institutions adopt these principles in order to ensure that the projects financed are developed in a manner that is socially responsible and reflects sound environmental management practices. Accordingly, foreign corporations have a very crucial role to play in the development and promotion of corporate social and environmental sustainability which can be seen in a limited manner in Bangladesh.<sup>98</sup>

Though there are some legislative rules and guidelines for EIA, a strict and effective EIA regime is absent in Bangladesh. There is no legal requirement for public participation and disclosure of information or for making the EIA document public at any stage of the process.<sup>99</sup> For this, in every development project, the responsible company can exploit the communities of the project area. The FAP’s EIA guidelines, ECA, ECR, and the DoE’s guidelines do not mention the requirement of social assessment separately. Consequently, there is a danger of ignoring social factors where there are no apparent consequences on the natural environment.<sup>100</sup> A reasonable

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<sup>95</sup> Momtaz, *supra* note 75 at 173.

<sup>96</sup> *Ibid.* at 174 & 175.

<sup>97</sup> Farid A. Sobhani, Azlan Amran, and Yuserrie Zainuddin, “Sustainability Disclosure in Annual Reports and Websites: A Study of the Banking Industry in Bangladesh.” (2012) 23:1 Journal of Cleaner Production at 76.

<sup>98</sup> *Ibid.*

<sup>99</sup> Interview with S.R.H., Dhaka, April 17, 2016.

<sup>100</sup> Salim Momtaz, “Institutionalizing Social Impact Assessment in Bangladesh Resource Management: Limitations and Opportunities” (2005) 25:1 Environmental Impact Assessment Review at 35.

number of people should be contacted through all possible means of communication to ensure maximum and efficient participation in EIA.<sup>101</sup> I think implementing the elements of SIA can be a vital step for sustainable development. SIA is a process that should inform people not only of the details of the proposed projects but also of the possible positive and negative consequences. An appropriate amendment to the legislation on EIA is required to emphasize the importance of SIA.<sup>102</sup>

Legislation related to EIA in Bangladesh contains provisions for complaints from the public.<sup>103</sup> But those complaints are not heard properly by DoE. Very few people know about the process with DoE due to a lack of their campaign and access to information. DoE receives complaints from some individuals, however, when complainants see the process takes a long time, they lose their interest. Bangladesh Environmental Lawyers Association (BELA), a prominent environmental NGO in Bangladesh, has established its own process for dealing with public complaints. BELA's process is easily accessible and quick. The executive director of BELA told me during an interview, "We receive many complaints from communities against specific industrial units. After receiving complaints from the communities and verifying news reports, we file cases."<sup>104</sup> She also added:

"BELA tries to find out whether a particular industrial unit or that commercial venture has got an ECC. If it has an ECC, then we see whether the EIA report was detailed out properly; whether it is adequate, and whether it covers all aspects of environmental management required for that given industry. If we find that it has any deficiency, then we do the media campaign. If there is no environmental clearance, then we right away challenge the project.

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<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> Razzaque, *supra note* 86.

<sup>104</sup> Interview with S.R.H., Dhaka, April 17, 2016.

If there is an environmental clearance, then we try to say that the public consultation requirement has not been fulfilled. Because people gave objection.”<sup>105</sup>

If the industrial unit is already in operation and if it has an environmental clearance and EIA report, there is very little any NGO can do. The only option for challenging the actions of the company or industry is going to the court. However, going to the court with the deficient EIA report may not be feasible because the court might say that the EIA has been submitted and ECC has been given based on the EIA. The court would not see whether the EIA is deficient, whether it's faulty or not. So, the court would not be interfering in this case.<sup>106</sup>

The EIA process involves the identification of all positive and negative environmental impacts. It is observed that the guidelines for legislative control over the EIA system in Bangladesh are not yet well established.<sup>107</sup> The politicization of the EIA process and pervasive corruption has made it nearly impossible to conduct fair EIA or social assessment in these sectors.<sup>108</sup> The absence of strong legal provisions for some essential components of EIAs all around the world may result in weaker legislative control over the EIA process. To me, the DoE of Bangladesh should develop a code of conduct for the consultants conducting EIA for projects that are beyond the supervision of donor agencies. Moreover, strengthening DoE and making it more efficient, transparent and accountable would place it in a better position as a lead environmental organization. Some concrete statutory provisions and active legislative or administrative control over the EIA process are necessary for meaningful and effective EIA. This can reduce the anger and protests of those affected communities and motivate them to support the projects.

### **2.4.3. Employing Indigenous Rights and Concerns in the EIA Process**

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<sup>105</sup> Interview with S.R.H., Dhaka, April 17, 2016.

<sup>106</sup> Interview with S.R.H., Dhaka, April 17, 2016.

<sup>107</sup> Ahammed & Harvey, *supra* note 84 at 67.

<sup>108</sup> *Ibid.*

### 2.4.3.1. Participatory Rights of Indigenous Peoples in EIA

The participatory rights of procedural justice play a vital role in environmental decision-making. Employing public participation in EIA can theoretically enhance the public trust of the government's decision-making, reduce litigation, and serve to coordinate and reconcile various environmental strategies.<sup>109</sup> Public participation can be defined as 'any form of interaction between government and corporate actors and the public that occurs as part of the EIA process'.<sup>110</sup> The fundamental goal of public participation in EIA is to achieve a more equitable distribution of political power and change existing decision structures. Public participation can be a platform allowing the decision-maker to draw an ultimate decision in any developing project.<sup>111</sup>

Community participation in the decision-making process of a development project concerning natural resources is recognized as essential for the creation and maintenance of a healthy and stable society.<sup>112</sup> Razzaque claims that procedural justice (access to information, public participation, and access to justice) advances the credibility, effectiveness, and accountability of government decision-making processes. The effectiveness of participatory rights depends heavily on the national legal system, courts, and other government agencies.<sup>113</sup> Effective participation also depends on the quality of information available to the community. O'Faircheallaigh argues that the powerless in society are least likely to participate in EIA, both because they lack the resources to do so and they often find the processes involved mysterious and intimidating.<sup>114</sup> UNDRIP affirms that Indigenous peoples have the right to maintain and strengthen their political, legal, economic,

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<sup>109</sup> Razzaque, *supra* note 86 at 31.

<sup>110</sup> Ciaran O'Faircheallaigh, "Public Participation and Environmental Impact Assessment: Purposes, Implications, and Lessons for Public Policy Making" (2010) 30:1 Environmental Impact Assessment Review, at 19.

<sup>111</sup> *Ibid.*

<sup>112</sup> Jona Razzaque, "Information, Public Participation and Access to Justice in Environmental Matters", in Shawkat Alam et al., eds, *Routledge Handbook of International Environmental Law* (London: Routledge, 2012).

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

social, cultural and decision-making institutions through which they will apply their right to participate in the decision-making process.<sup>115</sup>

For achieving an increased understanding of EIA, the evaluation of public participation in EIA is essential. The impact of public participation in the decision-making process should always be evaluated, though it is widely documented in the literature as being a valuable component of the EIA process. If the results of the consultation are not considered, then the whole exercise might be considered a waste of time and resources.<sup>116</sup> It is the time for regional and international agencies to support and encourage countries to manage trans-boundary shared resources jointly with rules on EIA for affected communities. The 1998 Aarhus Convention contributed to bringing about one of the unique developments in participatory rights to protect the environment and livelihoods.<sup>117</sup> But governments of the global South may not be willing to ratify this Convention since it contains a detailed EIA procedure for development projects, which may be expensive and time-consuming. Bangladesh has not ratified the Convention.

#### **2.4.3.2. Indigenous Right to FPIC in EIA**

Papillon and Rodon argue that the most effective way to implement free, prior and informed consent (FPIC) in the EIA process is by integrating Indigenous peoples fully into the various aspects of the assessment process such as involving them in the design of process and early stage of evaluation.<sup>118</sup> Performance Standard 7 of IFC incorporated guiding principles to ensure FPIC,

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<sup>115</sup> Article 5 and 18 of UNDRIP.

<sup>116</sup> *Ibid.*

<sup>117</sup> The Convention of Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted on June 25<sup>th</sup>, 1998 in Aarhus at the Fourth Ministerial Conference by the UN Economic Commission for Europe (UNECE) as part of the “Environment for Europe” process. The Convention entered into force in 2001.

<sup>118</sup> Martin Papillon and Thierry Rodon, “Environmental Assessment Processes and the Implementation of Indigenous Peoples Free, Prior and Informed Consent” (2016) Report to the Expert Panel Reviewing Federal Environmental Assessment Processes.

prior consultation, and participation of the affected communities of Indigenous peoples throughout the project.<sup>119</sup> IFC's policy is generated to eliminate the numerous economic risks that accompany large projects. Such risks include the risk of project disruption because of civil unrest, local protests, or violence directly related to a project. In theory, obtaining FPIC of Indigenous peoples prior to a project could curtail these risks, which in turn could affect the economics of a project.<sup>120</sup> ADB's Indigenous peoples' policy number 21 states that development initiatives should be conceived, planned, and implemented with the informed consent of affected communities, and include respect for the dignity, human rights and cultural uniqueness of Indigenous peoples.<sup>121</sup> Though the right of access to information has been given little formal recognition in EIAs in the global South, attempts are being made to disclose general environmental information by corresponding public participation and access to environmental justice for local and Indigenous communities who are largely affected by development projects.

#### **2.4.3.3. Indigenous Traditional Ecological Knowledge (TEK) in EIA**

The inclusion of Indigenous TEK in the policy-making process in their territories is important for the participation of Indigenous peoples. Employing Indigenous TEK effectively in EIA can enable Indigenous peoples to participate in the environmental decision-making process. Appiah-Opoku contends that Indigenous TEK could be used to reveal scientific data and information in the global South. Consultations and community hearings may facilitate the incorporation of Indigenous TEK, especially during the preparation and review phases of environmental

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<sup>119</sup> International Finance Corporation (IFC), Performance Standards on Environmental and Social Sustainability 2 – 5 (2012), Online:

[http://www1.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS\\_English\\_2012](http://www1.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012)

<sup>120</sup> Shalanda H. Baker, "Why the IFC's Free, Prior, and Informed Consent Policy Doesn't Matter (Yet) to Indigenous Communities Affected by Development Projects." (2012) Wisconsin International Law Journal.

<sup>121</sup> ADB, "Bank's Policy on Indigenous Peoples" (1998). Online: <

<https://www.adb.org/sites/default/files/institutional-document/33441/files/policy-indigenous-peoples.pdf>>

assessment.<sup>122</sup> Further, the timing of public consultations in Indigenous communities is crucial to the success of the assessment process.

TEK in the EIA process may also help the assessment team to understand handling local natural resources and can demonstrate local sets of values to interpret, evaluate, and monitor project impacts on local communities. In this sense, EIA could become part of the solution to the continued loss of Indigenous TEK by enhancing the participation of Indigenous peoples in environmental assessment studies.<sup>123</sup> Moreover, it is possible to gain the trust of the local and Indigenous communities through community participation, and incorporation of local and Indigenous TEK in project development will help to accelerate the smooth implementation of projects.<sup>124</sup> Therefore, Indigenous TEK could be a tool in the decision-making process of EIA, which is one of the dimensions of the environmental justice paradigm. Christensen and Grant argue that the inclusion of Indigenous TEK in EIA is particularly significant because it entails shifting control of the social production of space and effectively emphasize a right to representation and participation in decision-making for resource management.<sup>125</sup>

Through their traditional knowledge, Indigenous peoples can contribute through consultation and public participation, which may ultimately lead to better decision-making.<sup>126</sup> Furthermore, effective participation of Indigenous peoples in decision-making processes should principally be recognized for strengthening their democracy and environmental sustainability.

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<sup>122</sup> Seth Appiah-Opoku, “Environmental Impact Assessment in Developing Countries: The Case of Ghana” (2001) 21:1 Environmental Impact Assessment Review, at 59.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> Julia Christensen & Miriam Grant, “How political change paved the way for indigenous knowledge: The Mackenzie valley resource management act” (2007) 60:2 Arctic 115.

<sup>126</sup> Ellis, *supra* note 56 at 67.

## 2.5. MNCs and TNCs in Bangladesh

Governments of the global South often follow neoliberal policies and invite multinational and transnational corporations (MNCs and TNCs) to invest in their mineral resource extraction industries. Bangladesh is no exception. In Bangladesh, the government agencies are not willing to use expensive modern technology for extracting mineral resources.<sup>127</sup> The government wants the economic development most cheaply, and policies are liberalized for foreign investors. MNCs and TNCs from the global North are often interested more in mining natural resources from the global South. They invest in the global South because the regulations and policies are made favorable for them by eliminating barriers to foreign investment, trade liberalization, privatization of public sectors, and weakening industry regulations.<sup>128</sup> The misappropriation of MNCs and TNCs has caused adverse economic and environmental consequences that constrained sustainable development options in the global South.<sup>129</sup> Justifying Ruchi Ananda's argument, Carmen Gonzalez states, "the ongoing unsustainable extraction of the South's natural resources to satisfy Northern's consumers, and transfer of polluting industry and hazardous wastes from the North to the South."<sup>130</sup> Communities from the global South are often excluded from the benefits of growth despite historically high commodity prices and record corporate profits.<sup>131</sup>

In Bangladesh, neoliberal intervention is characterized by corporate land grabbing and displacement of people, and governments are friendly to activities of MNCs. Foreign mining

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<sup>127</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>128</sup> Sara L. Seck, "Transnational Business and Environmental Harm: A TWAIL Analysis of Home State Obligations." (2011) 3 Trade Law & Development. Also see: David Szablowski, *Transnational Law and Local Struggles: Mining, Communities and the World Bank*. (Portland: Hart Publishing, 2007)

<sup>129</sup> Carmen G. Gonzalez, "Environmental Justice, Human Rights, and the Global South." (2015) 13. Santa Clara Journal of International Law at 154.

<sup>130</sup> *Ibid.* at 157.

<sup>131</sup> Kishan Khoday and Usha Natarajan, "Fairness and International Environmental Law from Below: Social Movements and Legal Transformation in India." (2012) 25.2 Leiden Journal of International Law: 415-441.

companies have been trying to grab mineral resources in Bangladesh, and to ensure the highest profit they are pushing for extracting the utmost, such as in the case of Phulbari.<sup>132</sup> Moreover, the guidelines and policies of international financial institutions such as ADB, the World Bank, International Monetary Fund (IMF), and the International Financial Council (IFC) favor Northern investors in the global South,<sup>133</sup> because the North dominates decision-making in most of the IFIs and multilateral environmental and human rights treaty negotiations.<sup>134</sup> There have been several cases where foreign companies have created a significant loss for Bangladesh, but those companies could not be made accountable.<sup>135</sup> Before moving into the historical journey of neoliberal policy in Bangladesh and how it has impacted mineral extraction, the next section starts with a discussion about neoliberalism.

### **2.5.1. What is Neoliberalism?**

Neoliberalism is the philosophy that fortifies economic globalization through the free market and minimizes barriers to the flow of goods and services.<sup>136</sup> It consists of a set of ideas of economic liberalization policies such as privatization, deregulation, free trade, individualization, the transformation of state-citizen relationship, and reduction of government expenditures to increase the private sector's responsibilities in the economy and society.<sup>137</sup> The neoliberalism approach advocates that economics should be separated from politics and argues that markets should be free from the interference of government.<sup>138</sup> According to the supporters of neoliberal theory, a free

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<sup>132</sup> Muhammad, *supra* note 27.

<sup>133</sup> Pegu, *supra* note 1.

<sup>134</sup> Gonzalez, *supra* note 129 at 158.

<sup>135</sup> Muhammad, *supra* note 27.

<sup>136</sup> Simon Springer, Kean Birch, and Julie MacLeavy, eds. *Handbook of neoliberalism*. (Routledge, 2016).

<sup>137</sup> Isabel Altamirano-Jiménez, *Indigenous encounters with Neoliberalism: Place, women, and the environment in Canada and Mexico*. (Vancouver: UBC Press, 2013) at 5. Also see: Campbell Jones, Martin Parker, and Rene T. Bos, *For Business Ethics*, Routledge- 2005 at 100.

<sup>138</sup> *Ibid.*

market will allow efficiency, economic growth, appropriate income distribution, and technological progress.<sup>139</sup> They also argue that neoliberal policy benefits both rich and poor nations because every nation can enjoy a comparative advantage from flowing their capital, goods, and services.<sup>140</sup> Sometimes, neoliberalism is understood to refer to the process of opening up national economies to global actors such as MNCs, TNCs and IFIs.<sup>141</sup> However, critics argue that any state intervention to encourage these moves will worsen economic performance.<sup>142</sup> Advocates of neoliberal policies tend to contend that MNCs and TNCs need to be free to pursue operating businesses in host countries with little national government constraint or regulation.<sup>143</sup> On the other hand, critics of neoliberalism contend that neoliberal economic intervention is not sustainable environmentally, culturally or socially in many ways.

Isabel Altamirano-Jimenez complicates the connection between neoliberalism and Indigeneity and argues that the recognition of cultural difference and the compensatory measure of granting collective rights to Indigenous peoples are integral to neoliberalism.<sup>144</sup> These cultural rights including other socio-economic rights, and distinguish neoliberalism as a specific form of governance that shapes, delimits and produce differences. The author argues that neoliberalism opens up a space for the recognition of Indigenous rights as well as for the institutionalization of management practices.<sup>145</sup> Gabrielle Slowey studies the self-determination of Indigenous peoples of Canada in the neoliberal context. According to her, “the neoliberal ideal of the common good rests on market-oriented values such as self-reliance, efficiency, and competition. The neoliberal

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<sup>139</sup> David M. Kotz, *The rise and fall of neoliberal capitalism*. Harvard University Press, 2015.

<sup>140</sup> WHO, Neo-liberal Ideas, Globalization, Trade and Health in WHO Glossary. Online: <<https://web.archive.org/web/20040806144320/>> <<http://www.who.int/trade/glossary/story067/en/>>

<sup>141</sup> Wendy Larner, “Neoliberalism? Environment and Planning” (2003) 21 *Society and Space*

<sup>142</sup> Seck, *supra* note 128.

<sup>143</sup> WHO, *supra* note 140.

<sup>144</sup> Altamirano-Jimenez, *supra* note 137.

<sup>145</sup> *Ibid.*

ideal is for citizens to recognize their obligation to work longer and harder in order to become more self-reliant.”<sup>146</sup> She argues that self-determination re-establishes the proper balance between First Nations and the neoliberal marketplace.<sup>147</sup> However, it is important to know whether communities want external investment opportunities or not. Slowey argues that First Nations alone can generate more jobs by combining the corporate support and First Nations enterprise. This means Indigenous peoples can become self-reliant with their own initiatives.<sup>148</sup> It is common in both poor and rich countries that MNCs and TNCs are taking advantage of the policies of host-states to ensure higher profits. Since national governments, especially in the global South, encourage foreign corporations to invest in projects for their own economic benefit, they pursue trade liberalization in the interests of investors. Thus, MNCs and TNCs can shape the rules and regulations of the host country with the help of the host government.

### **2.5.2. Neoliberal Intervention in Bangladesh**

Bangladesh became an independent country after a bloody war in 1971 against Pakistan. The new nation adopted a socialist approach, and foreign investment from MNCs and TNCs was discouraged by the policy.<sup>149</sup> However, after the assassination of the founder of the nation, Bangabandhu Sheikh Mujibur Rahman and his four key ministers by a military coup in 1975, a military-backed government came into power. The subsequent military governments adopted neoliberal policies as part of a structural adjustment program (SAP) during the 1980s with the development process confined by the suggestions and regulations of the World Bank, IMF, ADB,

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<sup>146</sup> Gabrielle Slowey, *Navigating Neoliberalism: Self-determination and the Mikisew Cree First Nation*. (UBC Press, 2008) at 117.

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.* at 21.

<sup>149</sup> Anu Muhammad, “Natural Resources and Energy Security Challenging the ‘Resource-Curse’ Model in Bangladesh” (January, 2014) *Economic and Political Weekly*.

IFC, and other international financial institutions. The military governments had become more and more hostile towards the public enterprises, and the crisis of public institutions of health, education, and other essential services intensified.<sup>150</sup> During that time, the energy and power sector was handed over to the private sector under the new policy.<sup>151</sup> Anu Muhammad argues that privatization of natural resources and leasing those resources to MNCs for exporting gas and coal pushed Bangladesh into the “resource-curse” model.<sup>152</sup>

Developing the mining sector in Bangladesh through MNCs began in the early 1990s when a new democratic government took power. The new government invited foreign companies to invest in Bangladeshi mineral resources such as gas, oil, and coal with production sharing contracts (PSC) in line with the regulations of IFIs. The contracts used by IFIs have always been secretive.<sup>153</sup> In 1993-1997, ten PSCs were signed between the Petro Bangla<sup>154</sup> and various MNCs in two rounds.<sup>155</sup> Besides IFIs, the US, the UK, Germany, and Australia worked together to promote neoliberal policies in Bangladesh.<sup>156</sup> The subsequent governments continued with this trend for the economic development of the country. According to the agreements with foreign extractive companies, the government agencies started purchasing Bangladesh’s own extracted natural resources with hard-

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<sup>150</sup> *Ibid.*

<sup>151</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>152</sup> Muhammad, *supra* note 149 at 66.

<sup>153</sup> Anu Muhammad, “ADB and the case of the Phulbari coal project.” *Countercurrents19* (2007). Online: <https://www.countercurrents.org/muhammad190507.htm>

<sup>154</sup> The government agency dealing with mineral resources in Bangladesh.

<sup>155</sup> Anu Muhammad, *supra* note 149 at 63. Cairn Energy-Holland Sea Search were awarded Blocks 15 and 16. Later, Halliburton/Santos took Block 16, and Shell/Cairn took over Block 15. Initially, Occidental was given Blocks 12, 13 and 14, which were then transferred to Unocal; later, these blocks were transferred once again to Chevron. Blocks 17 and 18 were awarded to Oakland-Rexwood, and later to Oakland/Tullow. United Meridian Corporation was given Block 22. In 1997, four PSCs were awarded in the second licensing round. Shell-Cairn Energy were awarded Blocks 5 and 10, Tullow-Chevron-Texaco: Block 9; Unocal, and later Chevron, got Block 7. Bapex is tagged with these companies, but with little share.

<sup>156</sup> *Ibid.*

earned foreign currency initially at a price that was at least 30 times higher than that offered by public-sector companies.<sup>157</sup>

According to Anu Muhammad, legality and transparency in the environmental sector are not maintained properly due to the weak policy implementation. MNCs and TNCs used this advantage in every mineral resource investment case, thinking that they would manage by bribery.<sup>158</sup> As a result, the government in Bangladesh force people to leave their ancestral lands and provided minimal compensation.<sup>159</sup> In most of the cases, MNCs benefit from weak environmental enforcement and continued corruption among government officials. Due to this, MNCs are never held accountable for their negligence, which I have tried to demonstrate in the subsequent section by describing two accidents in gas fields that occurred just before Asia Energy attempted to begin coal mining in Phulbari. In each case, responsible foreign multinational corporations violated regulations, bribed influential persons to change the existing policy, which was implemented by the party in power, committed negligence, and did not pay compensation for blowouts.

#### **2.5.2.1. Occidental in the Magurchara Blowout**

A massive blowout occurred in the Magurchara Gas field on June 14, 1997, when the US-based energy company Occidental was drilling a well. The gas field was situated very close to the Lawachara Reserve Forest of which 96 acres of the forest was entirely burnt by the blowout, including a teak grove which was raised between 1944 and 1950, bamboo shacks, and a strip of plantation established in 1994.<sup>160</sup> Moreover, 50% of the forest resources and 30% of the

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<sup>157</sup> *Ibid.* at 63.

<sup>158</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>159</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>160</sup> Md. Khan and Fuad Nasir, "A Review Over Major Gas Blowouts In Bangladesh, Their Effects And The Measures To Prevent Them In Future" (2014) 3.9 International Journal of Scientific and Technology research, at 111.

surrounding Indigenous peoples' lands were damaged. Most of the wild animals those left after the blowout have still not returned to the forest. According to an expert report, the damage to the forest resources alone was BDT 98.6 billion along with BDT 460 million loss of the surrounding 29 tea gardens. Furthermore, the Bangladesh Electricity Department, Jalalabad Gas Company, and Bangladesh Railway suffered a loss of more than BDT 250 million.<sup>161</sup>

The National Committee to Protect Oil, Gas, Mineral Resources, Power and Ports of Bangladesh (NCBD) estimated that the blowout caused about 245 billion cubic feet of the gas reserve to burn in the explosion, worth BDT 90 billion. Experts opined that the burnt gas could have met two years of the country's electricity demand.<sup>162</sup> NCBD was formed in 1998 after a blowout in the Magurchhara gas field. NCBD protested the gas export policy and PSC with MNCs and TNCs, leasing ports, some ground projects by an Indian company, TATA, which were postponed.<sup>163</sup> However, environmental, ecological and wildlife loss were not included in this estimation.<sup>164</sup> Occidental left the country and handed over the license to Unocol Corporation (2003), which was later merged with Chevron Corporation (2005). Although the total loss was BDT 200 billion, the government claimed only BDT 39 billion due to PSC between the company and the government, but Chevron only paid BDT 120 million in compensation as of June 30, 2016.<sup>165</sup> Recently, the company wished to sell its assets in Bangladesh for \$2 billion. Although the government wants to buy the assets, environmentalists and economists requested the government realize the rest of the claimed compensation first. In another note, Chevron lodged an arbitration suit at the International Centre for Settlement of Investment Dispute (ICSID), an institute of the

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<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

<sup>163</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>164</sup> Khan and Nasir, *supra* note 160 at 111.

<sup>165</sup> The Independent, "Compensation claim for Magurchhara: Out of Tk 3,900cr, only Tk 12cr realised." (October 27, 2016). Online: <http://www.theindependentbd.com/printversion/details/65704>

World Bank Group, against Petrobangla regarding a transmission charge the company paid to the government. Petrobangla also lodged a suit in a domestic court against Chevron, which they decided to withdraw and fight at the ICSID.<sup>166</sup>

### **2.5.2.2. Niko in the Tengratila Blowout**

On January 8, 2005, drilling well operated by a Canadian multinational company, Niko Resources Ltd., exploded in the Chhatak Gas Field in Tengratila of Sunamgonj district. Around ten thousand people had to flee from their homes due to the blowout, which was visible from 30km away. A second blowout happened on June 17, 2005, in the same gas field, while the company was trying to control the first blowout.<sup>167</sup> The blowouts and the subsequent payments in bribes to settle the issue drew the Canadian company into controversy. Niko stopped their operation after the blowouts and faced legal challenges when BELA and some other organizations filed a writ petition (petition number 5673 of SCB) challenging the validity of the joint venture agreement signed in 2003 between Niko and Bangladesh Petroleum Exploration and Production Company (BAPEX) to develop two gas fields.<sup>168</sup>

Furthermore, many lawsuits have been filed against political leaders of Bangladesh in local and international courts over corruption related to Niko. The Anti-Corruption Commission of Bangladesh filed two cases in 2007 against the current Prime Minister Sheikh Hasina and the then Prime Minister Begum Khaleda Zia over bribery that occurred between 1997 and 2006. Later, in 2010, the case against Hasina was dismissed, a year after she took office.<sup>169</sup> However, the case against Khaleda, her three ministers, and a few acquaintances are under trial. Niko made a mess in

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<sup>166</sup> DAWN, “[BD to drop case against Chevron.](https://www.dawn.com/news/314668)” (August 3, 2008). Online: <https://www.dawn.com/news/314668>

<sup>167</sup> Khan and Nasir, *supra* note 160 at 112.

<sup>168</sup> *Ibid.*

<sup>169</sup> The Daily Star, “Niko Signed Bribery Deals” (April 07, 2017). Online: <https://www.thedailystar.net/frontpage/niko-signed-bribery-deals-1387600>

Bangladesh with corruption, mismanagement of resources and cases. The Supreme Court of Bangladesh in 2009 ordered the government not to pay for the gas they purchased from Niko until the company pays the compensation for the blowouts. In 2008, the government filed a damage suit with a Dhaka court against Niko, claiming BDT 7.5 billion in compensation for the destruction of properties and gas reserves in and around the Chhatak gas field. The case is still in process.<sup>170</sup> Again, Niko Canada pleaded guilty before a Canadian court for bribing Mosharraf and agreed to pay a \$9.5 million fine in 2011, which was investigated by the ACC, the RCMP, and the Federal Bureau of Investigation (FBI).<sup>171</sup>

On the other hand, Niko filed lawsuits at the ICSID of the World Bank Group in 2010, claiming the remaining payments for the gas it supplied to Petrobangla. In September 2014, the tribunal gave its first decision in favor of Niko with insiders alleging Bangladesh's legal battle was timid.<sup>172</sup>

### **2.5.2.3. Asia Energy in the Phulbari Coal Project**

The government of Bangladesh is always silent about implementing the proper regulations in cases of MNCs involved in exploring natural resource projects. Following the trend of adopting neoliberal policies, the government allowed an Australian company, Broken Hill Proprietary (BHP), to explore coal deposits in Phulbari under a comprehensive licensing and investment agreement with the Bangladesh government in 1994. BHP exploration confirmed a significant amount of coal deposits (382 million tonnes) between 1994 and 1997.<sup>173</sup> However, they realized at one point that the existing water resource could not be appropriately managed, and a disaster might happen. Bearing in mind their negative experience in Papua New Guinea regarding water

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<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*

<sup>173</sup> Pegu, *supra* note 1.

management, the company decided that it would extract coal through underground mining. The company reported that it would not pursue the project in Phulbari.<sup>174</sup>

As a result, BHP left Phulbari in 1997, realizing that it would not be technically feasible for open-pit mining in Phulbari because of its depth, water system, and geological and geographical structure. Surprisingly and mysteriously, a new company was formed under the name of Asia Energy Corporation (Bangladesh) Pty Ltd., targeting only Phulbari, with some Australian and Bangladeshi persons involved, and the license of BHP was transferred to a newly formed company without any public notification.<sup>175</sup> According to Anu Muhammad, although BHP, a world-leading mining company, quit Phulbari after finding it too risky, it transferred the license to a newly formed mining company. The government of Bangladesh has given all sorts of concessions for mine development in Phulbari to Asia Energy.<sup>176</sup> Asia Energy conducted a pre-feasibility study that confirmed the economic viability of the project as large-scale open-pit mining. Although DoE approved the EIA and granted the ECC for the project, it was still missing the government's approval.<sup>177</sup>

The government violated its own rules and many international guidelines to facilitate the Phulbari project; no transparency was maintained in the dealings.<sup>178</sup> Clause 41 of the Mines and Minerals Rules (MMR) 1968 (amended in 1987 and 1989) categorically mentions that only 400 hectares will be allowed for mining and that a company can lease it for only ten years; furthermore, extensions would only be given after discussions and negotiations. However, in this case, the initial project area was 10,000 hectares that were later reduced to 5,933 hectares, and the project would

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<sup>174</sup> Anu Muhammed, *Phulbari, Kanshat, Garments 2006*, Dhaka, 2007, at 98

<sup>175</sup> Pegu, *supra* note 1 at 23.

<sup>176</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>177</sup> Anu Muhammad, "Projects of Mass Destruction (PMD) and Asian Development Bank (ADB): The Case of Phulbari Coal Project." (2008) Voice. Online: <http://www.jacsces.org/sdap/projects/phulbari/pmd-anu.pdf>

<sup>178</sup> *Ibid.*

operate for approximately 30 years at up to 16 million tonnes per annum.<sup>179</sup> The license BHP transferred to Asia Energy was already expired, which was found in an investigation report after the *Phulbari Khoni Andolon*.<sup>180</sup> The amended MMR of Bangladesh provided that the royalty percentage for any company would be 20%, which was radically lowered to a minimal 6% for Asia Energy.<sup>181</sup> After the agreement, the government amended the rules, setting the royalty percentage at 6%. It seemed that lowering the royalty percentage was done for BHP only to hand over the project to a foreign company. However, there was an agreement signed between the BCMCL and the BMD with a 20% royalty only a month before the agreement between BHP and the BMD.<sup>182</sup>

Furthermore, Asia Energy did not submit 3% of the total investment money to the government according to the MMR. The environmental clearance for Asia Energy was given even before they had submitted the ESIA report without any public notification.<sup>183</sup> Soon after the transfer of the license, Asia Energy started drilling at a few points across Phulbari.<sup>184</sup> Again, people's consent is the primary prerequisite for a project of such colossal gravity to be implemented. The issue of 'public consent' assumes greater importance because Phulbari also has a considerable number of Indigenous communities. Thus, the government had acted imperiously while consenting to the project without having public consent.<sup>185</sup> Also, the company declared that the project would bring forth sustainable energy in Bangladesh without rationale. Moreover, they manipulated local people by concealing information. They also created local agents working in favor of the company, influencing and forcing people to support the project, the issue is detailed out in the Chapter V.

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<sup>179</sup> *Ibid.*

<sup>180</sup> Asia Energy PLC., *supra* note 23.

<sup>181</sup> Pegu, *supra* note 1.

<sup>182</sup> Muhammad, *supra* note 177.

<sup>183</sup> Pegu, *supra* note 1 at 23.

<sup>184</sup> *Ibid.* at 24.

<sup>185</sup> *Ibid.* at 25.

Civil society members and environmental activists were unaware of all discrepancies, as the media were silent.<sup>186</sup> Some of my respondents claimed that the media were purchased by the company to write in favor of them.

The government of Bangladesh drafted a National Coal Policy allowing the open-pit coal mine in August 2008 to accommodate the multiple concerns regarding mining in Phulbari, but this policy is being scrutinized and criticized by national environmental and economic activist groups involved in promoting the protests. The draft coal policy has never been implemented after all these years. Meanwhile, an expert committee formed by the government submitted its report which opined that the project should be canceled for environmental, economic and legal considerations.<sup>187</sup>

The Phulbari Coal Project flows directly from this history of neoliberal intervention. The government of Bangladesh facilitated the entry of BHP and Asia Energy for extracting mineral resources. Asia Energy is a wholly-owned subsidiary of a British company named Global Coal Management (GCM) Resources PLC.<sup>188</sup> The company was incorporated on the London Stock Exchange Alternative Investment Market (AIM) (Ticker code: GCM) in September 2003, and it acquired 100% of Asia Energy Corp.<sup>189</sup> The largest shareholder in GCM Resources is RAB Capital, a London-based hedge fund manager. Other shareholders include some private banks and hedge funds such as UBS, Fidelity Group, Credit Suisse, and Barclays, LR Group, Ospraie Management, Capital Group, and Argos Europe Fund.<sup>190</sup> Although the company claimed in their official document that it owns 100% of the project,<sup>191</sup> Wikileaks revealed in 2010 that between

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<sup>186</sup> Interview with N.Z., Phulbari, April 01, 2016.

<sup>187</sup> Muhammad, *supra* note 149.

<sup>188</sup> *Ibid.* at 30.

<sup>189</sup> Asia Energy PLC., *supra* note 23.

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

40% and 60% of all GCM shares are owned by a US-based group of the company named Luxor Capital Group and a U.S. citizen who operates a New-York-based hedge fund in his name.<sup>192</sup>

London-based transnational environmental justice organizations (TEJOs), including the NCBD and Bangladesh Communist Party London branches, have been protesting at every annual general meeting of the company. They demand that the company scrap the project and stop doing business in AIM because the company does not have any existing contract with the Bangladesh government on the Phulbari coal project. After a long struggle by TEJOs over the company's illegal activities in the London AIM, the Bangladesh government finally acknowledges that the company has been selling shares to shareholders by providing false information about the mining project.<sup>193</sup> The State Minister of Power, Energy, and Mineral Resources states that the company got a license from BMD in 2004 for two years which expired in 2006 and was never renewed. Since there is no valid lease agreement between the Bangladesh government and Asia Energy, the company has no right to engage in share business in the name of the Phulbari coal project. The Minister points out that the Bangladesh government is in the process of suing the company.<sup>194</sup>

## **2.6. The Role of ADB in the Phulbari Coal Project**

The Asian Development Bank (ADB) has been involved in the energy sector of Bangladesh since the early 1980s in formulating policies to privatize common property and to create a favorable path for MNCs and TNCs. Along with the World Bank, ADB helped foreign and private companies snatch natural resources through various favorable terms and conditions towards them. On the other hand, ADB's loans to public sectors are meant to dismantle institutions and national

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<sup>192</sup> *Ibid.*

<sup>193</sup> Prothom Alo, "Asia Energy is providing untrue information about Phulbari lease agreement". (August 24, 2019).

<sup>194</sup> *Ibid.*

capabilities.<sup>195</sup> By these means, ADB has been using its power and influence derived from public money in different countries to serve MNCs and TNCs at a cost to people and the environment. In the case of the Phulbari Coal Project, ADB makes its stand clear against the people's verdict of stopping the project because local people and Adibasis would never accept any foreign investment that goes against national interest and destroys the environment and livelihoods. ADB's Private Sector Operations Department (PSOD) was promoting the Asia Energy's Phulbari Coal Project for an investment loan and a political risk guarantee, although there was an immense obstacle from local people, experts, and national environmental activists.<sup>196</sup> The Department emphasized that the open-pit coal project would economically benefit Bangladesh and provide the country with much-needed energy. ADB approved the Summary of Environmental Impact Assessment (SEIA), which was submitted in 2005 in accordance with its request to complete the resettlement action plan and Indigenous peoples' development plan by following ADB's Energy Policy (1995), Indigenous Peoples Policy (1998), Involuntary Resettlement Policy (1995), Environment Policy (2002), and Communication Policy (2005).

Although ADB's PSOD cleared the concept for this project on 14 October 2005, 64 civil society and environmental organizations in a joint statement to the ADB Board of Directors to discontinue the project contended that the project violates ADB's policies and human rights.<sup>197</sup> Followed by the civil society organizations' letter, various community leaders and representatives of the Phulbari area wrote a letter to the ADB's Executive Directors in December 2007 protesting the ADB's involvement in the project. However, earlier the same year in October, the ADB's mission head in Bangladesh, Kunio Senga told journalists that coal mining is very effective and

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<sup>195</sup> Muhammad, *supra* note 153.

<sup>196</sup> Bank Information Centre, "ADB's Private Sector Arm Considering Funding Controversial Coal Project in Northwest Bangladesh". Online: <http://www.bankinformationcenter.org/feature/phulbari-coal-project/>

<sup>197</sup> *Ibid.*

would give a huge potential benefit for power generation in Bangladesh.<sup>198</sup> As international NGOs point out that the project would cause extensive damage to the Sundarbans where the port facilities for exporting the coal are to be constructed. As several of the ADB's Executive Directors began raising questions about Phulbari, the Bank's management finally decided to take the project out of the ADB's funding pipeline.<sup>199</sup> In a statement, ADB said, "We think it is premature to continue dialogue with the private sector under current circumstances. So, at this stage, we are open to suggestions of the Government of Bangladesh, civil society, and other stakeholders and prepared to review our engagement in this project."<sup>200</sup>

Not only in Phulbari, but ADB has also so far funded numerous projects in Bangladesh, including the Meghna Power Project, various forest projects for eco-parks, and rubber plantations in Chokoria and Madhupur, water and irrigation projects in southern regions. Those projects created high insecurity amongst local and Adibasi communities. Moreover, in the education sector, the ADB projects created a path for privatization, high corruption, and disastrous reform. Protests from teachers and students compelled the previous government to stop implementing 'reforms,' but huge money was wasted in the process.<sup>201</sup> Anu Muhammad argues that ADB was successful in lending, but Bangladesh became indebted for creating the mess.<sup>202</sup>

## 2.7. Conclusion

The Phulbari Coal Project forms a perfect manifestation of contemporary neoliberalism. In the above discussion, it is shown that the primary intention of corporate intervention is to grab lands

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<sup>198</sup> The Daily Star, "Asia Energy wants to renegotiate deal" (October 4, 2007). Online: <https://www.thedailystar.net/news-detail-6567>

<sup>199</sup> The Guardian, "Asian Bank Scuppers UK Mine Project in Bangladesh" (April 6, 2008). Online: <https://www.theguardian.com/business/2008/apr/06/mining.bangladesh>

<sup>200</sup> *Ibid.*

<sup>201</sup> Muhammad, *supra* note 153.

<sup>202</sup> *Ibid.*

and natural resources where poor and Indigenous peoples live. The governments of the global South see the interests of MNCs and TNCs instead of seeing sustainability because they want immediate visible economic development. International financial institutions (IFIs) such as the World Bank, ADB, and IFC influence governments to hand over their natural resources to MNCs and TNCs. In Bangladesh, the governments were ordained to take neoliberal policy in line with the rules and regulations of those IFIs where companies were given excessive opportunities to explore natural resources. Governments are attracted to privatization and foreign investment with loans and aids by IFIs.<sup>203</sup> However, governments never consider that this neoliberal policy and opening of the mining sector to MNCs and TNCs will lead to the destruction of areas where poor people live. I have exemplified three examples including the Phulbari Coal Project, where foreign companies could not be found accountable for their negligence and violation of environmental regulations. In the case of the Phulbari Coal Project, the entry of BHP and Asia Energy was facilitated by the Government of Bangladesh. Instead of seeing the interests of citizens, the government also liberalized and indemnified the destructive activities, whether their good deeds or bads deeds, of foreign investors in Bangladesh, which gave rise to public interest groups and civil society. These groups have frequently been raising voices against the government's neoliberal actions, especially leasing mineral resources out to MNCs. Other grassroots groups are being educated and started articulating that they are the owner of natural and mineral resources found in the territory and should not be transferred or leased out to foreign investors without their consent.

The following chapter (Chapter III) will encompass the accounts of people's struggle against the neoliberal intervention. I detail the protesters' views of the popular *Phulbari Khoni Andolon*

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<sup>203</sup> *Ibid.*

as their fight manifested against local and multinational powerful actors. According to them, different layers of organizing movements have led towards the protest's success. These layers of the movement strategies created the foundation for an environmental justice movement in the global South which eventually voided the company's presence in Bangladesh.

## CHAPTER III

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### PHULBARI RESISTANCE: ELEMENTS AND MOTIVATION

#### 3.1. Introduction

Local resistance against mining projects rarely achieves success, especially in relation to transnational and multinational corporations (TNCs and MNCs) operating in the global South.<sup>1</sup> One explanation for this relates to how national governments or ‘host-states’ and international financial institutions (IFIs) prioritize the interests of the MNCs or TNCs rather than the interests of their citizens. In the interest of pursuing economic benefits, regardless of how hazardous the projects are, the governments often support corporations in developing their projects. In the global South, this is a common phenomenon. In this case, the Government of Bangladesh was technically forced by IFIs such as the World Bank, IFC, and ADB to enter into an agreement with an MNC since Bangladesh does not have the technology to extract coal through the opencast mining method on its own. Moreover, the government had been looking for foreign investors as part of its neoliberal policy agenda.<sup>2</sup> However, according to my interviewees, Asia Energy took the opportunity because they knew that they could bypass the country’s weak environmental regulations and pressure the government to implement the open-pit project.<sup>3</sup> In the case of the Phulbari Coal Project in Bangladesh, the government wholeheartedly supported the British company’s open-pit coal mine project in order to glean economic benefit by neglecting the interest of local Adibasi and non-Adibasi farming communities. The Phulbari region is densely populated,

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<sup>1</sup> M. Omar Faruque, *Mining and Subaltern Politics: Political Struggle against Neoliberal Development in Bangladesh*, (2017) 26(1) *Asian Journal of Political Science*, at 67.

<sup>2</sup> Anu Muhammad, *Development or Destruction: Essays on Global Hegemony and Corporate Grabbing and Bangladesh*. (Dhaka: Shrabon Prokashoni, 2007).

<sup>3</sup> *Ibid.*

notably by Adibasi farming communities as well as Bangalee farmers. Consequently, local grassroots started protesting; the objective was not only to drive the foreign company away from the country but also to pressure the government to stop projects which, according to them, would go against local and national interests. Local resistance to the mining project built a coalition with the National Committee to Protect Oil, Gas, Mineral Resources, Power and Ports of Bangladesh (NCBD), who successfully fought back against the multi-dimensional powerful forces (the government, the company, and IFIs) through a bloody resistance movement in 2006. In turn, these local and national protesters have built coalitions with different transnational environmental justice organizations (TEJOs). According to key organizers, the *Phulbari Khoni Andolon* was successful because movement actors and the Adibasi peoples of Phulbari were able to overcome the divide-and-conquer tactics attempted by Asia Energy.

### **3.2. Phulbari Khoni Andolon: Layers of Developing an Environmental Justice Movement**

The people of Phulbari and surrounding areas raised their voices and joined a movement to protest the MNC and the open-pit coal project for the sake of the affected people and the country's economic and environmental broader interest. Protesters were not convinced that coal extracted from the open-pit mine would create benefits surpassing the overall losses and environmental impacts. They countered the company's claim about the low number of people that would be evicted and displaced. For these reasons, local opposition against the project was strong. A group of local politicians took the initiative by forming a committee to protest Asia Energy, which later became weaker due to political influences. A national public interest group mediated the process. Their goal was to increase awareness of the potential negative impacts of mining and to help local communities organizing protests against the company, their means of manipulation, and the open-

pit mining method.<sup>4</sup> The popular Phulbari resistance uprising that happened on 26<sup>th</sup> August 2006 has multiple layers. It built over eighteen months of campaigns, networks, meetings, assemblies, and discussions. The protest was locally called the *Asia Energy Office Gherao Kormosuchi*<sup>5</sup> (Occupy the Asia Energy Office), which was organized and declared by NCBD to expel Asia Energy from Bangladesh and drop the open-pit mining method everywhere in the country.

### 3.2.1. Adibasi Accounts of the Movement

“মানবতা সভত্যা পরিবেশ ধ্বংস করে কয়লা খনি চাই না, মসজিদ মন্দির কবরস্থান শশ্মান ধ্বংস করে কয়লা খনি চাই না, হাজার বছরের ঐতিহ্য ধ্বংস করে আমরা কয়লা খনি চাই না.”

(We don't want coal mining by destroying humanity, civilization, and environment; we don't want coal mining by destroying mosque, temple, graveyards; we don't want coal mining by destroying a thousand years' heritage and archeology.)

--A Popular Slogan of the Phulbari Khoni Andolon in Bangla Language

When the company technologists drilled in different places to test the feasibility of the Phulbari project, including on household properties and agricultural lands, they never informed local people that the project would be an open-pit mine. An elderly Santal farmer elucidated that he had learned about the negative impact of the proposed mining project through an Adibasi leader of his hamlet. He was also complaining that no consultants informed the local people that the mine would destroy the households, agricultural lands, graveyards, schools, playgrounds, and small businesses of the area.<sup>6</sup> When the Adibasi villagers overheard that the Committee to Protect Phulbari or *Phulbari Rokkha Committee* (hereinafter PRC), which was formed by Phulbari towners, was holding

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<sup>4</sup> Sadid A. Nuremowla, *Resistance, rootedness and mining protest in Phulbari*, DPhil Thesis. University of Sussex, (2012) at 170.

<sup>5</sup> Bangla words 'Gherao Kormosuchi' are used more often in political movement in Bangladesh to mean encircling or surrounding of politicians or office buildings until the protestors' demands are met.

<sup>6</sup> Interview with P. Murmu, Boro Bukshi, Birampur, Dinajpur, March 3, 2016.

meetings and rallies to stop the operation, some Adibasi leaders met them and expressed their concern. Initially, Adibasi respondents complained that PRC leaders did not adequately recognize the interests of the Adibasis.

Before the popular 26<sup>th</sup> August *Phulbari Khoni Andolon*, Jatiyo Adibasi Parishad (JAP), with the support of NCBD and a few local Adibasi NGOs, organized a mass gathering named *Adibasi-Krishok Somabesh* (Indigenous-Farmers Rally) on 29<sup>th</sup> April 2006 at Phulbari College field. Researchers, media, national and transnational advocacy, network, and solidarity groups never focused and highlighted this rally where local Adibasis from 68 hamlets, including Adibasi leaders, activists, traditional institutional members from various parts of the country, attended and demanded sharply to suspend the mass destruction project.<sup>7</sup> JAP organized the rally to demonstrate that Adibasis do not want mining activity on their traditional lands and forests they have cherished for thousand years. The rally was also held to counter the company's phony campaign, 'Adibasis want the mining,' which they had been circulating to local non-Adibasi villagers and Phulbari town.<sup>8</sup> National Adibasi leaders such as Jatirindra Bodhipriyo Larma (popularly known as Shantu Larma), leader of the *Parbatya Chattogram Jana Songhati Samitee*, Sanjib Drong, chairman of the Bangladesh Adibasi Forum, Anil Mardi, former president of JAP, Rabindranath Soren, current president of JAP, and Professor Mesbah Kamal, a university teacher and researcher on Indigenous issues traveled to Phulbari and vowed to fight the transnational corporation. Shantu Larma stated in the rally:

“We cannot accept this open-pit mining project in this heavily populated Adibasi region. Not only Adibasis, I believe, but other communities also will not accept this extremely

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<sup>7</sup> Biplab Das, *Phulbari Coalmine and the Broken Dreams of a Corporation*, (Dhaka: Jatiyo Sahitya Prokashoni, 2015) at 66.

<sup>8</sup> Interview with Rob Soren, Dhaka, April 11, 2016

destructive project. The government must consult with Adibasi before constructing any development project in their area.”<sup>9</sup>

From this initial rally, Adibasi leaders had got the impression that they should organize another rally with local and national activists to attract national and international media coverage. According to Adibasi leaders I interviewed, *Adibasi-Krishak Somabesh* was the foundation of the popular *Phulbari Khoni Andolon*.<sup>10</sup> A national Adibasi leader stated:

“We had requested NCBD leaders to organize a protest rally to send the company a message that most people from Adibasi and local Bangalee communities do not want mining, and the propaganda the company was spreading is not true. However, we also had fixed a date to hold another rally; rather, NCBD failed to organize a mass rally. Our declaration was published in the local newspaper which was later circulated to national media.”<sup>11</sup>

After observing the spirit towards fighting the company among Adibasis, NCBD activists, who had already been campaigning against the project and planning for a mass gathering, acknowledged that the upcoming event would be successful. Members of NCBD met Adibasi leaders and formed a coalition to stop open-pit mining operations in Phulbari by collaborating with all people in the area. Before the Phulbari resistance, the regional NCBD members and JAP gave an ultimatum to the company saying, “If you do not leave Phulbari, you would be evicted through mass protest.” Many local activists and Adibasi leaders from different hamlets traveled together and educated people about the negative impact of the project and inspired people to join the movement. A local Adibasi leader claimed:

“From our meeting, we told Asia Energy to stop their mining activities, but they continued. Consequently, we had no other option but to organize that mass protest rally on August 26<sup>th</sup>, 2006. We had learned about the negative impacts of experts that we transmitted to

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<sup>9</sup> Das, *supra* note 7.

<sup>10</sup> Interview with Rob Soren, Dhaka, April 11, 2016

<sup>11</sup> Interview with Rob Soren, Dhaka, April 11, 2016

Adibasi and local people throughout the campaigning period. We successfully educated people that if the open-pit coal mining project would have been implemented, human capital, water, sacred sites, biodiversity, archeological sites, and other natural and ecological resources would be destroyed.”<sup>12</sup>

Among the seventy thousand protesters in NCBD’s *Asia Energy Office Gherao Kormosuchi* rally, at least fifteen thousand protesters were Adibasis who attended from various parts of the North-western part of Bangladesh.<sup>13</sup> Though the rally had begun as a peaceful protest, after a few Adibasi youths were shot and wounded by paramilitary forces, it turned into a violent mass struggle for the next four days by blocking and boycotting the state machinery. The violence ultimately led to the destruction of the Asia Energy office, houses, and business centers of the local agents of the company.

National and regional NCBD members also recall the Adibasi participation in the movement. Adibasi leaders told organizers in the rally that Adibasis were prepared to sacrifice their lives but wanted to fight before dying. It was a huge gathering in Phulbari where Adibasi communities vowed that they would protest



Figure 12: “No Coal Mine in Phulbari” the Asia Energy Office Gherao rally at Phulbari, 2006  
Photo Courtesy: SEHD

with their lives to protect their traditional lands and natural resources from the foreign company’s

<sup>12</sup> Interview with Ram Soren, Phulbari Bazaar, March 11, 2016.

<sup>13</sup> Das, *supra* note 7.

intervention.<sup>14</sup> Most of the Adibasis, especially Santals, thought they were going to a battlefield as their ancestors joined in Santal Rebellion<sup>15</sup> that happened centuries ago against British colonial power. They wanted to bring their traditional bow and arrow. But NCBD organizers had requested them not to carry because they wanted a peaceful assembly although some of them did bring bow and arrow in the rally to show their anger. Adibasis were present in the rally with their traditional dresses, played *dhak* and *dhol*, and energized protesters with their traditional songs and dances.<sup>16</sup> Cherobin Hembrom, an Adibasi leader and key informant, told me that although not all the Adibasi protesters would be affected, they were concerned about Adibasi communities of the mining area and joined the movement in solidarity. If the mining company could successfully develop the operation in the area, Adibasis would have been affected. That is why they moved forward to say, “we do not want any mining in our region, which would displace us and make us refugee”.<sup>17</sup>

According to Cherobin Hembrom, local Adibasis were the first communities who started raising their voices against the projected open-pit mining. He was one of the speakers who stated in the *Adibasi-Krishak Somabesh* that Adibasis of the area had been facing various vulnerabilities throughout their existence. They were never given a voice, and all decisions whether they are good or bad, are imposed on them without their consent. The government should have consulted Adibasi and non-Adibasi communities of this area, whether they want any large-scale developing project on their lands. He also stated that the foreign company had not consulted adequately with Adibasi communities and their traditional institutions. The company had continued deceiving local people.

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<sup>14</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>15</sup> Thousands of Santals of Bhagnadihi at Santal Parogana in Jharkhanda State of India, under the leadership of Sidhu, Kanu Chand, Bhairab, Fulmoni and Jhano, revolted on June 30, 1855 against the misrule, torture and extortion by zamindars, wholesalers and police. The revolution lasted eight months and thousands of Santals and other people were killed.

See: Abul Barkat et. Al., *Life and Land of Adibashis*, (Dhaka: Pathak Shamabesh, 2009) at 244.

<sup>16</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>17</sup> Interview with Cherobin Helmbrom, Dhanajuri Hamlet, Birampur, April 05, 2016.

Mr. Hembrom's statement supports the global trend of environmental injustice with the unfair treatment of Indigenous peoples by nation-states and corporations, as will be discussed in the next section.

### **3.2.2. Local and National Activists Accounts of the Movement**

“Go back Asia Energy, Leave Phulbari, We don't want Coal Mine”

‘Go Back Asia Energy, Save the environment’

“Go Back Asia Energy, Save Adibasi”

“We don't want to be displaced, we don't want a so-called coal mine”

“My soil is my mother, we don't want a so-called coal mine”

“Save Humanity, We don't want a so-called coal mine”.

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*Some Popular Slogans of the Movement*

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#### **3.2.2.1. Building a Local Movement to Resist the Mining**

As the grievances and dissatisfaction grew, and the temptation was intensifying among many local people who were misinformed through *Dalal*. Local experts, leftist politicians, Adibasis, and civil society members gathered together in Phulbari town and unfolded a roadmap to protest the foreign company.<sup>18</sup> They formed a committee named *Phulbari Shohor Rokkha Committee-PSRC* (Committee to Protect Phulbari Town) on 15<sup>th</sup> March 2005, taking activists from different political parties to save the township and its residents from destruction due to the projected mining. While this organization was the first to mobilize against the proposed mining activity, they were unable to mobilize against the MNC at this stage. Simply put, PSRC members and other leaders had no information—whether the open-pit mining would impact negatively or not—and they could not campaign actively against the company.

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<sup>18</sup> Interview with N.Z., Phulbari, April 01, 2016.

When rural Adibasi and non-Adibasi (Bangalee) villagers realized that they stood to be displaced and impoverished, they contacted the PSRC and showed their interest in getting involved. They complained that the project would not only destroy the town but also destroy vast rural villages and agricultural lands including Adibasi hamlets. By late May 2005, this new scope



Figure 13: A wall slogan written in Bangla ; *Bachao Sundarbans* (Save Sundarbans) still exist in Phulbari

Photo: Fieldwork, 2016

prompted the members of the PSRC to remove the word ‘town’ from their name, to reflect the interests of a broader Phulbari community as the *Phulbari Rokkha Committee-PRC* (Committee to Protect Phulbari).<sup>19</sup>

People started mobilizing more frequently. The Phulbari *bazaar* became a colorful place with posters, leaflets, wall slogans, and festoons. On Sundays, thousands of people attended street assemblies where PRC members inspired people to say “No” to the project. Phulbari Entrepreneurs Society or *Phulbari Byabosai Somitee* (hereinafter PBS), which was already formed in Phulbari *bazaar* to protect the interest of businessmen, started campaigning against the company’s activities. PBS wholeheartedly supported PRC’s every event. PRC submitted a memorandum to the Prime Minister through the executive head of the Phulbari sub-district and organized human chains and hunger strikes to attract attention from the media and the government agencies. After submitting the memorandum, thousands of people roamed around the *bazaar* and chanted various slogans for saving households,

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<sup>19</sup> Das, *supra* note 7.

agricultural lands, school-college-madrassa, mosques, temples, graveyards, business centers, heritages, archeological sites from destruction.

PRC's events, confined to Phulbari, did not attract the attention of the national media, though they were regularly covered by the local press. The reach of PRC's message did not always reach to their audience, leading to a feeling of atrophy and demoralization. Some progressive members of PRC identified that they were failing to convey their messages to local peasants and Adibasis, who stood to be the most impacted. Because they did not want to alienate foreign investors, most major political parties kept silent on PRC's campaign.<sup>20</sup> Most of the members of PRC are influential political leaders from various political parties, and all political parties want to keep foreign investors in their hands so that they can use them as a weapon to come into power. Consequently, local political leaders were threatened by central leaders to leave PRC and work for the company. It was found that the chairman and other influential committee members had been maintaining connections with the company officials and their local agents. It was observed that PRC was not raising any question of methods of extraction, environmental degradation or displacement of people; their main concern was only to get compensation.

Many members of the PRC got frustrated at one point and failed to communicate among themselves as well as creating roadmaps to stop operations of the company. Moreover, they realized that those local leaders would never go against their central leader's order and consequently, the ongoing movement could be destroyed. Finding no option to go against them, some members resigned from the committee. They realized that it would not be possible to fight locally against the company that is backed by the government and needs to form a coalition with national organizations that protest to protect the national interest.

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<sup>20</sup> Interview with A.M., Dhaka, April 08, 2016.

### 3.2.2.2. Local to National: Coalition with NCBD

David Szablowski's 'social mediation' can be a compelling idea in mining development that "refers to the task of addressing community and civil society calls for the construction of a new framework for governing the distribution of the costs and benefits generated by mining activity."<sup>21</sup> He contends that by constructing a new governance framework for demands, a 'social mediation' strategy gains a certain level of acceptance when communities engaged in conflicts are denied benefits and opportunities that are expected to arise from mining activity.<sup>22</sup> According to Szablowski, grassroots pressures can create new forms of political consciousness, higher quality of life among local actors, and changes in the existing governance systems.<sup>23</sup> Giving the example of Andean communities' strong demand for social mediation, Szablowski finds that national NGOs and transnational allies had facilitated the formation of a national coordinating organization for mining-affected people. For example, the National Confederation of Peruvian Communities Affected by Mining (CONACAMI) has later served to raise the profile of individual struggles and to press for change at the national policies.<sup>24</sup> A similar type of organization is seen in Bangladesh named the National Committee or NCBD.

NCBD helps to uphold community rights by resisting corporate and neoliberal policies. Initiated and participated in by left political leaders and party representatives, NCBD was formed in 1998 when they got the news of production sharing contracts (PSC) and gas exports between the government and MNCs. NCBD was already well-known in Magurchhara and Tengratila gas explosion cases, where they successfully made the government accountable for regulating

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<sup>21</sup> David Szablowski, *Transnational Law and Local Struggles: Mining, Communities and the World Bank*. (Portland: Hart Publishing, 2007) at 28.

<sup>22</sup> *Ibid.* at 42.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

MNCs.<sup>25</sup> Moreover, NCBD received substantial positive responses from mass people for their protest against the government’s policy of leasing land ports to India and other countries. The government was forced to cancel those policies due to NCBD’s pressure since they made clear to policymakers that those policies regarding natural resources would go against the interest of the country. Although NCBD gained the general reputation of being a left-led forum, people of Bangladesh realized that ‘where there is an anti-interest activity, there is NCBD’.<sup>26</sup>

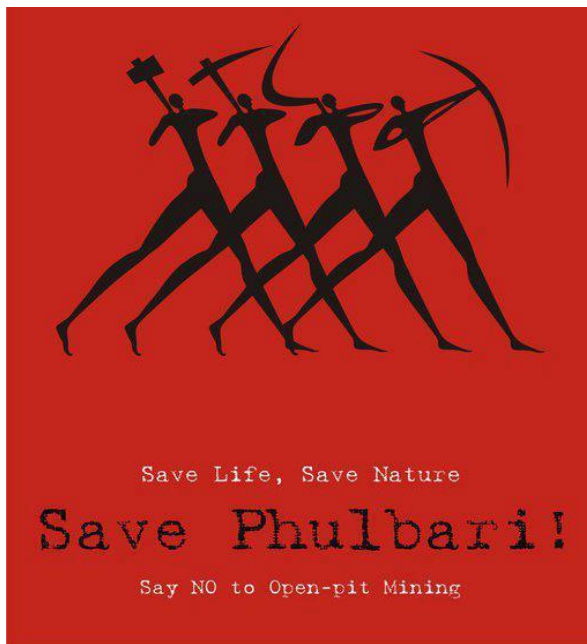


Figure 14: Leaflet in English circulated by NCBD Collected from Nuruzzaman

In the case of Phulbari resistance, some young leftist party activists of PRC thought about NCBD. They realized that if NCBD would help them, they could succeed. They went to Dhaka and met members of NCBD. After an initial study in the meeting, the activists were assured that NCBD would look at the merit of the project. Local activists also contacted students from Phulbari who were studying in Dhaka and requested them to create a coalition with NCBD.

After returning from Dhaka, the young leftist group arranged a demonstration named *Chhatra Jubo Shomabesh* (Student Youth Assembly) at Phulbari without the support of PRC. This was the first instance an event was organized in Phubari without PRC’s involvement. It is to be highlighted that people who contacted NCBD were harassed by leaders of PRC and party in power afterward.

NCBD responded positively after reviewing and discovering that the project would have been mass destruction which would displace thousands of people including many Adibasi communities.

<sup>25</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>26</sup> Interview with A.M., Dhaka, April 08, 2016.

The scope of NCBD was limited only on protesting the issues related to natural gas, oil, and ports before the Phulbari Coal Project issue. Before the communication from the Phulbari activists, NCBD members did not know much about the project since the company had been conducting their activities secretly and no information was published in the national media.<sup>27</sup> The NCBD modified its name and inserted “Mineral Resources” in the organization making the name “The National Committee of Bangladesh to Protect Oil, Gas, Mineral Resources, Power and Ports”. A central leader of NCBD told me in an interview:

“We started working on the issue, contacted responsible ministries, examined a geological survey of the project, and after our investigation, we have not found any related document. The government had no document related to this project. They did not conduct any study, did not have any assessment report. The government completely relied on the documents made by the company. We collected documents of the company made for circulation purposes and started working on the project.”<sup>28</sup>

After a wide range of analyses on economic and environmental issues and consideration, NCBD published a document titled *Phulbari Koyla Khoni: Kar Lav, Kar Kkhoti* (Phulbari Coal Project: whose profit and whose loss?) written by Professor Anu Muhammad in November 2005. Many experts and civil society members contacted and met with NCBD leaders. After an open discussion with them, NCBD informed local activists that they would join the fight to stop the project.

NCBD first came to know all inconsistencies and illegalities when they talked to local people of Phulbari and surrounding other sub-districts. Local people were unsure if they would be compensated for their lands to be acquired by the company. However, the compensation was not vital to them because local political activists who are also members of PRC found that they would

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<sup>27</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>28</sup> Interview with A.M., Dhaka, April 08, 2016.

not be able to protect the area even by going against their personal interests. NCBD decided to protest the company's activities in Phulbari after discussing it with experts.<sup>29</sup>

NCBD formed two regional branches of the organization, one in the Phulbari sub-district and another in the Birampur sub-district to enter into the area. Regional NCBD members, facilitated by central NCBD leaders, started coordinating with PRC by helping organizing rallies and other events. NCBD had become popular among local protesters in a short period of time because of their strategies and their strong motivational skills. Most of the central leaders had frequently been traveling to and mobilizing in the mining regions. On the other hand, PRC became silent, but some leaders had been supporting NCBD. A regional NCBD leader told me:

“Our intention was to establish a non-partisan movement where people from all political parties will have voices. Most of our activists forgot their political interests and started focusing only on one issue, that is ‘saving humanity and environment, and protesting the company’s activities’. A spirit was created among all people with a new pace, and voices were becoming stronger day by day. We started feeling that this force can break all evil powers and motives. We realized that PRC might not stay, but we have to fight until it is confirmed that the company left the country, and the project is canceled.”<sup>30</sup>

During the mobilization for organizing protests, in the first week of August 2006, the company published an environmental and social impact assessment (ESIA) in the English language. The central leaders of NCBD translated important issues into Bangla language and forwarded those to regional NCBD, which had been circulated to the villagers. The members educated Adibasi and non-Adibasi (Bangalee) villagers through focus group discussions, street rallies, bazaar assemblies, showing documentary films and PowerPoint presentations. When local people learned about the consent and consultation issues which were recorded in the ESIA, they claimed that the

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<sup>29</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>30</sup> Interview with N.Z., Phulbari, April 01, 2016.

company lied about obtaining consent from Adibasis. When JAP organized the *Adibasi-Krishok Somabesh* in April 2006 to inform the company that they had not given permission and they are against the project, NCBD helped. However, many programs were held throughout the 18-month period, such as road march, rallies, student-teacher rally, civil society assembly, street protest, campaign, mass signature, etc. As a result of continuous pressure from local people, especially Adibasi communities, NCBD declared the *Gherao Kormosuchi* on August 26, 2006, to show people's power through a mass protest.<sup>31</sup>

The regional NCBD leaders informed PRC of the decision and requested them to cooperate. But PRC disregarded NCBD's decision and filed a general diary (GD) at a local police station stating that 'the upcoming protest is solely organized by NCBD and PRC would not take any responsibility if anything happens'. Asia Energy took the opportunity; they obtained a copy of the GD and circulated the information everywhere. The company had been telling people that 'the protesters are divided, and they became weak'. Their intention was to demotivate people and refrain people from going to the *Gherao* event.

On 26<sup>th</sup> August 2006, thousands of people from surrounding sub-districts started gathering in Phulbari town to express their grievances against the company and their open-pit coal project. Adibasi and local Bangalee farming communities, teachers, students, small entrepreneurs, women, children, and solidarity groups from the capital gathered in Phulbari outskirts to send a message to the government, the company, and IFIs that they do not want open-pit mining which would destroy their livelihoods and the surrounding environment. Protesters from the rally decided to boycott the company. No sooner had the demonstration been concluded, the security forces opened fire on the

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<sup>31</sup> Interview with A.I.B., Phulbari Bazaar, March 14, 2016.

rally. Three young boys were killed, and as many as three hundred people were injured. But this incident only heightened public opposition to Asia Energy.

Over the next four days, more people, especially women and children, gathered in Phulbari town and blocked all major roads. The storming masses cut down communication between major cities. During this period, many activists faced obstacles. The company employed influential people as their agents who threatened movement activists. The security forces raided and arrested some activists after criminal cases were filed by the company. Both Adibasi and non-Adibasi activists shared their experiences of terror from the events of August 26<sup>th</sup> and the following four days. Only after a six-point demand agreement between the protestors and the government was signed did the tension dissipate. In this action, thousands of people occupied major streets and effectively shut down all communication with the capital city Dhaka. Rumana Hashem, the president of the Phulbari Solidarity Group, which she runs from London, the UK for connecting the local actors with TEJOs, shared an event in Saptahik 2000, a Bangla weekly. She went to Phulbari the day before from Dhaka and joined the *Phulbari Khoni Andolon*. She took shelter at a regional NCBD leader's house in Phulbari town after the mass violence where police force raided at night to arrest him, but he escaped. The day after the movement, Rumana saw thousands of people occupying major streets and effectively shut down all transportation systems. There were multiple clashes between protesters and security forces. Security forces became intolerant. They tortured unarmed protesters throughout the period and raided houses of leaders of the movement during the night.<sup>32</sup> Shop owners of Phulbari town closed their shops voluntarily and joined the protest. Many people selflessly donated cooking materials and foods for protesters. Hundreds of people brought beds and created temporary shelters on the streets. Protesters remained unmoved

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<sup>32</sup> Rumana Hashem, "Rokto Diye Koyla Rokkha: Ekti Onnorokom Gono Ovvutthan" (Protecting Coal by Blood: A Different Mass Uprising), Saptahik 2000, November 2006.

in front of the government offices and forced them to refrain from working. The situation continued until 30<sup>th</sup> August 2006. When local people heard that ‘three people were killed, and hundreds were injured’, they got scared but took the street as their weapon to show their strength. Adibasi children, men, women, and the elderly went to major roads to block the mobilization of transport.<sup>33</sup> Two ministers of the government contacted the leaders of NCBD, met them in the office of Parbatipur sub-district council, and signed the agreement on 30<sup>th</sup> August 2006. The ministers promised to implement the deal quickly. Although protesters adjourned their protests and returned home, they swore that demonstrations would be continued until all demands are fulfilled.<sup>34</sup>

The six-demands included: a) banning Asia Energy in Bangladesh and canceling open-pit mining everywhere in the country; b) compensating the victims of police firing; c) trying the officers responsible for indiscriminate firing on the protesters; d) returning the dead bodies and those gone missing; e) founding a memorial for the three deceased protesters; f) compensating the owners of affected shopkeepers, houses, vehicles, and g) trying *Dalal* of Asia Energy, and withdrawing cases filed against the protesters.<sup>35</sup>

### **3.2.3. Torture and Intimidation**

My Adibasi respondents told me that while organizing the *Phulbari Khoni Andolont*, *Dalal* of the company threatened the movement actors and Adibasi community members not to get involved in the movement. An Adibasi farmer from the Munda community shared his experience of encountering a company agent who tried to elicit greed and threatened after failing. According to him,

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<sup>33</sup> Interview with Ram Soren, Phulbari Bazaar, March 11, 2016.

<sup>34</sup> *Ibid.*

<sup>35</sup> Das, *supra* note 7.

“*Dalal* were given huge economic benefits. I have seen a few *Dalal* from Adibasi communities, but most of them were from non-Adibasi or Bangalees. Most of them are already economically benefitted in the society, and their households and lands would not be destroyed. Some poor Adibasi people, I knew, were manipulated by them and took unethical benefits from the company. However, when the movement started, many villagers rejected the company’s offer and joined the movement. A *Dalal* threatened to stab me as I had refused to work in favor of the company.”<sup>36</sup>

Another Adibasi leader from the Santal community told me:

“*Dalal* could not dare to come to me with the company’s benefit because they knew that I am inspiring my community members to join the movement. However, I saw a *Dalal* file a false case against an Adibasi activist of Sonajuri hamlet. The police came to the hamlet several times to arrest him but could not arrest him due to the resistance of his fellow villagers.”<sup>37</sup>

One NGO worker who was supporting the movement was killed inside her parked car,<sup>38</sup> and many fake criminal cases were filed to harass the protesters. Before the *Phulbari Khoni Andolon*, the former executive director of Action AID UK, Nasreen Huq, was brutally killed in her car because of her opposition to the project. The Guardian report revealed that Nasreen Huq told her sister that David Wood, the chief of the UK Department for International Development in Dhaka, asked her to drop the campaign against the mine. According to the report, the Department was becoming increasingly concerned by her opposition to the scheme. Action Aid UK wholeheartedly supported the company.<sup>39</sup>

The security forces went irrational when the military government came to power on January 11, 2007. The Rapid Action Battalion (RAB), special joint forces of Bangladesh, were deployed

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<sup>36</sup> Interview with N. Pahan, Belpukur Hamlet, Birampur, March 11, 2016.

<sup>37</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>38</sup> The Guardian “The mystery death, a town in uproar and a \$1bn UK mines deal.” (September 3, 2006). Online: <https://www.theguardian.com/world/2006/sep/03/bangladesh>

<sup>39</sup> *Ibid.*

in Phulbari to suppress activists so that they could not organize any protest. The force started tracking activists' phone calls and their mobilization. RAB arrested Nuruzzaman<sup>40</sup> on February 11, 2007 and was searching for other activists. Around 20-30 members of the force tortured him in the open bazaar first, and again in the police station. They also arrested Prakash Banik from his rice shop but released him on the same day. Key activists of Phulbari fled the town for a few days, but a mass of people gathered in Phulbari and raised their voices against the government's action. Although Nuruzzaman was released on bail after 36 hours of detention and torture, police filed a corruption case against him, which is still pending. Moreover, he has been still attending court hearings for a criminal lawsuit filed by the company in 2013 for vandalizing the Asia Energy office along with 40 other activists. Again, there were several false criminal cases filed before the August 26, 2006 *Phulbari Khoni Andolon*, although those were withdrawn due to lack of evidence. All the activists must attend regular court hearings, which are deemed to be harassment.

Still, the protests continue this day. The protesters claim that all demands are not yet fulfilled. The families of the deceased and injured people received partial compensation from the government. I have interviewed a victim of the movement who was a rickshaw-van puller and the only earning person of his family before the movement. A bullet hit in his waist, which made him paralyzed. His wife is now working as a maid for their livelihood. He told me that he had received partial compensation from the government. He refused the company's compensation and told, "if you come to me again, I will kill you. I do not need any support from you. I do not want blood-

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<sup>40</sup> Nuruzzaman is one of the first persons to raise his voice against the government's decision to lease out the mining area to an MNC to explore coal through an open-pit mining process. He is a local leader of the Bangladesh Communist Party and an important member of NCBP in the Phulbari branch. He has been fighting to establish the rights and support the demands of farmers and laborers since he was a student. His work for the suppressed class and leftist ideology inspired him to get involved in the Phulbari resistance. Throughout the period of organizing the movement, motivating, inspiring and educating people, corresponding and networking with national and transnational justice groups, and protesting the company and government's wrongdoings, his life was endangered several times.

soaked money from a foreign mining company.”<sup>41</sup> He told me that although his household and lands are not included in the mining footprint, he thought about the future generation and attended the rally. According to him, “the government’s position is political. The government is misusing its power. Once we have given blood, we will give more, but we will not let the company develop mining in Phulbari. I am still attending every event in Phulbari going with a wheelchair.”<sup>42</sup>

Following the days of bloodshed in August 2006, the then opposition leader and the current Prime Minister Sheikh Hasina went to Phulbari with a promise that her party would never allow open-pit mining in hugely populated and agricultural areas.<sup>43</sup> Yet, from then on until 2019, this commitment was never revisited. In fact, even crucial points of the demand agreement, including an investigation into three deaths resulting from the August 2006 protests, remain unfulfilled.

#### **3.2.4. Activists Visited Indian Mining Fields and Made Documentary a Film**

Following a strong protest and bloodshed on August 26, 2006, against the open-pit mining, the project has remained in limbo for the last 13 years. However, the plan of open-pit mining in Phulbari is still alive as a discussion of the concerned authority of government on this issue is ongoing. Local people still think that the government may restart mining at Phulbari, although the Prime Minister and other Ministers have insisted on multiple occasions that it is canceled. NCBD members along with local Adibasi leaders and movement activists visited several open-pit mining projects in India in 2013, 5 years after the *Phulbari Khoni Andolon*. The members observed the settings of mining projects. They talked to local Adibasis, who have been settled in neighboring areas. When I was talking to Adibasi villagers and activists in the Phulbari mining area, most of

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<sup>41</sup> Interview with B. Roy, Sujapur, Phulbari, March 13, 2016.

<sup>42</sup> Interview with B. Roy, Sujapur, Phulbari, March 13, 2016.

<sup>43</sup> Interview with A.I.B., Phulbari Bazaar, March 14, 2016.

them mentioned the Jharkhand visit of activists and Adibasi leaders. They said that they had watched a documentary film called *Phulbari Debona* (“We will not hand over Phulbari”) made by NCBD on their Indian mining site visit. I collected the film and examined the global trend of power politics and the negative impacts of open-pit mining in Indigenous settings. I identify that the Adibasis of the Phulbari mining region have been inspired to carry their spirit of resisting any hazardous activity on their lands. Professor Anu Muhammad, who led the visit, said in the film:

“Our intention of the visit was two-fold: one, sharing the experience of the Phulbari movement with activists and local people of mining areas, and two, gaining experience of local people and environment of mining projects. By that, we could connect through the process and fighting strategy in future days.”<sup>44</sup>

Open-pit mining projects in Jharkhand are located in mountainous areas where most of the residents are Adibasi people, especially Santals. They were displaced from their ancestral lands and households for the benefit of the country, which made them destitute. Displaced people are living with various health problems due to mining operations effects such as air pollution, dust, soil erosion, and water scarcity, which are directly impacting local Adibasi peoples.<sup>45</sup> Although coal is extracted to mitigate the electricity demands of the country, the local people have no electricity available. A local Adibasi resident said in the film:

“The land you see was ours. We used to cultivate our lands, and our livelihood was dependent on this land. We must have rights on that land, although the land was acquired by the government. We want the development of the country although we have lost everything. However, as we have rights on the lands from which coal is being extracted, we must have a share of benefits the government gets.”<sup>46</sup>

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<sup>44</sup> The Film titled “Phulbari Debona”

<sup>45</sup> Mathew Areeparampil, “Displacement due to mining in Jharkhand.” (1996) Economic and Political Weekly.

<sup>46</sup> *Ibid.*

Because of poverty among local people, they work as daily laborers in the mining project. The company promised to offer jobs in the mining activity, but most of them did not get jobs. The company later said that there are no jobs for unskilled people. Since affected Adibasis have no technical skills and the company did not make any reservation for training them, strategically those people were excluded from job qualifications. The existing workers are working in hazardous conditions.<sup>47</sup> An accident occurred on December 29, 2016, in an open-pit coal mining where 11 workers died, and 50 were trapped.<sup>48</sup> As livelihoods of the local Adibasi and non-Adibasi farmers are affected tremendously, consequently they take the risk of stealing wasted coal and selling it at local markets.

### **3.2.5. People are still Active to Confront the Company in Phulbari**

A group of geoscientists arrived to conduct a soil test during my fieldwork in Phulbari town in 2016. I was talking to one of the key activists at his home. After hearing the news, he rushed to the area where the scientists tried to conduct a geological test and survey. I followed him. I saw some activists were shouting slogans against the company. The administrative head of the Phulbari sub-district, whom I have known since my undergrad study at Dhaka University, told me, “I know the geoscientists have no connection with the company. I gave permission after a sincere inquiry. Although I know local people will protest, I have to implement the government’s order.”

The government attempted to survey in Phulbari in 2012, which was stopped amid a protest. The survey team had to escape the area. NCBD declared a rally against the government’s action and demanded to implement the six-point agreement in November 2012. But the government

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<sup>47</sup> *Ibid.*

<sup>48</sup> Hindustan Times, “Jharkhand coal mine collapse: Eleven workers killed, over 50 trapped” (December 30, 2016) Online: <https://www.hindustantimes.com/india-news/coal-mine-collapses-in-jharkhand-s-lalmatia-over-40-workers-feared-trapped/story-ZjRphBG1JBUMUUr2NOWXJ.html>

declared an emergency in Phulbari and deployed hundreds of police from 10 sub-districts to hinder the rally. An NCBD central leader, who went to Phulbari from Dhaka to hold the rally, told me, “throughout the period of holding rallies and protests in Phulbari after the resistance event in 2006, no violence occurred. There was no division among activists, and there is no point of incoming violence.” In that situation, the government assured the survey team to continue the survey, but they could not start their work. Around twenty thousand protesters started a procession in Phulbari streets, violating the emergency.<sup>49</sup>

NCBD leaders managed to make the police force understand that there is no chance of the protesters engaging in any violence. Seeing the situation might get worse, the police left the area.



Figure 15: A street protest in Phulbari during my fieldwork, 2016

On January 12, 2013, villagers opposing the Phulbari Coal Project confined two staff members of the Research and Development Centre (RDC), believing that they were *Dalal* and spies of Asia Energy. Rumana Hashem describes the incident as the “power of the resistance and the passion of people to halt the long-disputed open-pit coal project. The company and their lobbyists are still trying to develop the mine, but yet to recognize the power of community resistance to the proposed open-pit mine in Phulbari.”<sup>50</sup> Local protesters claimed that the government officials are helping the company by

<sup>49</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>50</sup> Phulbari Solidarity Blog, “Fascinating Story of Resistance: RDC personnel imprisoned by villagers in Phulbari” Online: <https://phulbarisolidaritygroup.wordpress.com/2013/01/13/fascinating-story-of-resistance-rdc-personnel-imprisoned-by-villagers-in-phulbari/>

providing security forces to facilitate the company's activity in the area.<sup>51</sup> Earlier in the same year, Adibasi and non-Adibasi farmers led by NCBD of Bangladesh and *Phulbari Byabosayi Somitee* (Association of the Phulbari Entrepreneurs) gave an ultimatum to remove Asia Energy's two local offices by March 30, 2013.<sup>52</sup> It is relevant to mention here that I have not seen any office of the company in Phulbari, not even in Bangladesh, in 2016, during my field activities. I said in the scope and limitation of the methodology that I could not get company personnel including



Figure 16: Rally in Phulbari to Protest Gary Lye's visit, 2013  
Courtesy: Nuruzzaman

company consultants for my research.

On January 29, 2013, local and Adibasi people of Phulbari, Birampur, Parbatipur and Nawabgonj sub-districts staged a demonstration protesting the planned visit of the company's

chief executive officer and country director Gary Lye to the company office in Phulbari, and different Adibasi hamlets and non-Adibasi villages of the mine footprint including Raghunathpur of Nawabganj sub-district and Khanpur of Birampur sub-district to distribute warm clothes among poor.<sup>53</sup> However, due to the protest, Lye could not visit the planned areas but had to conduct a meeting with the Deputy Commissioner and the Police Super of Dinajpur in the town. A daily newspaper reported, "Gary Lye wanted to give bribes to local people, but he did not know how local people are spirited to suspend the company from the country. He brought his wife so that he

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<sup>51</sup> *Ibid.*

<sup>52</sup> *Das, supra* note 7.

<sup>53</sup> The Daily Star, "Top Asia Energy official's visit sparks protest in Dinajpur" (January 30, 2013).  
<https://www.thedailystar.net/news-detail-267051>

would not face any violence, but locals expelled him completely.”<sup>54</sup> Local people brought out a procession protesting the visit and obstructed him. Despite mass people’s protest and demand, lease and license of Asia Energy for exploration of natural resources on the area are not yet canceled. Gary Lye initiated a criminal charge against 13 local activists, which is still pending, and harassment continues.<sup>55</sup>

The local and national protesters who participated in the 2006 Phulbari movement are still confronting the company and the project together. Every year on August 26, NCBD leaders travel to Phulbari to join the ‘Phulbari Day’ rally, which regional NCBD leaders organize in memory of the three martyrs and injured people of the Phulbari resistance movement. Thousands of people attend the rally each year. When I was talking to my Adibasi



Figure 17: Observing Phulbari Day in 2015 by Bangladesh Communist Party. Courtesy: Nuruzzaman

respondents, they mentioned that they are motivated by the people who died, and they will always remember them. Through the rally each year, protesters get a new spirit to fight corporate greed.

### 3.3. Building a Coalition with Transnational Environmental Justice Groups

Local communities and activists in the global South cannot succeed alone against TNCs; national and transnational justice and advocacy groups and networks must join with them and act together to resist mining companies and to establish rights and justice. Transnational networks

<sup>54</sup> *Ibid.*

<sup>55</sup> Interview with A.M., Dhaka, April 08, 2016.

campaign, negotiate and pressure the states and foreign companies through various tactics such as presenting evidence in websites, newspapers, and social media, organizing events, street protests, etc. to make them accountable for their actions and gain global attention. The campaigners also work with local communities and activists to assess needs and initiate the legal and direct campaign against corporations' and governments' oppression.<sup>56</sup> The activities in combination with the transnational and global justice organizations, can be called a 'transnational or cross-border social movement.'<sup>57</sup>

According to Khagram and Alvord, transnational social movement means "phenomena and dynamics that cross, alter, transcend, and even transform borders and boundaries."<sup>58</sup> In other words, transnational movements can be defined as movements involving activists from more than one country, which infiltrate from the local level (where the project is situated) to the national level (capital city or countrywide) to transnational space (another country, especially the origin of the company).<sup>59</sup> Additionally, activists themselves may be transnational such as citizens of more than one country or solidarity groups supporting independence movement in a foreign country. Alongside, transnational methods and strategies may be applied, such as mobilization, protest, social media campaign, or other web-based activities, and the movement requires cross-border interaction such as activism based in one or several countries where activists are located.<sup>60</sup>

Samina Lutfu, a Bangladeshi researcher, investigates how the coalition of local, national, and transnational activists for resisting the Phulbari coal mine project in Bangladesh was created and

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<sup>56</sup> Joe Bandy, "Reterritorializing Borders: Transnational Environmental Justice Movements on the US/Mexico Border." (1997) *Race, Gender & Class*, at 90.

<sup>57</sup> *Ibid.*

<sup>58</sup> Sanjeeb Khagram and Sarah Alvord, "The Rise of Civic Transnationalism." In Srilatha Batliwala and L. David Brown (eds.) *Transnational Civil Society: An Introduction*. (Bloomfield: Kumarian Press Inc, 2006).

<sup>59</sup> Samina Lutfu, "Transnational Ties and Reciprocal Tenacity: Resisting Mining in Bangladesh with Transnational Coalition." (2017) *51.1 Sociology* at 128.

<sup>60</sup> Nicola Piper and Anders Uhlin, "New Perspectives on Transnational Activism." In Nicola Piper and Anders Uhlin (eds.) *Transnational Activism in Asia: Problems of Power and Democracy*. (New York: Routledge, 2003) pp 1-25

is still resisting, even after a decade of a successful campaign to suspend the project.<sup>61</sup> The author, through qualitative research, shows that as local activists were experiencing repression by the military-backed government and false criminal cases filed by the company, it was likely that mining would begin again and local resistance re-emerged. Lutfa's research has explored the transnational coalition activities in a larger scenario for resisting a mine operation in Bangladesh, but it has not focused on the dynamics of environmental justice for Indigenous peoples in global settings.

Protesters have attracted considerable attention from national and international groups. International campaign groups from the UK and the USA working for environmental protection and human rights collaborated with national groups and organizations using the internet and social media campaigns. Over the years, those transnational environmental justice organizations created a network with national and local organizations. They have been researching the company's activities and created pressure on the company and the government through publications and shared them with the NCBD and other local organizations. Moreover, some TEJOs in London<sup>62</sup> continued attending the company's annual general meetings and pressuring its shareholders by asking questions about the company's activities in the Phulbari Coal Project.

On the other hand, the company continued to lobby through different influential channels to resume mining while the community mobilization against the mining project kept on. It is important to note that the military-backed interim government came into power in January 2007, and the company continued to manipulate them and tried to take it as an opportunity to go ahead with the project. A month after the new government's formation, Asia Energy appointed a retired

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<sup>61</sup> Lutfa, *supra* note 59 at 130.

<sup>62</sup> London had become the minerals capital of the world, providing a critical proportion of global mine capital investment and playing a pivotal role in the fixing of world metals prices. Two of the world's four most influential mining companies' headquarters are located in London.

Army General to implement the project to strengthen its power. An NCBD leader told me, “the company started publicizing through their website that there is a military government in Bangladesh; they resolved the issue, and they were going to implement the project without any protest.”<sup>63</sup> However, the company consultants became active and started mining activities in Phulbari with the protection of the security forces. Since the RAB force had started repression of local activists, there was no strong protest due to fear of torture. Nuruzzaman’s arrest and torture was a signal that if activists come forward to protest, they would be stifled in a similar way. The situation of Phulbari became vulnerable, and NCBD members started thinking that the government could begin torturing innocent people any time, which has become normalized in some extractive contexts in the global South.<sup>64</sup> NCBD central members and civil society in the name of *Udbigno Nagorik* (Worried Citizens) organized a protest rally on February 12, 2007, demanding the release of Nuruzzaman in Dhaka. A central NCBD leader told me:

“From that rally, we started thinking of contacting international solidarity and advocacy groups, especially ones who are campaigning and advocating for local protesters from London, the UK. We informed them that local protesters in trouble could be increased, and national pressure groups would not be able to handle the repression of the non-democratic government. Our perception of creating transnational ties was to create pressure on the company as well as the government.”<sup>65</sup>

Another reason for thinking of building a transnational coalition by NCBD was to inform others of the existing situation of Phulbari and the company’s activities so that they can spread the news. NCBD thought that it would be tough for them to continue the tie between them and local activists for a more extended period without the outside entities continuing the movement against

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<sup>63</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>64</sup> Macarena Gómez-Barris, *The extractive zone: Social ecologies and decolonial perspectives*. (Duke University Press, 2017).

<sup>65</sup> Interview with A.M., Dhaka, April 08, 2016.

the company.<sup>66</sup> Moreover, public interest groups maintain communication with transnational coalitions to avoid further intervention from the company in the long run.<sup>67</sup> Since local protesters and Adibasi right holders cannot trace the company's most recent activities, TEJOs, through their secure networks, advocacies, and contact, bargain with the company and to some extent, with states. Therefore, the national and transnational justice and solidarity groups act as mediators in this case whose actions and voices reach the company, host and home states.

Lutfu identifies two dimensions, such as 'reach out' and 'pick up connections' and 'direct ties' and 'mediated ties.' For the first dimension, local and national activists first reach out to TEJOs, and transnational groups may or may not 'pick up' the case depending on meeting their criteria and institutional goals. In the second dimension, the connection or coalition can happen through direct contact or through mediated communication.<sup>68</sup> In the case of the *Phulbari Khoni Andolon*, to build a transnational coalition, NCBD informed Bangladeshi immigrants to connect the movement to the transnational arena through the Bangladesh Environment Network (BEN).<sup>69</sup> BEN experts started writing about the adverse impact of this mine and mediated NCBD's ties with other organizations. Through this network, some TEJOs came to know about the Phulbari open-pit coal project and the *Phulbari Khoni Andolon*.<sup>70</sup> TEJOs from the UK, the USA, Japan, Germany, and Australia responded and successfully built a coalition with NCBD.<sup>71</sup> Some groups were contacted directly by NCBD, and some were mediated through BEN and the Bangladesh Paribesh Andolon (BAPA).<sup>72</sup> BAPA and BEN closely work on issues and have a connection through their

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<sup>66</sup> Interview with A.M., Dhaka, April 08, 2016.

<sup>67</sup> Lutfu, *supra* note 59 at 133.

<sup>68</sup> Lutfu, *supra* note 59 at 133.

<sup>69</sup> BEN is a network group where emigrant Bangladeshi professors and other professionals in different countries are connected to campaign against environmental wrongdoings.

<sup>70</sup> Interview with S.J., Dhaka, April 12, 2016.

<sup>71</sup> Lutfu, *supra* note 59 at 132-133.

<sup>72</sup> *Ibid.*

advocacies.<sup>73</sup> At the later stage, TEJOs mediated through other transnational networks and created a coalition and started working together with solidarity.

Samina Lutfu's research shows how transnational organizations have their own interests in getting involved with a movement like the *Phulbari Khoni Andolon*—to make their struggle to save the environment more meaningful. Since this is a global movement against mining corporations, they sometimes come forward to contact local protesters and national activists on their own initiatives. To expose the interests of transnational groups involving in the movements, Lutfu argues,

“These transnational–local connections support each side's goals, and the relationship is reciprocal. Despite claims that transnational partners are more dominant than the local groups, the Phulbari case shows us that the transnational groups were not always saviors rather they also benefited from the resistance showing their potential funders or boards or supporters that they have achieved measurable impact through it.”<sup>74</sup>

David Naguib Pellow argues that TEJO activists articulate a conception of global political economy as “shifting risks and hazards from North to South, from rich nations to poor communities between and within nations, and from racially privileged communities to racially despised communities.”<sup>75</sup> Pellow further argues that many TEJOs originated not only to combat growing global environmental problems but also to take responsibility for hazards being transmitted from the global North to the global South as an ethical obligation.<sup>76</sup> In this way, these groups tend to challenge the most powerful actors such as governments, TNCs and MNCs, and IFIs.<sup>77</sup> Despite developing the cultures of solidarity and its successes, Bandy presents criticisms on transnational

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<sup>73</sup> Interview with S.J., Dhaka, April 12, 2016.

<sup>74</sup> Lutfu, *supra* note 59 at 136.

<sup>75</sup> David N. Pellow, *Resisting Global Toxics: Transnational Movements for Environmental Justice*, (Cambridge: MIT Press, 2007), at 95.

<sup>76</sup> *Ibid.* at 57

<sup>77</sup> *Ibid.*

environmental justice movements. The author argues that ideological agendas may exclude influential supporters and coalition members, which can hinder the purposes of transnational ties and the more significant cause.<sup>78</sup>

### **3.3.1. Involved TEJOs in Phulbari Khoni Andolon**

The following TEJOs got involved in the *Phulbari Khoni Andolon* through different activities:

#### **3.3.1.1. NGO Forum on ADB**

This is an Asian-led civil society networking and advocacy organization formed in 1992 to hold ADB accountable, transparent, and transparent by frequently monitoring of whether the rights of local communities are affected by the ADB's policies and large-scale development projects. On its website, the network group recognizes,

“the perilous situation Asia is facing in the midst of the rising inequality, illegitimate debts, environmental degradation, displacement, human rights violations and increasing vulnerability of the poor. The Forum had also strengthened the capacities of its members through research and policy advocacy on safeguards. It had fought with the struggles of its members calling for justice in elevating the grievances of project-affected communities to the Bank.”<sup>79</sup>

This organization has frequently protested ADB's statement by cross-checking with local groups and residents. For example, when ADB claimed in a statement that most of the protesters were non-residents of Phulbari, this advocacy group countered and told ADB, “this is in complete contradiction to statements made by local people that most of the demonstrators, including all the

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<sup>78</sup> Bandy, *supra* note 56 at 97.

<sup>79</sup> NGO Forum on ADB Website: <https://www.forum-adb.org/background>

victims who were killed and injured, were Phulbari residents.”<sup>80</sup> After continuous pressure on ADB by this organization, and a community letter by several Adibasi leaders, the country director, at last, declared in 2008 that ADB would not fund the project anymore.<sup>81</sup>

### **3.3.1.2. Japan Centre for a Sustainable Environment and Society (JACSES)**

JACSES is a networking group that works for the accountability of the Japanese government on environmental issues.<sup>82</sup> Throughout the period of its involvement with the *Phulbari Khoni Andolon*, this advocacy group protested through writing action papers to pressure the Japanese government to pull their support back from the Phulbari Coal Project.

### **3.3.1.3. International Accountability Project (IAP)**

IAP is an international advocacy organization that supports through advocacy skills local activists and communities to access and exchange information on development that affects them. This group seeks to advance development projects that prioritize human rights, environmental rights, and community participation in the decision-making process. IAP supports the community-led priorities and recommendations directed towards financial institutions, governments and project proponents connected to the project through their campaign activities. IAP exchanges expert advice, training, and materials to communities likely to be affected and the civil society groups supporting them.<sup>83</sup> IAP still maintains a frequently updated webpage on the Phulbari Coal Project and manages ties with other organizations and participates in direct activism to the resistance.<sup>84</sup>

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<sup>80</sup> NGO Forum on ADB, “Bangladesh: Phulbari Coal Project”. Online: <https://www.forum-adb.org/project-monitoring-south-asia>

<sup>81</sup> John A. Schertow, “Development Bank Pulls Away from Phulbari”, *Intercontinental Cry* (April 22, 2008). Online: <https://intercontinentalcry.org/development-bank-pulls-away-from-phulbari/>

<sup>82</sup> Japan Government is one of the funders of ADB.

<sup>83</sup> The International Accountability Project website: <https://accountabilityproject.org/about/>

<sup>84</sup> Lutfu, *supra* note 59 at 140.

#### **3.3.1.4. Cultural Survival**

Cultural Survival is a US-based advocacy organization that helps Indigenous communities in mining areas to prevent the destruction of their land and natural resources.<sup>85</sup> Since its inception in 1972, Cultural Survival has partnered with Indigenous communities to advance Indigenous peoples' rights and cultures worldwide. The organization employs a participatory, rights-based approach to strengthen Indigenous rights, support access to information, bolster freedom of expression, and assist them in organizing protests. Lutfa explores that in the case of Phulbari resistance, Adibasis of Phulbari needed to prove that their traditional agricultural lands, forests, ecosystem, and their livelihoods were endangered, and consequently, they needed to invite Cultural Survival. JAP contacted this transnational group to get involved to observe their situation.<sup>86</sup> Paula Palmer, the Director of Cultural Survival's Global Response Program, stated in an interview with IAP:

“The project threatens some of Bangladesh’s most vulnerable Indigenous peoples, who trace their ancestry in the region back 5,000 years. Indigenous leaders fear that if their small communities are broken apart and dispersed, they will not be able to maintain the cultural traditions, religious practices, and languages that have sustained them for thousands of years.”<sup>87</sup>

#### **3.3.1.5. The London Mining Network (LMN)**

LMN is a network of organizations concerned about human rights, Indigenous rights, social justice, development, and the ecological integrity of the planet. Most of the world's biggest mining companies and many smaller mining companies are listed on the London Stock Exchange, and on

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<sup>85</sup> *Ibid.*

<sup>86</sup> Interview with Rob Soren, Dhaka, April 11, 2016

<sup>87</sup> IAP, “Phulbari Coal Project”. Online:

[https://www.culturalsurvival.org/sites/default/files/Phulbari\\_Coal\\_Project\\_Fact\\_Sheet\\_LowRes.pdf](https://www.culturalsurvival.org/sites/default/files/Phulbari_Coal_Project_Fact_Sheet_LowRes.pdf)

its Alternative Investment Market (AIM).<sup>88</sup> Since Asia Energy started a business in the AIM, LMN has initiated share-holder activism inside the company's annual general meetings, participated in demonstrations and seminars, and organized many advocacy meetings with the UK government officials. It has also provided research support to activists of other solidarity, networks, and coalition groups.<sup>89</sup>

### 3.3.1.6. Mines and Communities (MAC)

Launched in 2001, MAC is another London-based network group with the purpose to provide affected communities, especially Indigenous peoples, NGOs, activists, the media, and the public, information about aspects of global mining and its impacts.<sup>90</sup> This network group's founding document is named 'the London Declaration,' and it encapsulates key demands being made by many communities affected by mining around the world.<sup>91</sup>



Figure 18: Protest by TEJOs in front of AGM of Asia Energy in London  
Photo: Peter Marshall and PSG

### 3.3.1.7. Global Justice Now

Global Justice Now, formerly known as the World Development Movement, is a democratic social justice group based in the UK which campaigns and works in solidarity with those fighting global injustice, especially in the global South.<sup>92</sup> This organization has been campaigning against

<sup>88</sup>The London Mining Network Website: <http://londonminingnetwork.org/about/>

<sup>89</sup> Lutfu, *supra* note 59.

<sup>90</sup> *Ibid.* at 141.

<sup>91</sup> Mine and Communities website: <http://www.minesandcommunities.org/>

<sup>92</sup>Global Justice Now website: <https://www.globaljustice.org.uk/about-us>

Asia Energy's activities in London and challenged the company's allies, such as Barclays Capital, RBS, and the UK government.<sup>93</sup>

### **3.3.1.8. The Bank Information Centre (BIC)**

BIC, a transnational campaign group, supports “those whose health, livelihoods, homes, sacred sites, and support systems are threatened by the development process, and work[s] to reform the development finance system to prevent harm to people and the planet.” BIC recognizes that the policies and programs of IFIs such as the World Bank, IFC, and ADB can exacerbate climate change, undermine human rights, and further marginalize people who have historically faced discrimination.<sup>94</sup> In their campaign, this group shares information and initiates capacity building, project monitoring, and policy reform of IFIs.<sup>95</sup>

### **3.3.1.9. Phulbari Solidarity Group (PSG)**

PSG is a London-based transnational activist group that originated from activists who participated in the *Phulbari Khoni Andolon* in 2006 and later moved to different countries. As a joint effort of national and transnational activists, this group supports and represents the communities of the Phulbari mining region, opposes the project, and sought to build a transnational coalition to halt the open-pit coal project in Bangladesh. Through their advocacy, campaign, network, and solidarity, PSG sought to ensure that the company quit Phulbari and kept pressuring the Bangladesh government to fulfill the demands made after the movement.<sup>96</sup> In partnership, PSG works closely with LMN, Coal Action UK, Foil Vedanta, Grow Heathrow, Global Justice Now,

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<sup>93</sup> *Lutfu*, *supra* note 59 at 139.

<sup>94</sup> Bank Information Centre website: <https://bankinformationcenter.org/en-us/about/>

<sup>95</sup> *Ibid.*

<sup>96</sup> Phulbari Solidarity Group blog. Online: <http://phulbarisolidaritygroup.org/>

MAC, Cultural Survival, Mangrove Action Plan, IAP, Reclaim the Power, and South Asia Solidarity to build transnational resistance and solidarity with local people.<sup>97</sup>

These are some organizations that made a significant contribution to halting the project and have been defending communities in Phulbari through their direct and interpersonal advocacy work, campaigns, and protests against Asia Energy in London.<sup>98</sup> IAP was interested in the Phulbari case since it was highly destructive and in an area where IAP could add their value. IAP had reliable regional partners and local grassroots were strong, as they required; it was easy for them



Figure 19: NCBD and CPB protesting in front of the Asia Energy Office in London. Photo courtesy: PSG

to take the decision to get involved with the *Phulbari khoni Andolon*.<sup>99</sup> Although JAP contacted Cultural Survival to get involved to observe their situation,<sup>100</sup> IAP mediated a tie with them. LMN was involved with a direct connection from NCBD. MAC was mediated through LMN and built a coalition to support Adibasi communities, protesters, and activists.<sup>101</sup> When NCBD reached out to Global Justice Now, they responded quickly and created an alliance in 2008.<sup>102</sup> BIC actively connected with the coalition partners and with media outlets on the Phulbari issue, indicating that

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<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> Lutfu, *supra* note 59 at 134.

<sup>100</sup> Interview with Rob Soren, Dhaka, April 11, 2016

<sup>101</sup> *Ibid.*

<sup>102</sup> GJN Website. Online: <<https://www.globaljustice.org.uk/blog/2016/aug/25/phulbari-day-action>>

they continue to be committed.<sup>103</sup> Since the Phulbari Coal Project was supposed to be partly funded by ADB, NGO Forum on ADB kept an eye on it and built a coalition with national grassroots groups. However, they built a network when a community organization contacted them directly.<sup>104</sup> When JACSES learned that the Phulbari mine was funded by ADB, they decided to work against it. Moreover, the London branch of the Communist Party of Bangladesh (CPB), NCBD activists, and concerned Bangladeshi expats in London have been organizing protest rallies and programs in collaboration with TEJOs to give the Bangladesh government a message not to implement the project.

### **3.4. Conclusion**

The *Phulbari Khoni Andolon* happened more than a decade ago, in 2006, but Adibasis and local Bangalee people are still thriving in the spirit of the movement, which they shared in interviews I conducted. The protest was the largest against any foreign company in Bangladesh and set an example for MNC's and their mining initiatives. Despite threats, criminal cases, terrorization, corruption, manipulation, and the use of lethal force against local activists and Adibasi communities, they are still fighting to protect their lands and livelihoods. Indigenous peoples around the world tend to be disproportionately affected by resource extraction activities and have fewer technical, legal, and other resources to participate in the decision-making process effectively. This lack of adequate participation can be interpreted as a procedural environmental injustice. The issue of justice raised by community residents in the development projects calls into question the institutional structures that justify some decision-making procedures.

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<sup>103</sup> Lutfu, *supra* note 59 at 134.

<sup>104</sup> *Ibid.*

The resistance to Phulbari was based on the belief that communities, especially Indigenous and other marginalized communities, should have the right to participate in the decision-making process by having the power to approve or reject any project. In many cases, where the primary conflict opposes the interests of a corporation with those of residents affected by its operations, citizens rarely believe for long that the state is neutral and impartial. They find themselves having to struggle with the nation-states, which they perceive as representing interests other than theirs,<sup>105</sup> but states should ideally give priority to the interests of their citizens.<sup>106</sup> The governments argue that the decision would bring the greatest benefit to the most significant number. However, the Government of Bangladesh's actions, in this case, could not assure the protesters that their interests would be protected. In the Phulbari case, the protesters challenged the government's decision on the mine and successfully created a discourse among citizens that 'not all mining would bring the greatest benefit to the greatest number.' They argue that the government has the responsibility to make decisions based on a fair distribution of risks and benefits among different actors in the case of mineral resource extraction. Adibasi communities of Phulbari resisted because they thought that they might not be appropriately compensated, and their voices would not be heard adequately due to longstanding lack of recognition of their rights.

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<sup>105</sup> Eyal Benvenisti, "Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders." (2013) 107.2 *American Journal of International Law* at 298.

<sup>106</sup> *Ibid.* at 300.

## CHAPTER IV

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# INDIGENOUS PEOPLES IN INTERNATIONAL LAW AND RECOGNITION POLITICS IN BANGLADESH

### 4.1. Introduction

Indigenous peoples are being persecuted systematically around the world by nation-states and multinational and transnational corporations (MNCs and TNCs) in the name of development in their own territories. Moreover, Indigenous peoples are also widely deprived of political and social participation and engagement in various decision-making processes, although different international legal instruments such as the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169), the United Nations Declaration on Rights of Indigenous Peoples (UNDRIP), 2007, International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social, and Cultural Rights (ICESCR) have established rights of self-determination so that Indigenous peoples can take a decision over their territories and determine their own identity. Indigenous peoples are defined by the United Nations (UN) as the descendants of the earliest and original peoples who settled in a region and with new arrivals later became dominated and marginalized through conquest, occupation, oppression, settlement, or other means.<sup>1</sup> As a result of 500 years of European imperialism, more than 100 million people, mostly Indigenous peoples, moved away from homelands and have been increasingly marginalized.<sup>2</sup> Colonizers tried to eradicate the cultural identity of Indigenous peoples through the erasure of their sacred histories, traditional knowledge, customs, and geographies that provide the foundation for Indigenous

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<sup>1</sup> The United Nations, “Permanent Forum on Indigenous Issues: Report on the Fifth Session” (2006) Online: <https://undocs.org/E/C.19/2006/11>

<sup>2</sup> Brian Goehring, *Indigenous Peoples of the World: An Introduction to Their Past, Present, and Future*. Purich's Aboriginal Issues Series. (Saskatoon: Purich Publishing, 1993) at 13.

cultural identities and a sense of self-identification.<sup>3</sup> Despite all these challenges, Indigenous peoples retain social, cultural, economic, and political aspects of governing themselves and have remained distinct from other dominant groups by practicing their unique traditions, customs, cultures, beliefs, histories, and languages.<sup>4</sup> Before they rooted in particular places, they trekked through one hamlet to another hamlet, from one valley to another valley, and encountered the power of assimilationist nation-states, making strong claims for self-determination and legal personality, or for various forms of sovereignty.<sup>5</sup>

The United Nations Economic and Social Council (ECOSOC) estimates that there are around 400 million Indigenous peoples situated in 90 countries around the world,<sup>6</sup> (80% of them live in Asia, 7% in South America, 6% in North America, 4% in Africa, 3% in Australia/Oceania and 0.1% in Europe)<sup>7</sup> that makeup 5-7% of the world population.<sup>8</sup> Roughly, 5000 Indigenous groups speak over 5000 languages and are regarded amongst the poorest sections of the world population though they mostly live in rich biodiversity and resource surroundings.<sup>9</sup>

In this chapter, I observe and report on various approaches to defining Indigenous peoples developed by scholars and international legal instruments. Based on my qualitative data, my attempt in this chapter is to identify whether Adibasi communities of the Phulbari mining region and throughout Bangladesh could establish the definition of Indigenous peoples under international law.

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<sup>3</sup> Isabel Altamirano-Jiménez, *Indigenous encounters with Neoliberalism: Place, women, and the environment in Canada and Mexico*. (Vancouver: UBC Press, 2013) at 30-34.

<sup>4</sup> FAO (Food and Agriculture Organization), *Free, Prior and Informed Consent: An Indigenous Peoples' Right and a Good Practice for Local Communities, Manual for Project Practitioners* (Paris, 2015) at 4. Online: <http://www.fao.org/3/a-i6190e.pdf>

<sup>5</sup> James Clifford, "Indigenous Articulations" (2001) 13:2, *The Contemporary Pacific* at 469-472.

<sup>6</sup> *Ibid.*

<sup>7</sup> The United Nations, *supra* note 1 at 1.

<sup>8</sup> *Ibid.*

<sup>9</sup> Ulia Popova-Gosart, "Indigenous Peoples: Attempts to Define1." (2012) 151 *Biomapping Indigenous Peoples: Towards an Understanding of the Issues* at 89.

## 4.2. Indigenous Peoples: From Past to Present

Throughout the process of developing international law, the idea of Indigenous peoples has evolved.<sup>10</sup> Francisco de Vittoria<sup>11</sup> stated that nobody could possess the lordship over Indigenous lands even if s/he were an Emperor or Pope because Indigenous peoples own exclusive territorial rights over their lands.<sup>12</sup> Though Vittoria supported the European invaders apprehending Indigenous peoples' lands through his theory of 'just war', he suggested that the colonizers should respect certain autonomous powers and land claims of the original inhabitants.<sup>13</sup> The United Nations (UN) agrees that the concept of Indigenous peoples was developed from the colonial experience, in which 'original inhabitants' were either deported or became marginalized by colonizers through different types of colonialism.<sup>14</sup> The term 'colonialism' is broadly used to describe the atrocious experience that Indigenous peoples and original inhabitants faced, but the colonial systems could not fully capture Indigenous peoples' desires, visions, and strategies.<sup>15</sup> Through their long encounter with European settlers and colonizers, Indigenous peoples did not always remain tied to their homelands and often had to migrate to different places, holding distinct languages and cultures.<sup>16</sup>

Altamirano-Jiménez identifies 'settler colonialism' and 'extractive colonialism' in her critical contribution to the debate over Indigenous peoples. In settler colonialism, the colonizers evicted

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<sup>10</sup> Andre Beteille, "The Idea of Indigenous Peoples." (1998) 39.2 *Current anthropology*, at 188.

<sup>11</sup> Francisco de Vittoria is considered one of the founding scholars of international law.

<sup>12</sup> Francisco de Vittoria, "On the Indians Lately Discovered" *The expansion of Europe: The first phase*, ed. J. Muldoon (1977).

<sup>13</sup> *Ibid.*

<sup>14</sup> UNDESA, *State of the World's Indigenous Peoples*. Vol. 9. (United Nations Publications, 2009) at 6. Online: <[http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf)>

<sup>15</sup> Taiaiake Alfred and Jeff Corntassel, "Being Indigenous: Resurgences against contemporary colonialism" (2005) 40:4 *Government and Opposition*, at 601.

<sup>16</sup> Altamirano-Jiménez, *supra* note 3 at 30-34.

Indigenous peoples from their lands and established new settlements for the settlers.<sup>17</sup> Patrick Wolfe termed settler colonialism as “a structure and not an event”, based on what he called the ‘logic of elimination’.<sup>18</sup> In most of the British colonies, especially in North America, Indigenous peoples were evicted from their lands for settlement purposes, but “were not killed, driven away, romanticized, assimilated, fenced-in, bred White, and otherwise eliminated as the ‘original owners’ of the land but as ‘Indians’”.<sup>19</sup> Altamirano-Jiménez contrasts this to extractive colonialism that involved practices of reproductive labor, controlling resources, and labor distribution. Spanish colonizers used ‘extractive colonialism’ approaches where they did not expel Indigenous peoples from their land but instead employed them to reproduce mineral resources for the colonizers’ interests.<sup>20</sup> However, these types of colonial experiences are not the same everywhere.

Indigenous identity should not be exclusively determined according to the history of European colonization.<sup>21</sup> Altamirano-Jimenez’s insights on settler colonialism are accurate for the Americas, Russia, Arctic, and some parts of the Pacific but are not applicable for all African and Asian countries where European colonizers did not displace the whole populations and replace them with European settlers.<sup>22</sup> As Clifford argues, Indigenous movements are positioned in relation to their experience of dispossession, but not always connected to the European or other imperialist influences.<sup>23</sup> The UN recognizes that it was not only European rulers and settlers but also existing dominant groups that marginalized Indigenous peoples and displaced them from their lands.<sup>24</sup> Nevertheless, arguments are made by many Asian state governments, such as India, Bangladesh,

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<sup>17</sup> *Ibid.*

<sup>18</sup> Patrick Wolfe, “Settler Colonialization and the Elimination of the Native”, (2006) 8:4 *Journal of Genocide Research* at 390.

<sup>19</sup> *Ibid.* at 388.

<sup>20</sup> Altamirano-Jiménez, *supra* note 3.

<sup>21</sup> UNDESA, *supra* note 14 at 6.

<sup>22</sup> *Ibid.*

<sup>23</sup> Clifford, *supra* note 5 at 472.

<sup>24</sup> UNDESA, *supra* note 14 at 6.

China, and Myanmar in the UN system, that as there was no large-scale European settler colonialism in many Asian and African countries, “there can be no Indigenous peoples in a given country and, therefore, there can be no distinction between the original inhabitants and newcomers.”<sup>25</sup> It can easily be argued that in the context of European colonization, Africans are Indigenous to Africa, and Asians are Indigenous to Asia.<sup>26</sup> But, some contend that colonial rule had destroyed the earlier territorial boundaries and communal mapping of the region by creating new administrative units, which led to increasing dispossession of marginalized communities.<sup>27</sup>

Differences among Indigenous peoples around the world can be observed in their cultures, ethnicities, political-economic situations, and in their relationships in some cases with settler societies created by colonizers. However, Indigenous peoples’ struggle to survive as distinct communities is ongoing throughout the world.<sup>28</sup> One reason is the challenge of identifying their status in society. Bartholomew Dean and Jerome Levi investigate the puzzle of why and how the circumstances<sup>29</sup> of Indigenous peoples are improving in some places in the world while their human rights continue to be abused in other places.<sup>30</sup> The authors identify that in postcolonial societies, state actors and their political, intellectual, and development partners (MNCs and TNCs) marginalized Indigenous peoples for the sake of modernization, development, and economic prosperity within their national territory.<sup>31</sup> Furthermore, contemporary nation-states uphold the colonizers’ mandate, not by attempting to uproot the physical presence of Indigenous peoples as

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<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> Kawser Ahmed, “Defining ‘Indigenous’ in Bangladesh: International Law in Domestic Context” (2010) 17:1 International Journal on Minority and Group Rights, at 71.

<sup>28</sup> Alfred & Cortassel, *supra* note 15 at 597.

<sup>29</sup> Dean and Levi identify the following issues: Indigenous land rights, cultural rights, ownership and exploitation of natural resources, self-determination, environmental degradation and incursion, poverty, health and discrimination.

<sup>30</sup> Bartholomew Dean and Jerome Levi, *At the Risk of Being Heard: Indigenous Rights, Identity and Postcolonial States*, eds. (Michigan: University of Michigan Press, 2003).

<sup>31</sup> *Ibid.* at 11-12.

‘human bodies’, but by trying to eradicate their existence as ‘peoples’.<sup>32</sup> Equally, the current state practices corrupt the relationship between Indigenous groups and settlers by the process of assimilation which produces state-sanctioned legal and political definitional approaches to Indigenous identities.<sup>33</sup> Transnational alliances (between environmental groups, political parties, human rights organizations, and social movements), Indigenous intellectuals, and leaders have used ‘strategic essentialism’<sup>34</sup> in their efforts to define Indigenous identity, secure the recognition of Indigenous peoples and uphold their distinct cultural traditions.<sup>35</sup> Therefore, ‘Indigeneity’ is reconstructed and reshaped through every process of colonial arrangement and actively enacted by Indigenous peoples when they fight against state oppression and external interference.

### **4.3. Defining Indigenous Peoples**

#### **4.3.1. Debates about the Definition of Indigenous Peoples**

The debates over defining and identifying Indigenous peoples have attracted enormous concern in the international legal arena. As a result, various non-governmental and intergovernmental organizations have attempted to institutionalize their own definitions of Indigenous peoples, bringing the category within contemporary international human rights discourse and practices.<sup>36</sup> However, little progress has been made. It is still contested in many nation-states and within Indigenous communities themselves how to identify ‘Indigeneity’. In fact, the real question might be who ought to have the authority to define Indigenous peoples. Definitions by scholars, policy-

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<sup>32</sup> Alfred & Corntassel, *supra* note 15 at 598.

<sup>33</sup> *Ibid.* at 600.

<sup>34</sup> The presence of essential characteristic distinguishing Indigenous from non-Indigenous identity. See: Gayatri Chakravorty Spivak, and Sarah Harasym. *The post-colonial critic: Interviews, strategies, dialogues.* (Routledge, 2014).

<sup>35</sup> Dean and Levi, *supra* note 30 at 14.

<sup>36</sup> Douglas E. Sanders, “Indigenous Peoples: Issues of Definition.” (1999) 8.01 International Journal of Cultural Property, at 12.

makers, and legal instruments have considered the circumstances, geographies, distinctiveness and diversity of peoples or communities or groups to identify them as Indigenous peoples.<sup>37</sup>

Observers from various Indigenous organizations at the Working Group of the Commission on Human Rights<sup>38</sup> (hereinafter the Working Group) in 1996 took a common position and rejected the idea of a ‘formal’ definition of Indigenous peoples adopted by the state agencies.<sup>39</sup> Governmental delegations from different countries expressed the view that it was neither desirable nor necessary to elaborate a universal definition of Indigenous peoples.<sup>40</sup> Finally, the Working Group, at its fifteenth session in 1997, concluded that “a definition of ‘Indigenous peoples’ at the global level was not possible at that time, and indeed not necessary for the adoption of the United Nations Draft Declaration on the Rights of Indigenous Peoples”.<sup>41</sup> Neizen argues that a “rigorous definition of Indigenous peoples would be premature and ultimately futile. Debates over the problem of definition are more interesting than any definition in and of itself.”<sup>42</sup> However, setting a standard and universally accepted definition of Indigenous peoples have been emphasized both by Indigenous groups/nations and state authorities. Therefore, the definition or identification of Indigenous peoples and other minority groups is contested, inadequate, and incomplete.

Altamirano-Jiménez observes that the formation of strict definitional standards in international and national laws excludes some Indigenous groups who need protection.<sup>43</sup> Taking consideration of the set of rights vested in the communities, they can benefit from adopting Indigenous political

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<sup>37</sup> *Ibid.* at 17.

<sup>38</sup> ECOSOC, “Discrimination Against Indigenous Peoples: Report of the Working Group on Indigenous Populations on its Fourteenth Session”. (1996) online: <https://undocs.org/E/CN.4/Sub.2/1996/21>

<sup>39</sup> Siegfried Wiessner, “Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis.” (1999) 12 Harv. Hum. Rts. J., at 113.

<sup>40</sup> *Ibid.*

<sup>41</sup> ECOSOC, *supra* note 38. Paras. 153-154.

<sup>42</sup> R. Neizen, *Origins of Indigeneism: Human Rights and Politics of Identity* (University of California Press, 2003) at 19.

<sup>43</sup> Altamirano-Jiménez, *supra* note 3 at 20.

identities.<sup>44</sup> It is also observed that an inadequate universal definition of ‘Indigenous peoples’ gives many state governments a chance to repudiate the existence of Indigenous peoples within their national borders.<sup>45</sup> The pressure continued from some states such as Bangladesh, India, and Nigeria for a universal definition.<sup>46</sup> The Bangladeshi observer in the Working Group stated that a definition could be an essential step for safeguarding the rights of Indigenous peoples. He said, “ambiguity or absence of criteria could be a convenient cover for states to deny or grant recognition of Indigenous status since there would be no international standard to go by.”<sup>47</sup> Both India and Bangladesh took the chance of non-existence of any formal definition of Indigenous peoples.

Since the Indian government classified ‘all ethnic communities into ‘scheduled tribes’, ‘scheduled castes or forward castes’, and ‘other backward classes’ in the Constitution, India is motivated to gain support for its position that ‘no category of people in India can be singled out as ‘Indigenous peoples’.<sup>48</sup> Indian Courts on different occasions use both ‘Scheduled Tribes’ and ‘Adibasi’ terms interchangeably to mean Indigenous peoples, however, the communities are not recognized by the Indian government as Indigenous peoples or Adibasis.<sup>49</sup> According to Pooja Parmar, “though Adibasis could certainly be protected by the Constitutional recognition of their status as ‘backward section of peoples’, that recognition would not include a fundamental right not to be alienated from the lands they lived on.”<sup>50</sup> Following the Indian government’s position of recognizing Indigenous peoples, the Bangladesh government outright rejects the existence of Indigenous peoples or Adibasi in Bangladesh; instead, the government in 2011 through 15<sup>th</sup>

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<sup>44</sup> *Ibid.* at 37

<sup>45</sup> Marcus Colchester, “Indigenous Rights and the Collective Conscious.” (2002) 18.1 *Anthropology Today* at 2.

<sup>46</sup> ECOSOC, *supra* note 38.

<sup>47</sup> *Ibid.*

<sup>48</sup> Pooja Parmar, “Undoing Historical Wrongs: Law and Indigeneity in India.” (2011) 49 *Osgoode Hall Law Journal* at 496.

<sup>49</sup> *Ibid.* at 498.

<sup>50</sup> *Ibid.* at 512.

Amendment of the Constitution identified them as ‘the tribes, minor races, ethnic sects and communities’<sup>51</sup> and ‘small ethnic minority’.<sup>52</sup>

Given the circumstances, Indigenous leaders and organizations often advocate for the direct endorsement of the accepted international definition of Indigenous peoples and reject any reference to national laws in identifying Indigenous peoples.<sup>53</sup> As Indigenous leaders in the United Nations Permanent Forum on Indigenous Issues (UNPFII) announced in 1996, “We categorically reject any attempts that governments or states define Indigenous peoples”.<sup>54</sup> They argue that states should comply with international legal instruments in this regard and implement them in national legislation.<sup>55</sup> The Food and Agriculture Organization (FAO) claims, “The recognition or identification of certain collectivities as ‘Indigenous Peoples’ shall not be dependent on whether a national government has recognized them as such.”<sup>56</sup> Indigenous grassroots groups demand that only Indigenous peoples can define ‘Indigenous peoples’, and believe that this right of ‘self-definition’ derives from international human rights instruments such as ICESCR and ICCPR. Article 1 of both instruments reveal, “All peoples have the right of self-determination. By that right, they freely determine their political status and freely pursue their economic, social and cultural development.” Thus, while Wiessner argues that the search for the definition becomes tainted if interpretations are sought for the purposes of excluding specific communities from the application of international instruments,<sup>57</sup> others argue that formal definitions might help to protect

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<sup>51</sup> Article 23A of the Constitution of the Peoples’ Republic of Bangladesh states, “The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.”

<sup>52</sup> The Small Ethnic Groups Academy Act 2010 uses the term.

<sup>53</sup> Jeff Corntassel, “Who is Indigenous? ‘Peoplehood’ and Ethnonationalist Approaches to Rearticulating Indigenous Identity” (2003) 9.1 *Nationalism and Ethnic Politics*, at 76.

<sup>54</sup> The United Nations, *supra* note 1.

<sup>55</sup> Indira Simbolon, “Law Reforms and Recognition of Indigenous Peoples’ Communal Rights in Cambodia” Jayantha Perera eds. *Land and Cultural Survival: The Communal Land Rights of Indigenous Peoples in Asia* (Manila: Asian Development Bank, 2009) at 65-66.

<sup>56</sup> FAO, *supra* note 4.

<sup>57</sup> Wiessner, *supra* note 39 at 113.

Indigenous peoples against governments' positions of denial.<sup>58</sup> The UN has acknowledged that “no formal universal definition of the term is necessary, given that a single definition will inevitably be either over or under-inclusive, making sense in some societies but not in others.”<sup>59</sup>

#### **4.3.2. Definitions of Indigenous Peoples in International Law**

Though there are various contentions of identification or definition of Indigenous peoples, international legal instruments provide guidance on what criteria constitute Indigenous peoples globally.<sup>60</sup> However, there still exists unambiguity about what constitutes its global legal status. The following part of the chapter examines some features of ‘becoming Indigenous’<sup>61</sup> by analyzing various working definitions and approaches to identify Indigenous peoples provided by international instruments and scholars.

One of the most cited working definitions of Indigenous ‘communities’, ‘peoples’, and ‘nations’ was given by José R. Martínez Cobo<sup>62</sup> in 1982, which is endorsed by Indigenous representatives in the report of the 1996 Working Group. The working definition reads as follows:

“Indigenous communities, peoples, and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions, and legal system.

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<sup>58</sup> *Ibid.*

<sup>59</sup> UNDESA, *supra* note 14 at 7.

<sup>60</sup> Patrick Macklem, “Indigenous Recognition in International Law: Theoretical Observations” (2008) 30:July Mich J Int’l L at 177.

<sup>61</sup> Corntassel, *supra* note 53.

<sup>62</sup> The First UN Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his famous Study on the Problem of Discrimination against Indigenous Populations (1981).

This historical continuity may consist of the continuation, for an extended period reaching into the presence of one or more of the following factors:

- a. Occupation of ancestral lands, or at least of part of them
- b. Common ancestry with the original occupants of these lands
- c. Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.)
- d. Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family or as the main, preferred habitual, general or normal language)
- e. Residence in certain parts of the country, or in certain regions of the world
- f. Other relevant factors.

On an individual basis, an Indigenous person is one who belongs to these Indigenous populations through self-identification as Indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.”<sup>63</sup>

Indigenous peoples’ representatives have advocated the significance of Martínez Cobo’s ‘self-identification’, as the essential element for identifying Indigenous peoples.<sup>64</sup> Taking Cobo’s definition into consideration, Wiessner categorizes Indigenous peoples as: “peoples with historical continuity suffering from invasion or colonization; self-identification as distinct from other groups of the society; a present non-dominant status; and the determination to preserve the groups’ ancestral land.”<sup>65</sup> However, Kingsbury takes a different position regarding the working definition of Martínez Cobo. According to him, “this definition takes potentially a limited and controversial

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<sup>63</sup> ECOSOC, *Martínez Cobo Study*. Online: <https://www.un.org/development/desa/indigenouspeoples/publications/martinez-cobo-study.html>

<sup>64</sup> ECOSOC, *supra* note 38.

<sup>65</sup> Wiessner, *supra* note 39 at 111.

view of Indigenous peoples by requiring ‘historical continuity’ with pre-invasion and pre-colonial societies that developed on their territories”.<sup>66</sup>

ILO was the first international agency that addressed Indigenous issues. ILO has been working to protect Indigenous and tribal peoples’ rights since the 1920s. The Indigenous and Tribal Populations Convention, 1957 (ILO Convention No. 107) defines both the ‘Indigenous population’ and ‘tribal population’ that has experienced conquest or colonization in the past.<sup>67</sup> It also explains the term ‘semi-tribal’ as “groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.”<sup>68</sup> However, the difference between ‘Indigenous’ and ‘Tribal’ communities, according to the definition of the ILO Convention No. 107, is minimal since Indigenous peoples are defined as “not only encompassing descendants of the inhabitants of the territory ‘at the time of conquest or colonization,’ but also descendants of people residing there at the time of ‘establishment of present state boundaries’”.<sup>69</sup>

The ILO Convention No. 169 definition ascertains the principle of ‘self-identification’ to be recognized as ‘Indigenous peoples’.<sup>70</sup> The Convention introduces the concept of ‘self-recognition’ for protecting Indigenous peoples<sup>71</sup> and provides self-identification as a ‘fundamental criterion’

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<sup>66</sup> Benedict Kingsbury, “‘Indigenous Peoples’ in International Law: A Constructivist Approach to the Asian Controversy.” (1998) *American Journal of International Law* at 420.

<sup>67</sup> Article 1(1) of the Convention states: (a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.

<sup>68</sup> Article 1(2) of the ILO Convention No. 107

<sup>69</sup> Wiessner, *supra* note 39 at 112

<sup>70</sup> Macklem, *supra* note 60, at 196.

<sup>71</sup> *Ibid.*

for determining the groups to whom the Convention applies.<sup>72</sup> The following definition proposed by the Convention is recognized all over the world. Article 1 of the Convention defines Indigenous and Tribal peoples as:

“(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) Peoples in independent countries who are regarded as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”

The World Council of Indigenous Peoples (WCIP) has initiated the following definition of ‘Indigenous peoples’:

“Population groups who from ancient times have inhabited the lands where we live, who are aware of having a character of our own, with social traditions and means of expression that are linked to the country inherited from our ancestors, with a language of our own, and having certain essential and unique characteristics which confer upon us the strong conviction of belonging to a people, who have an identity in ourselves and should be thus regarded by others”.<sup>73</sup>

According to the ILO Convention No. 169 definition, disruptions caused by colonization or by present government actions as a form of imperialism if they continue to struggle, are regarded as elements of a group’s identity as ‘Indigenous peoples’.<sup>74</sup> Corntassel argues that the definition of

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<sup>72</sup> Kingsbury, *supra* note 66 at 440.

<sup>73</sup> IUCN, *Indigenous Peoples and Sustainability: Cases and Actions* (Utrecht, The Netherlands: International Books, 1997).

<sup>74</sup> Corntassel, *supra* note 53 at 86.

the Convention emphasizes the notion of social and cultural distinctiveness based on tradition.<sup>75</sup> It is acknowledged that both the ILO Convention No. 169 and the WCIP definitions ascertain the principle of ‘self-identification’ to be recognized as Indigenous peoples. UNDRIP did not provide any explicit definition of Indigenous peoples, fearing that a definition would result in harming the actual beneficiaries of the rights of the Declaration. Although the Declaration has no solid definition of Indigenous peoples, there are some defining components there. Paragraph 2 of the Annex of the UNDRIP states: “The General Assembly is affirming that indigenous peoples are equal to all other peoples while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.”

Paragraph 18 and 19 say:

“The General Assembly is convinced that the recognition of the rights of Indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the state and Indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith.”

“Encouraging states to comply with and effectively implement all their obligations as they apply to Indigenous peoples under international instruments, in particular, those related to human rights, in consultation and cooperation with the peoples concerned.”

From the above definitions of Indigenous peoples under international law, I have identified the following common characteristics for ‘being Indigenous’: self-identification as Indigenous; historical continuity with pre-colonial and/or pre-settler societies; a shared experience of colonialism and oppression; vulnerability in current society; occupation of or a strong link to specific territories; distinct social, economic and political systems; distinct language, culture, and beliefs; belonging to non-dominant sectors of society; recognized by others; and resolved to

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<sup>75</sup> *Ibid.*

maintain and reproduce their ancestral environments and distinctive identities. In the following section, I examine if Adibasi communities of the Phulbari mining area qualify as Indigenous peoples under international law by relying on the above-mentioned features for testing their identity.

#### **4.4. Indigenous Peoples in Bangladesh and Politics of Recognition**

In the previous section, I have analyzed various definitions accepted in international law, but there are many countries, including Bangladesh, that are inclined to disregard those definitions; instead, they try to assimilate the communities into dominant groups and their cultures. Advocates argue that the state-enforced assimilation process ultimately leads to the non-recognition of Indigenous identity.<sup>76</sup> According to the UN, Indigeneity does not depend on government recognition.<sup>77</sup> I have taken Adibasi communities around the Phulbari Coal Project as the subject of my research, and as such, my analysis of the debate over recognition of Adibasis or Indigenous peoples is limited to the project area, not the whole Bangladesh. Though the study is limited to one location, there is a discussion of recognition politics of Adibasis in Bangladesh.

##### **4.4.1. Test of Indigeneity in Bangladesh**

In my research, I adopt Kingsbury's 'constructivist approach' by engaging empirically with community members to determine how they identify themselves in society and what they think about the government's non-recognition policy. Kingsbury, in his article "Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy", describes the current

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<sup>76</sup> Corntassel, *supra* note 53 at 86.

<sup>77</sup> FAO, *supra* note 4.

patterns in Asia as attempts are made to define Indigenous peoples.<sup>78</sup> Kingsbury rejects the ‘strict’ historical test, which he terms a ‘positivist approach’ often taken by Western scholars, NGOs, and intergovernmental organizations.<sup>79</sup> Hence, to avoid excluding ‘peoples’ in Asia and other regions from claiming Indigenous status, Kingsbury suggests a flexible ‘constructive approach’ with four essential elements: a) self-identification as a distinct ethnic group; b) historical experience of, or contingent vulnerability to, severe disruption, dislocation or exploitation; c) long connection with the region; and d) the wish to retain a distinct identity.<sup>80</sup> Jeff Corntassel argues that each of Kingsbury’s four essential indicators has a reasonable basis for inclusion as Indigenous representatives stressed all of them as aspects of their distinct identity.<sup>81</sup> Kingsbury argues that a constructivist approach makes a global concept of ‘Indigenous peoples’ possible while allowing functional specificity to meet diverse social circumstances and institutional requirements.<sup>82</sup> However, Kingsbury’s constructivist approach means meanings and understandings grow out of social encounters such as interactions, practices, ideas, and beliefs. As part of the approach, Kingsbury includes ‘non-dominance’, ‘close natural affinity’, ‘historical continuity’, ‘socio-economic and socio-cultural differences’, ‘distinct characteristics such as language, race, etc.’, ‘regarded as Indigenous by others’ as strong additional indicators in his definition.<sup>83</sup> I apply these essential characteristics for being ‘Indigenous’ in the following sub-sections.

#### **4.4.1.1. Self-identification and Self-definition**

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<sup>78</sup> Kingsbury, *supra* note 66 at 420.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> Corntassel, *supra* note 53.

<sup>82</sup> Kingsbury, *supra* note 66 at 421.

<sup>83</sup> Corntassel, *supra* note 53 at 87.

Most of the definitions put forward by international organizations and prominent scholars highlight the self-identification approach. Marcus Colchester points out that many marginalized communities around the world that are struggling for their identity and control of traditional lands and livelihoods have redefined themselves as Indigenous.<sup>84</sup> However, people who consider themselves as ‘Indigenous peoples’ must be a self-defined class of people since international law already recognized this principle of self-identification as one of the essential criteria of being Indigenous. The significance of Martínez Cobo’s “‘self-identification’ as the most crucial component for identifying Indigenous peoples” was advocated by many UN member observers attended in the Working Group in 1996.<sup>85</sup> Furthermore, the definition of the ILO Convention No. 169 ascertains the principle of ‘self-identification’ to be recognized as Indigenous peoples. The Convention also introduced the concept of ‘self-recognition’ for protecting Indigenous peoples and provides ‘self-identification’ as a fundamental criterion for determining the groups to whom the Convention applies.<sup>86</sup> Again, Article 33 of the UNDRIP and Article 8 of the Draft Declaration on the Rights of Indigenous Peoples, 1994 vested the right of defining ‘Indigenous peoples’ only on Indigenous communities by emphasizing the importance of ‘self-identification’. Article 33 states:

“1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of Indigenous individuals to obtain citizenship of the states in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.”

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<sup>84</sup> Colchester, *supra* note 45.

<sup>85</sup> ECOSOC, *supra* note 38.

<sup>86</sup> Kingsbury, *supra* note 66 at 440.

Article 8 of the Draft Declaration reads, “Indigenous peoples have a collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as Indigenous and to be recognized as such”. Self-identification or self-recognition is a criterion for being Indigenous that prevents states from putting forward a claim of not having Indigenous peoples in a territory by enacting law or policy.<sup>87</sup> Cornassel notes that self-identification policies for Indigenous nations have increasingly become accepted as international legal practice. Despite the accepted practice of unlimited ‘self-identification’ for Indigenous peoples in global settings, states ‘accommodating’ Indigenous peoples within their borders have generally contested such an open policy.<sup>88</sup> Therefore, peoples who consider themselves as ‘Indigenous peoples’ must be a self-defined class of peoples since international law already recognizes this principle of self-identification as one of the essential characteristics of being ‘Indigenous’.

Members of Adibasi communities of the proposed Phulbari mining area in Bangladesh identify themselves as Adibasi. While I was interviewing a Santal farmer, I have observed a resilient attitude towards the debate about identifying his community. He was saying, “I identify myself as an Adibasi from a Santal community. I find no distinction between Santals and Adibasis. If you call me or identify me as a Santal, you have to recognize me as an Adibasi as well.”<sup>89</sup> Ram Soren is an Adibasi leader from the Santal community who was also involved in the *Phulbari Khoni Andolon*. He told me that it does not matter to Adibasis whether the government recognizes them as Adibasi or not because the government has no authority to define or identify them. He contended that it is enough if someone regards himself as an Adibasi. He questioned: “Why should the

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<sup>87</sup> Macklem, *supra* note 60 at 196.

<sup>88</sup> *Ibid.* at 75.

<sup>89</sup> Interview with D. Hansda, Lakshipur, Phulbari, March 07, 2016.

government identify whether any community or group is Indigenous or Adibasi or Bangalee?” He later added pointing at me:

“I cannot call you a Santal, because you are not a Santal. You are a Bangalee, which is your identity, and you would not accept anything other than Bangalee identity. Nobody would accept this. You only can call me whatever I decide to be called. Only I have the right to define and identify myself. I am a Santal according to ethnicity, as like other ethnic communities such as the Oraon, Munda, Mahili, Chakma, Marma, Tripura, Bengalee, etc.”<sup>90</sup>

Rob Soren, the president of a national Adibasi NGO and a key activist of the *Phulbari Khoni Andolon*, claimed during the interview that ethnic groups in North-west of Bangladesh (where the mining area is located) are always known and called as Adibasi. Not only Adibasis themselves but also local Bangalees and local government bodies use the term ‘Adibasi’.<sup>91</sup> Some of the communities are also called ‘Guna’ which is never scheduled in the government documents. Mr. Soren added that he has been called and recognized locally as a Santal and an Adibasi since he was born.<sup>92</sup> An elderly Santal woman reasoned that the government has no power and right to identify whether the communities are humans or animals. Since they identify themselves as Adibasis, they are Adibasi.<sup>93</sup> Therefore, throughout my interviews, I heard the view that all ethnic and linguistic communities should be recognized in accordance with their wishes. I find their claim on this criterion is strong.

#### **4.4.1.2. Regarded as Indigenous by Others**

Indigenous peoples require themselves not only be recognized as self-determining agents, but

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<sup>90</sup> Interview with Ram Soren, Phulbari Bazaar, March 11, 2016.

<sup>91</sup> The local people disregard government-imposed term *upojati* or *khudro nrigoshthi* or *tribes*.

<sup>92</sup> Interview with Rob Soren, Dhaka, April 11, 2016.

<sup>93</sup> Interview with N. Mardi, Lakshipur, Phulbari, March 07, 2016.

they should also be recognized by another self-conscious group.<sup>94</sup> Therefore, the institutionalization of a liberal regime of reciprocal recognition would enable Indigenous peoples to realize their status as distinct and self-determining actors.<sup>95</sup> The UN has pointed out that the self-identification feature alone cannot contribute to building a specific group for becoming ‘Indigenous peoples’, they should have close ties to their lands, with culture and languages distinct from the dominant groups, and be regarded as Indigenous by other communities.<sup>96</sup> The World Bank stipulates that the surrounding community should also confirm that the communities who are claiming to be ‘Indigenous’ are maintaining distinctiveness and are dominated by other groups.<sup>97</sup> During my stay in the township of Phulbari and Birampur sub-districts, I talked, discussed, and interviewed with Bangalee activists, local government representatives, farmers, and teachers about mining, resistance, and Adibasi issues. Local Bangalees’ sense of identifying the communities as ‘he or she is from an Adibasi village or hamlet’. Bangalees call the self-recognized ethnic communities in the mining area ‘Adibasi’, though some people call pointedly as the Santal, Munda/Pahan, Mahili, and Karmakar. Though the term ‘small ethnic minority’ is being imposed on the self-identified Adibasi communities by the government, nobody in the area uses or refers them as a ‘small ethnic minority’ or ‘upojati’ or ‘tribes’.<sup>98</sup>

R. Begum, a Bangalee woman whose family settled in an Adibasi hamlet, contended that she calls the ethnic communities ‘Adibasi’ because they are Adibasi in nature. She also claimed, “I call them Adibasi because they love to be called Adibasi and, I respect their self-recognition and identification.”<sup>99</sup> Her argument explores that all people have their own identity, and they should

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<sup>94</sup> Glen S. Coulthard, *Red Skin, White Masks*. Rejecting the Colonial Politics of Recognition (Minneapolis: University of Minnesota Press, 2014) at 28.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> Interview with K. Kisku., Phulbari, March 07, 2016.

<sup>99</sup> Interview with R. Begum, Dhontola Hamlet, Birampur, March 3, 2016.

be regarded as such. She questioned, “if anyone calls me Adibasi, I feel insulted because I am not an Adibasi. Why should someone be called or identified what he/she is not?”<sup>100</sup> She added that Adibasis also feel insulted if they are called otherwise. Having a close attachment to the people, she found that Adibasis are completely different from Bangalees regarding their lifestyle, traditional rituals, customs, governance and belief systems. As R. Begum is living in an Adibasi hamlet and she understands that Adibasis have their *Manjhi Parishad*, she respects their customary system and follows their traditional governing policies. She finally connected and said, “that does not mean I have become an Adibasi. Nobody can change his or her ethnicity; it has to be earned through birth and practice. Once you are a Bangalee, you are always a Bangalee, and once you are an Adibasi, you are always an Adibasi unless you do not want to be regarded so.”<sup>101</sup>

B. Roy, another Bangalee farmer and a rickshaw puller who was shot and severely injured during the *Phulbari Khoni Andolonon* 26<sup>th</sup> August 2016, rejected the government’s position and stated that the government has to recognize the communities according to their demand and has to take initiatives to stop persecuting them.<sup>102</sup> I also observed that one Adibasi community (such as Santal) recognizes and identifies another Adibasi community (Robidas) through their long-standing understanding of the lifestyle. S. Baske, a Santal man who was also shot in his leg and waist during the *Phulbari Khoni Andolon* and had to stay in the hospital for few months with injury, talked about Robidas<sup>103</sup> community who identify themselves as Adibasi. According to him, Robidas are marginalized and discriminated in the society, have their own language and distinct culture, but are not recognized even as ‘small ethnic minority’ by the government and by the

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<sup>100</sup> Interview with R. Begum, Dhontola Hamlet, Birampur, March 3, 2016.

<sup>101</sup> Interview with R. Begum, Dhontola Hamlet, Birampur, March 3, 2016.

<sup>102</sup> Interview with B. Roy, Sujapur, Phulbari, March 13, 2016.

<sup>103</sup> Robidas (muchhi in Bangla) is a backward section of people who repair shoes. They travel around villages to find dead animals and get their skin and collect them. They process the skin and make shoes and repair shoes using the shoes they collect. They continue with their profession for generations and single themselves out of the dominant Bangalees. They speak in their language and follow their own lifestyle, traditions and customs.

company.<sup>104</sup> He said, “among 23 households of Adibasis in my hamlet, ten households are from Robidas community. I find Robidas is also an Adibasi.”<sup>105</sup>

Thus, I find that being ‘recognized by others’ is an important criterion, which can be read with self-recognition or identification. Accordingly, Bangalee respondents of the Phulbari mining area were asked: “what do they think about the people who are identifying themselves as Adibasi but not regarded as Adibasi by the government?” Most of the respondents, regardless of their race, ethnicity, gender, age, literacy, occupation, claimed that they are Indigenous peoples, and they must be called either ‘Adibasi’ or ‘Indigenous peoples’ because the people want to be called so.

#### **4.4.1.3. Historical Continuity**

Many scholars favor the ‘historical continuity’ criterion arguing that historical continuation is enough for being ‘Indigenous’. Macklem claims that Indigenous peoples in international law are communities who maintained historical continuity in occupied and governed territories before colonization.<sup>106</sup> Benedict Kingsbury contests Cobo’s working definition of Indigenous peoples and argues that by requiring “‘historical continuity’ with pre-invasion and pre-colonial societies that developed on their territories”, the definition takes potentially a limited and controversial view of Indigenous peoples.<sup>107</sup> Kingsbury observes that this historical continuity may consist of the continuation of reaching into the present.<sup>108</sup> Macklem supports this position of Indigenous peoples in international law and argues that they are the people who maintained ‘historical continuity’ in occupied and governed territories prior to colonization.<sup>109</sup>

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<sup>104</sup> The company has recognized Santal, Munda and Mahili as Indigenous in their official document.

<sup>105</sup> Interview with S. Baske. Ratanpur Village, Birampur, March 06, 2016.

<sup>106</sup> Macklem, *supra* note 60.

<sup>107</sup> Kingsbury, *supra* note 66 at 420.

<sup>108</sup> *Ibid.* at 422.

<sup>109</sup> Macklem, *supra* note 60.

The World Bank takes a criteria-based approach for Asian countries by adding ‘historical continuity’ and ‘colonialism’ because some Asian countries such as India, Bangladesh, and Myanmar have argued that Indigenous peoples are descendants of the original inhabitants who have suffered from conquest or invasion from outside.<sup>110</sup> The principle of “being conquered and being dominated by another group is pre-condition for Indigenous status”<sup>111</sup> implies that European conquest and military invasion over Indigenous nations are necessary,<sup>112</sup> which I find is problematic. Because not all Indigenous groups were conquered by European invaders through military powers, nor they establish non-dominant sections in society.<sup>113</sup>

Designating the notion of Indigenous peoples as ‘the people who came first’, the Indian representatives have argued that it is impossible to determine who came first because of mass migration, preoccupation, and differentiation.<sup>114</sup> It is common in the Indian sub-continent, especially in undivided Bengal, where many people of diverse ethnicities have traveled from other parts of India and settled down in different places to work as *borga chashi* (sharecroppers)<sup>115</sup> and agricultural laborers.<sup>116</sup> All Adibasi communities of my research area have a similar historical and cultural background and belong to the earliest inhabitants of the Indian sub-continent.<sup>117</sup> They are believed to have moved from Jharkhand, Nagpur and other parts of current India to their new places (many forest areas of current Bangladesh) during the conquering time by British East India

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<sup>110</sup> *Ibid.*

<sup>111</sup> Ted Gurr from Minority At Risk (MAR) project defines Indigenous peoples as: “Conquered descendants of earlier inhabitants of a region who live mainly in conformity with traditional social, economic, and cultural customs that are sharply distinct from those of dominant groups...Indigenous peoples who had durable states of their own prior to conquest, such as Tibetans, or who have given sustained support to modern movements aimed at establishing their own state, such as the Kurds, are classified as ethnonationalists, not indigenous peoples.

Also See, Corntassel, *supra* note 53 at 79.

<sup>112</sup> Altamirano-Jiménez, *supra* note 5 at 22.

<sup>113</sup> Alfred and Corntassel, *supra* note 15.

<sup>114</sup> Kingsbury, *supra* note 66 at 434 & 435.

<sup>115</sup> Most of the Adibasis in the mining area are landless borga chashi. They cultivate three-season crops throughout the year.

<sup>116</sup> Abul Barkat et. Al., *Life and Land of Adibashis*, (Dhaka: Pathak Shamabesh, 2009) at 244.

<sup>117</sup> *Ibid.*

Company fearing to be captured and tortured.<sup>118</sup> There is another compelling claim of settling Adibasis in the Phulbari mining area. Sidhu Murmu and Kanhu Murmu were the Santal rebellions, who led fighting for liberating Adibasis and their rights from British colonial authority and their local agents (upper caste Zamindars) in 1885.<sup>119</sup> The British East India Company rulers and their agents had been torturing, persecuting, and marginalizing Adibasis in the name of production and development. The violence spread all over Adibasi communities, and they became refugees by traveling from one place to another place as they were displaced. They settled in different parts of the Indian sub-continent. Many of them settled in the mining area.<sup>120</sup>

Adibasi communities in the Phulbari mining area are distinct in their way of life, cultures, and languages from dominant Bangalee Muslim and Hindu populations, though they have coexisted with them for a long time. Mezbah Kamal, a Bangladesh historian, argues that since the period of Mughal in the 15<sup>th</sup> century, the boundaries of the region had been altered various times and became part of at least three countries. Since the whole region was a part of the Indian sub-continent until 1947, people could migrate from one place to another place, and they could settle anywhere they wanted.<sup>121</sup> Therefore, it cannot be said that “you migrated from India or Pakistan and as such you are not an Adibasi or Indigenous”. After becoming an independent country in 1971, Bangladesh has not experienced much migration into its territory.<sup>122</sup> However, the ethnic groups who are claiming themselves as Adibasi in Bangladesh have lived in the region since before the independence, even before the British invasion in 1757.<sup>123</sup>

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<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> Mesbah Kamal, “Introduction” eds Mesbah Kamal, Jahidul Islam and Sugata Chakma, *Adibasi Communities* Bangladesh Asiatic Society, Dhaka: 2007, at xiii

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

Therefore, the government's position that 'all people of the country are Indigenous' or 'there are no Indigenous peoples in Bangladesh' is invalid in the sense of 'historical continuity'.<sup>124</sup> With respect to the notion of Indigenous peoples as the 'people who came first', I support the argument made by the Indian representatives in an international forum that it is impossible to determine 'who came first'. Accordingly, the concept of 'who came first' or 'historical continuity' cannot be applied in the Indian sub-continent context because of the continuous migration, absorption, and differentiation of groups in the following centuries of colonization.<sup>125</sup> Therefore, the question of 'who came first' is illogical in this context.<sup>126</sup> Following Xaxa, there is no need to make distinction between settlement in the country as a whole and settlement within its parts or regions.<sup>127</sup> The Santals and other Adibasi groups may have settled in some territory where they live now later than the Bangalee, but it cannot be said that their settlement in undivided Bengal is prior to that of the groups.<sup>128</sup> Therefore, to claim Indigenous status on this ground, a group can say they are the first settlers of the area they live now from the time immemorial. Again, if we take the 'historical continuity' criterion in Bangladesh's perspective, Adibasis pass the test of 'Indigeneity' as well. Therefore, in my analysis, Adibasis of undivided Bengal are to be treated as Indigenous peoples of independent Bangladesh.

#### **4.4.1.4. A Long Connection with Regions and Kinship Networks**

Indigenous peoples are often demanding recognition as Indigenous peoples based on their long connection with regions. They also wish to retain a distinct identity through practicing their

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<sup>124</sup> UNDESA, *supra* note 14 at 6.

<sup>125</sup> Kingsbury, *supra* note 66 at 434 & 435.

<sup>126</sup> Virginius Xaxa, "Tribes as Indigenous People of India." (1999) *Economic and political weekly*, at 3592.

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.* at 3592.

traditions, cultures, and strong ties with lands.<sup>129</sup> The interconnected factors of the relationship to the land, language, and cultural practices appear to have some promises for discussing the adaptability and resurgence of Indigenous communities.<sup>130</sup> Wiessner suggests adding Indigenous peoples' 'strong ties' to their ancestral lands, whether they can reside in these territories or not.<sup>131</sup>

The self-identification and historical continuation criteria are not enough for a particular group to

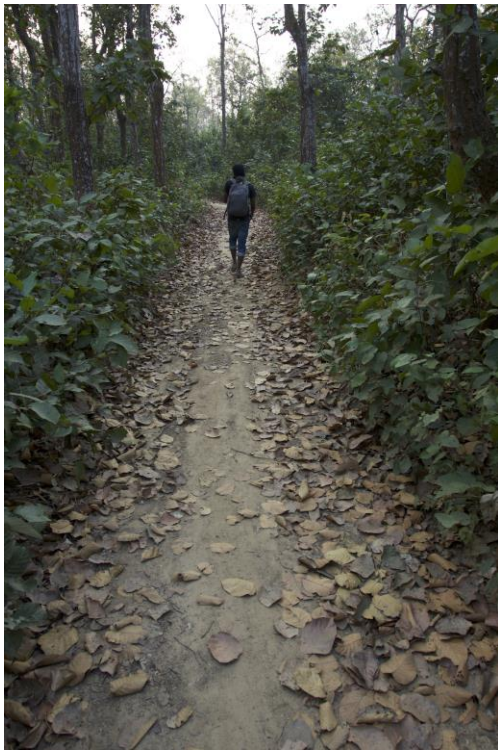


Figure 20: Sal forest near Adibasi hamlets

Photo: Fieldwork, 2016

establish an 'Indigenous' identity; they need close ties to their lands, with identities and languages distinct from the dominant groups.<sup>132</sup> Considering the international context, James Anaya identifies 'Indigenous peoples' as distinct communities with extensive kinship networks that clearly distinguish them from 'minority groups' by highlighting the continued colonial domination of homelands as well as the ancestral roots of the 'pre-invasion inhabitants'.<sup>133</sup> Their extensive kinship networks and continually devising cultural traditions also form an Indigenous identity. Moreover, multi-functionality of kinship

bonds governs Adibasi society and build their social relations.<sup>134</sup> Santals and other Adibasi communities had been living in the mining area before the victims of displacement arrived there.

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<sup>129</sup> UNDESA, *supra* note 14 at 6.

<sup>130</sup> Alfred and Corntassel, *supra* note 15 at 606-609.

<sup>131</sup> Wiessner, *supra* note 39 at 112

<sup>132</sup> *Ibid.*

<sup>133</sup> James Anaya, *Indigenous Peoples in International Law*. (New York: Oxford University Press, 2004).

<sup>134</sup> Virginius Xaxa, "Transformation of Tribes in India: Terms of Discourse." (1999) *Economic and Political Weekly*.

They could have settled comfortably in the region because of their kinship networks.<sup>135</sup> Kinship is the main basis of family organization.<sup>136</sup> Once an Adibasi group settled in one place, other relatives of that group followed that group. They started clearing the jungle for houses and carried their livelihoods by hunting, gathering wild foods from the forest, and working as agricultural laborers.<sup>137</sup> However, they now became victims of marginalization and deprivation. A Santal farmer was recalling his childhood memories: “the area was full of forest, and now you can barely see the forest. Many Bangalees migrated here lately from different places, cut trees for settling and created cultivated lands. Now it has become a crowded area with agricultural lands.” He added, “If you see any community live close to a forest and if they depend their livelihood on it, you will understand that they are Indigenous peoples.”<sup>138</sup>

D. Baske, an elderly Santal woman in her 80s, stated that Adibasis have a long connection with forests because their livelihood depends on forests where they hunt animals, gather honey, wild fruits, and flowers. They celebrate ‘hunting and gathering day’ every year as part of their continued customs, which they call *Sohrai*. In Santal tradition, *Sohrai* means ‘throw of a lance’.<sup>139</sup> Their religious beliefs, rituals, and sacred histories also are based on forest dwellings, and they are called ‘forest dwellers’, and ‘hunters and gatherers’. Indigenous peoples have a stable relationship with the forest; only they understand managing and maintaining the ecological value of forests. D. Baske contended that when Bangalees started moving in this place, they settled in forest and

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<sup>135</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>136</sup> Satadal Dasgupta, *Caste, Kinship, and Community: Social System of a Bengal Caste*. (Orient Blackswan, 1993).

<sup>137</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>138</sup> Interview with B. Tudu, Letason Hamlet, Birampur, February 29, 2016.

<sup>139</sup> There is an oral history of *Sohrai* among Santals and they believe that *Sohrai* was a person who tried to abduct a girl he loved of a rich family and was killed by the girl’s family with lance. As the date of *sohrai* is close to 25th December, converted Christians celebrate both festivals at the same time. During the *Sohrai*, Santals celebrate with various activities such as song, dance, making traditional foods, puja, drinking *haria*, games with cattle, *sakrat* (hunting animals, birds, and fishes). Santals hunt rats and eat during the *Sohrai*.

agricultural *Khas* (demesne) lands<sup>140</sup>, they began cutting forests, and they acquired colossal forest lands afterward. Bangalee refugees do not understand the ecological and biodiversity of the forest inhabitants.<sup>141</sup> Though their livelihoods mostly depend on agricultural products and activities, Adibasis continued their customary traditions of hunting and gathering. Therefore, in D. Baske's view, Adibasis created a sincere relationship with forests.

Moreover, Adibasis practice distinct rituals that are entirely different from Bangalees, and they continue what their ancestors used to follow. Ram Soren described Santals' rituals of welcoming a newborn into the family. When a child is born, the mother and the newborn both are bathed with neem leaves. The child is welcomed in the world by boiling neem leaves and cooking traditional dessert. Adibasis believe that neem leaves are beneficial for human health, and they use that for their traditional medicinal purposes. Though most Santals are not formally educated, they have a distinct system of naming, which cannot be seen in any other community in Bangladesh. Ram Soren, a local Santal leader, stated that his name was taken after his paternal grandfather's name. He added, "when I was born, I got my grandfather's secret name with the formal ritual ceremony. My father got his name in the same way; my sons got their names similarly." Cheroben described the naming rituals in more detail. He has two sons and two daughters. His elder son got his secret name from his paternal grandfather (Cheroben's father), his second son got from his maternal grandfather. If he would have a third son, he would take his paternal grandfather's younger brother's name. Similarly, his first daughter got from her paternal grandmother's secret name, and

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<sup>140</sup> *Khas* land means government owned fallow land, where nobody has property rights. Aline Herrera describes more on *khas* lands: In Bangladesh, the process of redistributing state-owned land, commonly named as *khas* land, to landless people which was started in the 1980s. See more: Aline Herrera, "Access to *khas* land in Bangladesh: Discussion on the opportunities and challenges for landless people." (2016). The problem had started after 1947 when many Adibasis had moved to India due to religious riots (Hindu and Muslim riots) leaving their lands behind. The lands of the drifted people became *Khas* and later declared as an enemy or vested property. Local powerful Bangalees started possessing Adibasi lands as well as those *khas* lands because Adibasis have little knowledge about the process of transfer of property.

<sup>141</sup> Interview with D. Baske. Ratanpur Village, Birampur, March 09, 2016.

his second daughter got her maternal grandmother's secret name. Through this traditional process, these names would never be lost, and the tradition will be kept alive for generations. This is one of the customs through which Santals maintain their kinship networks.

#### **4.4.1.5. Historical Experience and Vulnerability**

Erica-Irene Daes, the UN Chairperson-Rapporteur on the Concept of Indigenous, defines 'Indigenous peoples' as "the descendants of the original inhabitants of conquered territories possessing a minority culture and recognizing themselves as such".<sup>142</sup> Wiessner contemplates Daes's suggested factors of voluntary distinctiveness, self-identification, and recognition, as well as the experience of oppression as a reasonable functional definition.<sup>143</sup> Kingsbury's 'historical experience of vulnerability, severe disruption, dislocation, oppression or exploitation' of self-identified distinct communities who form non-dominant classes in the society is common everywhere in the world. Santals, Mundas, and other Adibasis from plain lands always live in the Northern part of Bangladesh and are being persecuted and marginalized from the very beginning of the civilization, and it got more intense as time passed.<sup>144</sup> Adibasi people in Bangladesh form the non-dominant sectors of society as against the majority Bangalees.<sup>145</sup> Their historical situation can be labeled as politically powerless, legally unprotected, economically inferior, numerically inferior, and victims of violence.<sup>146</sup> Their present psychological states also support the 'powerless' class in every aspect of society. For example, when I was talking to Cherobin about the marginalization of Adibasis, he told me that though Adibasis are citizens, they cannot become a

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<sup>142</sup> Erica-Irene Daes, "Standard Setting Activities: Evolution of Standards Concerning the Rights of Indigenous People: The Concept of 'Indigenous Peoples'" (1996) The Working Paper. Online: <https://undocs.org/E/CN.4/Sub.2/AC.4/1996/2>

<sup>143</sup> Wiessner *supra* note 39 at 115.

<sup>144</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>145</sup> Ahmed, *supra* note 27 at 72.

<sup>146</sup> *Ibid.*

‘Prime Minister’ of the country<sup>147</sup>, but the Bangladesh Constitution has no racial, ethnic, religious and gender-based exclusionary provision.<sup>148</sup> Article 28(4) of the Constitution states: “Nothing in this article shall prevent the nation-state from making special provisions in favor of women or children or for the advancement of any backward section of citizens.” Any citizen who is qualified for the election to become a member of the parliament (MP) can also become the Prime Minister of Bangladesh with the support of the members of the parliament.<sup>149</sup> Cherobin feels that though Adibasis are Bangladeshi citizens, they are not actual citizens. They would never be entitled to get similar opportunities or benefits as Bangalees get, although the Bangladesh Constitution guarantees equality for everyone.<sup>150</sup> As a member of a marginalized and non-dominant group of the country, his experience was never good dealing with Bangalees and government officials. His sense of the above state of mind is for their long history of marginalization, deprivation, and discrimination. He thinks the situation would never be better because Bangladesh is a Muslim and Bangalee majority country where they dominate everything.<sup>151</sup>

S. Baske was worried about losing his land to powerful local Bangalees. His grandfather’s property was grabbed by a Bangalee neighbor by making a forged deed after his death. One of his Santal neighbors lost substantial agricultural lands recently in the same way.<sup>152</sup> This trend is happening everywhere in Bangladesh among Adibasis.<sup>153</sup> D. Baske claimed that Santals and Mundas were owners of lands, but now most of the lands of the area are owned by Bangalees,

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<sup>147</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>148</sup> Article 28 of the Constitution states: (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. (2) Women shall have equal rights with men in all spheres of the State and of public life. (3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.

<sup>149</sup> Article 66 and 56(3) of the Constitution of Bangladesh.

<sup>150</sup> Article 27 states: All citizens are equal before law and are entitled to equal protection of law.

<sup>151</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>152</sup> Interview with S. Baske. Ratanpur Village, Birampur, March 06, 2016.

<sup>153</sup> Barkat et. al., *supra* note 116.

which they acquired through deception.<sup>154</sup> In Bangladeshi land law, a Santal's or any Adibasi's land cannot be transferred or sold to a Bangalee. Adibasi authority and government administrative body must endorse the document, and then only it can be possible to sell to a Bangalee,<sup>155</sup> which was not followed in this case. Most of the Adibasis are not formally educated and do not understand the land-related laws, and many Bangalees, mainly those who migrated later, take this chance to occupy. Few of my Adibasi respondents confirmed that the relationship between Adibasi and local Bangalees are good except *bohiragoto*. They do not want to understand the traditional life of Adibasi and their culture. Furthermore, there are several incidents where refugees dispossessed Adibasi people from their lands by creating false ownership documents.<sup>156</sup> This is how Adibasi lands are grabbed by powerful local Bangalees.

Some of the Adibasi and non-Adibasi respondents of my research also confirmed that Bangalees are buying and alienating Adibasi lands through unlawful means. There were multiple incidents that happened in this area where clever Bangalees deceived and tempted Adibasis and offered more price than existing land prices. As they are unaware of land laws and rights, Adibasis agreed to sell their lands to those Bangalee land grabbers. Adibasis get the agreed prices, but the size of properties being sold are written wrong by Bangalees. For example, instead of writing *one bigha*, they write *one-acre*<sup>157</sup> in the registered land deed. Adibasis understand the trick during the transfer of the ownership, but by that time, they lose vast properties. Adibasis demand that the government should establish a separate land commission to deal with the situation. K. Kisku, who works for an NGO that deals with Adibasi matters in the area, confirmed that he had seen several

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<sup>154</sup> Interview with D. Baske. Ratanpur Village, Birampur, March 09, 2016.

<sup>155</sup> Section 97(7) of the East Bengal State Acquisition and Tenancy Act, 1950 provides: "Any transfer made by an *aboriginal* raiyat in contravention of the provisions of this section shall be void."

<sup>156</sup> Interview with S. Mardi, Sonajuri Hamlet, Birampur, March 06, 2016.

<sup>157</sup> Bigha and acre are units of land, which are used during land purchases in Bangladesh. Three bigha is equal to one acre.

instances where Adibasi lands were grabbed illegally by local Bangalees through deception. To remedy the situation, Adibasis need a separate land commission so that they can return their lost territories, which were grabbed by Bangalees.<sup>158</sup>

S. Baske pointed out that Adibasis feel very upset and marginalized because they do not get proper justice from the government administration. Corruption in local administration and courts still exist. People who tend to grab property illegally, they are wealthy and able to bribe officers who deal with registration and transfer of lands. Most of the Adibasis became poor by losing their lands through illegal processes, and now they are bound to work as day laborers. Adibasis are so frustrated that they stopped going to the court because they do not get justice. Judges and government officials help those Bangalees who grab Adibasi lands illegally through corruption.<sup>159</sup> Adibasi communities feel so marginalized due to these ongoing incidents that they think that their all land will be lost eventually.

A recent incident in Bangladesh supports ‘vulnerability’, ‘oppression,’ and ‘exploitation’ criterion of Adibasi communities. When I was conducting interviews with Adibasis in my field area, at least two of the respondents informed me of their concern about the situation in Gaibanda, another northern district of Bangladesh, where Santals are living for ages. My respondents contended that the government would displace Adibasis from their households and agricultural lands of the sugarcane farming area because they are powerless and discriminated which turned into reality in a few months. I have seen the news and a video on social media on November 6, 2016. By that time, I had already returned to Canada. Several media reported that the incident happened after an eviction drive conducted by a sugar mill management in Gaibandha. The clash erupted when the Santal people prevented them, police opened fire and killed three Santal men

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<sup>158</sup> Interview with K. Kisku., Phulbari, March 07, 2016.

<sup>159</sup> Interview with S. Baske. Ratanpur Village, Birampur, March 06, 2016.

and injured many others. A video became viral on social media that shows a platoon of armed police march towards an abandoned Santal village and set fire on the houses of the Santal people. Consequently, the Santals were evicted from their ancestral lands and became refugees.

The issue arose when the residents were notified by the government administration (sugar mill management) to leave their houses saying that they are living in government land and have to leave the place. The government had acquired the area from the Santals in 1962 for sugarcane cultivation for the Rangpur Sugar Mill. There was a provision in the deed that the land would be returned to its original owners if the mill did not in operation. However, it is evident that the eviction notice was served to Santals for the interest of influential people as the mill authority started leasing the area to influential local leaders and rich people for the past years.<sup>160</sup> Local rich people are cultivating paddy, potato, mustard, and other agro-products in leased lands. After hearing the persecution of Santal people, an honorable judge of the Supreme Court of Bangladesh concluded that the sugar mill management had no right to lease out the acquired land.<sup>161</sup> Since the mill was not in operation, Santals living in the area was legal. Santals in the area feared getting arrested. Consequently, they cannot go to their house, cannot go to the temple which has been destroyed. Children cannot go to school as the school was destroyed too. Though the government offered to rehabilitate them, their demand is to make sure that their lands and households are returned to them. Adibasi communities are not satisfied with the government and the highest court's statement because of the long-standing injustice they have been experiencing.<sup>162</sup>

#### **4.4.1.6. Establishing Non-dominance in the Society**

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<sup>160</sup> An interview based report titled "Attacks on the Santal Community: Violence Spurred by Greed for Land" published on November 24, 2016 in The Daily Star. See online: <<https://www.thedailystar.net/opinion/the-big-picture/violence-spurred-greed-land-1319371>>

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

Many Indigenous groups around the world are persecuted and discriminated against due to their unbending mindset of not being assimilated with dominant groups, and consequently, they are often keeping themselves isolated. One of the essential features of Indigeneity, as stated in the definition under international law, is establishing non-dominance in society. Virginius Xaxa argues that the aspects of marginalization are built into the definition of Indigenous peoples. The use of the term Adibasi to mean different ethnic or tribal groups other than dominant people in Indian society have some validity in the sense of marginalization.<sup>163</sup> It is argued that only those people who have been subjected to domination, subjugation and assimilation with dominant groups have come to constitute the characteristics of the Indigenous peoples. Nonetheless, the use of the term Adibasi or Indigenous people to designate certain category of people and not the other category clearly reveals that the aspect of margination works to identify Indigenous peoples.<sup>164</sup>

Adibasi communities in the Phulbari mining area have formed a non-dominant section of people which I observed during my field activities. I had visited at least fourteen Adibasi hamlets during my field activities and observed that local Adibasis are dominated by Bangalees. Though Adibasis are the majority in the possible affected mining area, they segregate in the whole area and do not have a mechanism to establish their dominance. I observed a local government election (Union Council election), which was held during my stay in field area. My landlady<sup>165</sup> was running for reserved Woman Member seat in the election. While campaigning for her, I got a chance to visit some surrounding Adibasi hamlets. In most cases, my landlady was telling people that Adibasis are dominated by Bangalees in Adibasi areas everywhere, which should be changed. In Khanpur Union, most of the members including the Chairman of the Council are Bangalee,

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<sup>163</sup> Xaxa, *supra* note 120 at 3591.

<sup>164</sup> *Ibid.* at 3590

<sup>165</sup> She is also my key informant's wife and my research assistant's mother.

although Adibasi population constitutes around fifty percent of the total population of the Union.<sup>166</sup> There was only one Adibasi competitor for the Chairman position, and he achieved a few votes. So, Adibasis did not vote for him, they voted and elected a Bangalee as their local government chairman, who was also elected in the previous tenure.

A Santal leader claimed that the quota system for the ‘backward section of people’ in public jobs<sup>167</sup> is not maintained accurately. Even if it is maintained, the opportunity is not distributed equally among all Adibasi groups. Some Adibasi groups are getting more privileges than other groups.<sup>168</sup> He also said: “We are marginalized among marginalized. I saw many graduates in our community. Getting no suitable job, they are working in the garments industry with low wages. Since they have nobody in the job fields, they would not get a job. Therefore, our people are discouraged from going for higher study.”<sup>169</sup> A Santal elderly woman was also explaining her experience: “There was a government financial aid sanctioned in my name, but that financial help had never reached to me”.<sup>170</sup> She contended that the aid had gone to a Bangalee Union Council member, but nobody came forward to talk about this injustice. She thinks that she had been discriminated against because of her poverty, gender, race, and ethnicity as a Santal. She also claimed that if she was a Bangalee, it might not happen to her.<sup>171</sup>

Cherobin Hembrom expressed his frustration by stating that majority and dominant Bangalees want to dispossess and displace powerless Adibasis by alienating their lands. Adibasis, in plain lands and hill areas, everywhere are being oppressed by Bangalees and as a whole by the

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<sup>166</sup> Interview with Y. A, Birampur, April 04, 2016.

<sup>167</sup> There is a quota system in government services that 5% of the appointment would be made from ‘ethnic minority’.

<sup>168</sup> Interview with Rob Soren, Dhaka, April 11, 2016.

<sup>169</sup> Interview with Rob Soren, Dhaka, April 11, 2016.

<sup>170</sup> Interview with D. Mardi, Ratanpur village, Birampur, March 04, 2016.

<sup>171</sup> Interview with D. Mardi, Ratanpur village, Birampur, March 04, 2016.

government.<sup>172</sup> Cherobin pointed out that some people from the dominant Bangalee community have already started to insist that ‘Adibasis are refugees’. Through social media, they are campaigning that Adibasis came from another country and they should be swept away from Bangladesh which I observed in several occasions. Many people campaign that ‘there must not be other religions than Islam in Bangladesh. People from other religions must leave the country.’<sup>173</sup> Cherobin also mentioned, “if Adibasis are not being educated, they would be more backward and would not be able to economically, socially, politically and culturally develop themselves”. He claimed that if this continues, Adibasis and other marginalized groups will have to leave their ancestral and motherland.<sup>174</sup>

In some places, especially in Bangalee populated areas, Adibasis are not allowed in restaurants. Some local Bangalees, especially refugees, hate Adibasis due to their traditional lifestyle. They think that Adibasis are dirty because they eat some wild animals which are forbidden to Muslims.<sup>175</sup> He shared his experience of a similar incident that he went through at his young age. He protested and had a heated verbal fight with the owner of a restaurant, but the propensity still exists. Jovan Baske was sharing a similar experience he had faced in a restaurant in the nearby *bazaar* when he and his teammates went to play football. S. Baske said, “there are some Bangalees who still hate Adibasis. For example, if I am invited to a Bangalee family, they make separate food and serve them with separate plates, which we find very offensive.”<sup>176</sup> From the above circumstances, it is clear that Adibasis occupy a position of non-dominance in their societies and the country.

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<sup>172</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>173</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>174</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>175</sup> Interview with W. Mardi, Sonajuri, Birampur, March 16, 2016.

<sup>176</sup> Interview with S. Baske. Ratanpur Village, Birampur, March 06, 2016.

#### 4.4.1.7. Socio-economic and Cultural Differences

Socio-economic and cultural differences are one of the essential criteria for being Indigenous.<sup>177</sup> I find Indigenous peoples are distinct in a geographical territory regarding socio-economic and socio-cultural contexts. They need to maintain their traditional cultural practice and socio-economic activities in their traditional way. Indigenous peoples can be singled out through their economic events, festivals, rituals, expressions, folklore, and other cultural events. Adibasi communities in the Phulbari mining area are distinct from other ethnic groups considering their socio-cultural differences. S. Baske contends that their cultures such as traditional dances, songs, histories, arts, crafts, musical instruments, and customary governance, are entirely different from the Bangladeshi majority Bangalee community.<sup>178</sup> He also added that Adibasis observe festivals and rituals following their ancestors' traditions. Adibasi culture and historical presence are portrayed in their artworks on walls in their homes. Most of the Adibasi families I observed during my fieldwork have mud houses, and they display their artwork on the walls. Moreover, most Adibasi communities play musical instruments that they make themselves.<sup>179</sup> When I met H. Pahan for an interview, he was crafting a traditional hunting arrow using bamboo and wood in his yard. Clinton Hembrom, my research assistant and guide, went towards him and started talking to him in *Sadri*<sup>180</sup> language. Although Clinton is a Santal boy, he can speak in other local languages. He introduced me to H. Pahan. I was overwhelmed by his hospitality. He went inside and got a couple of chairs for us and offered food. I observed his small house which is built of mud. Before starting the interview, I requested him to let me go inside the house. I saw some musical instruments such as traditional drums and drifts, flutes, traditional dresses such as *dhoti* (loincloth), and some

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<sup>177</sup> Sanders, *supra* note 36 at 10.

<sup>178</sup> Interview with S. Baske. Ratanpur Village, Birampur, March 06, 2016.

<sup>179</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>180</sup> Munda, Mahili, Oraon and some other ethnic minorities speak in Sadri language.

traditionally made hunting tools inside the house. The Santal people use two types of drums while playing music in their festivals and rituals, such as *Tamak* and *Tumdah*.<sup>181</sup> *Tiriao* (the flute) is considered the most important Santal traditional instrument. The Santal dance and music traditionally revolved around Santal religious celebrations.<sup>182</sup> Their music and dance both retain connections to conventional ceremonies. The names of many Santal tunes and lyrics are derived from the traditional rituals and sacred histories. For example, *Sohrai* tunes were those sung at the *Sohrai* festival.<sup>183</sup>

Most of the Adibasi *Parban* (festivals) are associated with the traditional agricultural activities which fall within their agricultural cycle, i.e., from sowing to harvesting. N. Pahan, another Munda farmer, described Munda rituals and festivals. The Munda community celebrates *Ashari Puja* (worship of planting crops), *Nobanno Utsab* (celebration of harvesting new paddies), *Karam Puja* (worship of karam/karma Lord/God), *Poush Parban* (festival of making cake with new paddies that includes hunting and gathering), *Fagua Puja* (celebrate with flowers), *Chaitali* or *Shahrol Puja* (observed with new shaal trees). The Santal have some festivals such as *Sohrai Parban* (also known as *Bandana*), *Baha Parban*, *Dalpuja Parban*, etc. that are entirely different from the celebrations of Bangalees and other ethnic communities in surrounding areas.<sup>184</sup> Cherobin Hembram stated that Santals also have *Nobanno Utsab* what they call *irgondli* (celebrate with new paddies, traditional alcohol, and worship). In celebrating *Sohrai*, *Yog Manjhi* (communication member of a *Manjhi Parishad*) takes the responsibility to organize. *Baha* is observed during the blooming of Sal tree flowers. Santal women celebrate the *Baha* with traditional dances and water

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<sup>181</sup> Steven L. Danver, *Native peoples of the world: an Encyclopedia of groups, cultures and contemporary issues*. (Routledge, 2015) at 560.

<sup>182</sup> *Ibid.*

<sup>183</sup> Interview with Cherobin Hembram, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>184</sup> Barkat et. al., *supra* note 116.

throwing among family members. *Holi* (Adibasis regard it as the celebration of love) is also commemorated together with *Baha* festival, and Santals drink their traditional *haria*<sup>185</sup>. Santals also celebrate starting of cultivating and sowing seeds that they call *Ero*. Cherobin was discussing Santal's traditional way of making *haria*. He said that *haria* is used in *Sanatan* Santals' marriage and other festivals and rituals sacredly, but Christian Santals do not use *haria* as their sacred anymore.<sup>186</sup>

S. Mardi, a Santal farmer who had been converted to Christianity at his young age, stated that they have two main religious festivals, such as Christmas and Easter Friday. People who converted to Christianity celebrate these two religious festivals by combining them with Adibasi customs, traditions and rituals. They also celebrate the English New Year's Eve at the Church. *Kali* is followed by most of *Sanatan* Santals.

A Santal oral story 'Pinchu Haram and Pinchu Buri' by Cherobin Hembrom

*Pinchu Haram* and *Pinchu Buri*<sup>187</sup> are the first man and women in the Santals religious belief system. *Satan* entered their personal affairs and started provoking them to make *haria* (an alcohol/liquor), instructed them how to make it, and requested them to drink it to feel better. They were convinced and drank it. After drinking *haria*, they became drunk and could not recognize each other. They started making love with each other. They continued the activities after drinking *haria* and discovered that *Pinchu Buri* got pregnant and had a baby. However, before drinking *haria*, they did not know how to do sex and had babies. This is how *haria* was introduced to Santal traditions and used in weddings, festivals and other rituals.

*Pinchu Haram* and *Pinchu Buri* had seven sons and seven daughters. As they grew up *Pinchu Haram* and *Pinchu Buri* became worried about the marriage of their children. One day, the sons went for hunting, and the daughters went for gathering wild vegetables and fruits for dinner to a forest. When the sons were returning from hunting deer, they saw some women were dancing under a banyan tree but could not recognize them as they saw them from a distance. The sons started singing 'who are those fawn' by indicating those women. They were concentrated on music and dancing and were drinking *haria*. Some of the drunken sons went to the forest for hunting again. Then the elder son started

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<sup>185</sup> *Haria* is a homemade alcohol with rice and honey, which is the oldest tradition of Adibasis. This is also called rice beer.

<sup>186</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>187</sup> Similar story of Adam and Eve in the Bible or Adom and Hawa in the Quran.

making love with the elder daughter, a younger son with a younger daughter, and three couples got married after. Other sons and daughters were left unmarried. *Pinchu Haram* and *Pinchu Buri* ordered and made a rule that marriage among siblings is prohibited. The parents were worried about other children and found a solution to the problem. They formed 12 clans such as *Baske, Besra, Hansda, Hembram, Kisku, Mardi, Murmu, Soren, Tudu, Chonde, Gondwar, Paanwariya*. There are 164 sub-clans that exist among Santals. Since then, the same clan/ inter-clan marriage is prohibited among Santals. Someone from one clan has to marry from another clan. Also, a Santal cannot marry outside of Santals clans.

The local Union Council chairman told me that he had chances to see Adibasi festivals and rituals closely due to his responsibilities. According to him, Adibasis celebrate their ceremonies and celebrations in their distinct style which are entirely different from dominant Bangalees. They make *haria* and drink during their festivals. This is their ancient tradition, and local Muslim Bangalees do not complain much and respect Adibasi traditions and customs, although alcohol is prohibited in Islam.<sup>188</sup>

#### **4.4.1.8. Distinct Characteristics such as Language, Race, Sacred Oral Story, Religious Functionality**

Kingsbury and the World Bank identify that the surrounding community should also recognize that the communities who are claiming to be Indigenous are maintaining distinctiveness and are non-dominant in relation to other groups. Most of the Bangalee respondents of my research area call the communities ‘Adibasi’ and recognize their distinct cultures, their different languages, backwardness, their long connection with the traditional knowledge of cultivation and hunting methods. Ethnic groups in Bangladesh who are claiming to be identified as Adibasi or Indigenous continue to struggle for their rights and identity bearing in mind the international law context. Though Adibasis in my research area have been living in miserable economic and social

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<sup>188</sup> Interview with Y.A, Birampur, April 04, 2016.

conditions, and are subjected to multiple sources of discrimination and exploitation, they retain their traditions such as myths, belief system, languages, rituals, and other cultural practices which they inherited from their ancestors. The overall situation of Bangladeshi Adibasi communities is acutely disadvantaged compared to the rest of the country.<sup>189</sup>

Religious functionality is inseparably linked to Indigenous peoples' distinct language and dialects, their unique Indigenous expressions, sacred oral history, and myths, which can be traced in their ceremonial festivities.<sup>190</sup> The Adibasi groups in Indian sub-continent, especially in India and Bangladesh, speak a variety of dialects belonging presumably to two main linguistic families, such as, the Dravidian and the Austric.<sup>191</sup> According to Prathama Banerjee, Adivasis such as the Santals had been clearly asserting cultural, political, social and linguistic differences. When they were resisting about their right to land ownership or when they clashed with Bangalees in Santal Parganas, they were writing the language in their own script. Again, they resisted the competing conversion efforts by both Hindu and Christian organizations by continuing with their own worship and cultural practices.<sup>192</sup> Prathama Bannerjee asserts, "Santal wall-paintings suggest the European contemporary abstract art movement, and Santal oral stories suggested a surrealist perspective. The primitiveness of Adibasis associated with every single abstract shape gleaned from nature, leading to an infinite reproduction of meanings through the unitary sign."<sup>193</sup>

One of my Santal respondents stated that they are a distinct ethnic group and have been maintaining different cultural, religious, linguistic features than dominant Bangalees and other

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<sup>189</sup> Raja Devasish Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review*, Project to Promote the ILO Policy on Indigenous and Tribal Peoples and the ILO Office, Dhaka, Bangladesh, July, 2009. at 1.

<sup>190</sup> *Ibid.* at 92.

<sup>191</sup> Xaxa, *supra* note 120 at 3589.

<sup>192</sup> Prathama Banerjee, "Culture/Politics: The irresoluble double-bind of the Indian Adivasi." (2006) 33.1 *Indian Historical Review*, at 113.

<sup>193</sup> *Ibid.*

ethnic communities of Bangladesh. Santals also follow their diverse societal values and ethics which make them distinct from others.<sup>194</sup> G. Karmakar mentioned that the Karmakar people do not convert their religions and they observe their ancestor's religion to date.<sup>195</sup> Traditional religious beliefs of Adibasis have been significantly altered as a result of the influence of Hinduism and Christian missionaries.<sup>196</sup> Cherobin Hembrom told me that many Santals had changed their religion, but it did not affect their ancestor's way of observing festivals and rituals, but the worshiping system is run at the Church.<sup>197</sup> Therefore, Santals are divided into mainly two religions, such as people who converted to Christianity and people who are following their ancient religious beliefs (*Sanatan Dharma*). Inter-religion marriage became prohibited (a Christian Santal cannot marry a *Sanatan* Santal), which is a new trend among this community. However, the prohibition of the same clan marriage in the Santal community is ancient. For example, Santals have twelve clans, a Hembram titled man or woman cannot get married to another Hembram titled man/woman. He/she has to marry anyone from other Santal clans. Additionally, a Santal man or woman cannot marry outside of the Santal community. If anyone does not follow the tradition, he/she will be restricted in societal functionality.<sup>198</sup> Notwithstanding having the religious barrier, I observed that unlike Bangalees of Hindu religion, Adibasi communities in the mining area are devoid of any caste system and there is no discrimination by birth among them.

In Santals' wedding, the groom first chooses a bride, and then a date is set for the formal wedding. There is a ritual of fixing twelve Bangladeshi taka dowry, which is given to the bride. The twelve-taka tradition is carried through their twelve clans with separate titles (surname) in

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<sup>194</sup> Interview with T. Murmu, Dhakundah, Birampur, March 02, 2016.

<sup>195</sup> Interview with G. Karmakar, Dhontola, Birampur, March 10, 2016.

<sup>196</sup> Kamal, *supra* note 121.

<sup>197</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>198</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

Santal culture. Adibasis have traditions of turmeric session before marriage.<sup>199</sup> S. Baske, who is still a *Sanatan*, added that their marriage system is also different. Although Christian Santals have no divorce system, there is an unusual custom of divorce among *Sanatan* Santals than other communities, which is observed under mango trees, they call it *Marwa* (a hut is created with mango leaves). There are some rituals that are observed following ancient traditions.<sup>200</sup> In this traditional ritual, Santal women dance, men, hold bows and arrows with their hands, and a sword is kept in a hole.<sup>201</sup>

Adibasis had kept their ancestors' customs and traditions. Though Bangalee Hindus and *Sanatan* religious Adibasis have similar kind of worships, Adibasis have distinct systems of observing.<sup>202</sup> Adibasis also have different customs of observing rituals of a deceased person, which is entirely different from Hindus and other Bangalees. When an Adibasi dies, the *Mandal* of a hamlet must take the responsibilities and arrange the funeral rites. The *Sanatan* Santals arrange *Shraddha* (obsequies) after a lapse of

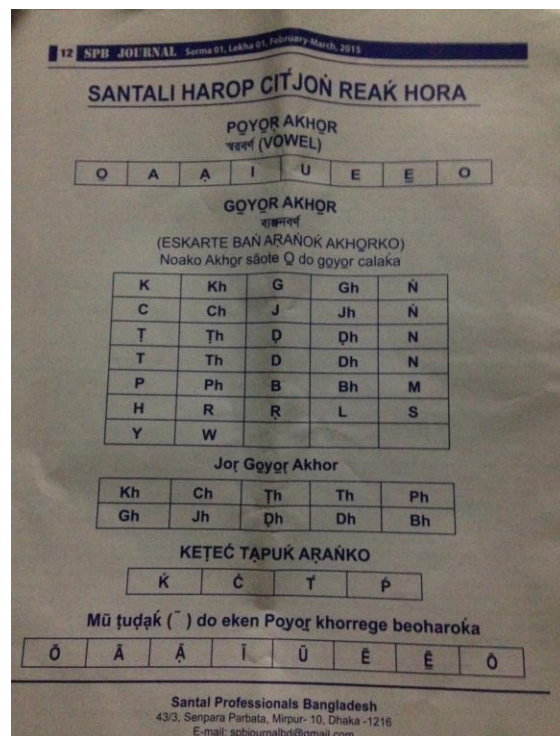


Figure 21: Santali Alphabet Collected from Cherobin Hembrom

<sup>199</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>200</sup> Interview with S. Baske. Ratanpur Village, Birampur, March 06, 2016.

<sup>201</sup> There is an oral history which is believed by all Santals that a bride was saved by her brother from a tiger when she was in the jungle drinking fountain water. The story is told through dance, holding the sword in brother's hand, pouring water from an ewer by pushing with leg.

<sup>202</sup> Adibasis (especially Santal and Munda people) are primarily animistic nature worshipers. Most of their deities are similar to Hindus, but they do not worship any idols like Hindus. The chief of the Gods of Adibasis is *Sing Bonga* (the God of the sun), next is *Marang Budu* (the God of mountain), and *Abe Bonga* (house-deity). Their belief is that soul is immortal, and supernatural soul determines the goods and bads on earth.

Aslo see: Barkat, *supra* note 116 at 244.

eight days following the death. In *Shraddha*, traditional food with *haria* is served. The Christian Santals arrange prayer sessions within one to two years following the death.<sup>203</sup>

Adibasi communities in the mining region speak in their languages, although many of them can also speak and understand Bangla language. Cherobin claimed that Santal people have a distinct language with unique alphabets named *Ol Chiki*,<sup>204</sup> which they speak among the community members.<sup>205</sup> When I have been taking interviews with Adibasis, my RA used to talk to them first in Adibasi languages and made them comfortable to participate in my research. Moreover, there were few instances, the respondent I chose to talk, could not speak in Bangla language. The Santal people speak Santali language among their community members, but most of the Santal people cannot read and write correctly in their distinct language. The Munda people speak in Nagri language. They also speak in Sadri language which is a mixed language spoken by some Adibasis such as Munda, Oraon, Mal Pahari people.<sup>206</sup> J. Baske was remembering his childhood and told me that he learned the Santali language in his school. He recalled a book named *Horhopon* through which he learned the Santali alphabets and ancient Santal history. In Santali language, *horhopon* means ‘sons of mankind’ and they call themselves *horhopon*.<sup>207</sup> Through this book, Santals can learn and know about their roots, their customs, and oral histories.<sup>208</sup> J. Baske cannot write his language but can understand what is written in a book or a document. Like J. Baske, most of the Santals and other Adibasi communities can speak in their languages, but they

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<sup>203</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>204</sup> The Ol Chiki script, is an Indic script which was introduced by Raghunath Murmu in 1925 for the Santali language. Before that Santali language had been written in latin script. According to Manmatha Kundu, since Santali language is not an Indo-Aryan language and there were shortage of Indic scripts for all of Santali’s phonemes, it made the pronunciation difficult. See more: Manmatha Kundu, *Tribal Education, New Perspectives* (Gyan Publishing House, 1994).

<sup>205</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>206</sup> Interview with Rob Soren, Dhaka, April 11, 2016

<sup>207</sup> George E. Somers, *The Dynamics of Santals Traditions in a Peasant Society* (Abhinav Publications, 1985).

<sup>208</sup> Interview with J. Baske, Dhanjuri Hamlet, Birampur, March 05, 2016.

cannot read and write. Jovan told me that the mission schools in the Adibasi area do not introduce anything in the Santali language.

All courses in the elementary schools to a higher level in the Adibasi area are taught only in *Bangla* and English languages, although the government is trying to introduce six more Adibasi languages such as Chakma, Marma, Tripura, Garo, Santali and Sadri languages. If the plan is implemented, children from six Adibasi communities can have chances to practice their words in school. Jovan was contending that their distinct culture, heritage, and identity would be lost if their words are lost. Adibasi NGO worker K. Kisku was telling me that his NGO is trying to introduce Adibasi languages at the community-level so that Adibasi people can learn. He added that his NGO had established few schools in different Santal hamlets where Santali language in Roman scripts is taught. He also added that the NGO and local Adibasi leaders are negotiating with the government policymakers to improve the situation.<sup>209</sup>

Tattoos on body parts are Santal's one of the oldest traditions in which people continue, though the predisposition of making tattoos among converted Christian Santals is decreasing day by day. There is a sacred oral history behind the art of making tattoos. Santals believe that if they do not draw tattoos in body parts, snakes will attack them after death, and they cannot go to heaven.<sup>210</sup> Santals have different tattoos for different parts of the body for different life stages. Santal men scratch tattoos on their forearms and wrists, and women scratch on their necks and wrists as their jewelry. Again, the number of these tattoos is always odd numbers because, in Santal cosmology, odd signifies 'life' and even signifies 'death'.<sup>211</sup> Munda people continue inscribing three vertical lines on their foreheads to mean their victory over Mughals.<sup>212</sup>

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<sup>209</sup> Interview with K. Kisku., Phulbari, March 07, 2016.

<sup>210</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>211</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>212</sup> Barkat, *supra* note 116.

There is a story of the *Jado* (deceiver) among Adibasi communities, which still exists in society. Whenever a person dies in a hamlet, the *Jado* goes to that family and make them believe that he knows some secret story about that deceased person. In most cases, he tells with curiosity that he (deceased) was crying to him in his dream. He offers people to see his paintings with a story that he painted before in papers or cloths. Then he shows a series of paintings where the deceased person has been suffering in hell. He then asks for various sacred belongings to collect so that he can heal his suffering. As the holy belongings are not found quickly, the family members of the deceased must buy them from the *Jado*.<sup>213</sup>

There is another sacred story that continued through generations in Santal communities. *Daini* and *Dakin*<sup>214</sup> are seen as evil and wicked souls that transfer to people. The *kabiraj*<sup>215</sup> usually goes to a family, reads *mantras*<sup>216</sup> and uses bustle, and later says that a *Daini* exists in a family staying with someone he identifies who can harm all family members. The news is spread to all the family members and hamlets. Later, people start blaming that person for any accident that happens in the hamlet. Cherobin Hembrom is a specialized doctor on leprosy who has an experience of observing *Daini* and *Dakin*. He went to a *shalish* (hamlet court) at a local Union council. The chairman of the council requested Cherobin to look after the matter as he is a Bangalee and did not want to interfere with Adibasi affairs. As he is a modern doctor, he does not believe in *Daini* and *Dakin*. He interfered with the issue and asked people not to follow which ultimately affected his family matters.<sup>217</sup> I observe that Adibasis are much inclined to believe their sacred story and kinship networks, which affect their traditional way of life.

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<sup>213</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>214</sup> *Daini* means witch and *Dakin* means wizard.

<sup>215</sup> *Kabiraj* is an occupational title found in persons of India or Indian origin. In old days the people practicing Ayurveda in India were also called *Kabi* (*Vaidhya*).

<sup>216</sup> *Mantra* is believed to have a special spiritual power.

<sup>217</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

#### 4.4.2. Cease to be Indigenous?

According to the World Bank's Operational Policy 4.10, Indigenous peoples cease to hold Indigenous status or identity by leaving their communities and entering an urban area.<sup>218</sup> In this regard, Jeff Corntassel argues that the realities of Indigenous refugees caused by war or state policies of resettlement would harm their identity as 'Indigenous' through the policy established by the World Bank.<sup>219</sup> Considering the example of the CHT, the author asks whether Adibasi communities who were displaced by the state-induced Bangalee settlement in the region would be regarded as Indigenous or not under the World Bank definition despite their illegal removal from the area.<sup>220</sup> Corntassel also argues that if a group even pursues statehood, as Adibasi communities in the CHT in Bangladesh, or Mohawk Nations in Canada and US have shown their intention various times in their history, they would cease to be Indigenous in this conceptualization.<sup>221</sup> So, if any Indigenous community or all groups in a geographical location pursue statehood and form a state, they would lose their Indigeneity.

In India, it can be effortlessly argued that some Scheduled tribes ceased to be Indigenous, and have become castes or something else, and this has happened extensively elsewhere as well.<sup>222</sup> Although self-identified Indigenous peoples of India are recognized in the Constitution as 'Scheduled Tribes', 'Scheduled Castes', and 'Other Backward Castes', their claims have never been established as 'Indigenous peoples' or 'Adibasis'. A similar situation can be seen in Bangladesh, where self-identified Indigenous peoples are called and named 'small ethnic groups' or 'tribes'. In Russia, under new law 'Indigenous peoples' are treated as only those ethnic groups

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<sup>218</sup> The World Bank, Operational Policy 4.10. Online: <https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f89d5.pdf>

<sup>219</sup> Corntassel, *supra* note 53 at 87.

<sup>220</sup> *Ibid.* at 87-88.

<sup>221</sup> *Ibid.* at 80.

<sup>222</sup> Beteille, *supra* note 10.

living in the territories of their ancestors, enjoying a traditional lifestyle, and whose populations remain under 50,000, are known as ‘small’, ‘numerically small peoples’, or ‘small-numbered peoples’.<sup>223</sup>

Most of the Adibasi communities, especially the Santal people, in my research area, are leaving their ancestral religions and converting to Christianity.<sup>224</sup> Not all but most of them left their ancestral *Sanatan Dharma* and began practicing new religion by assimilating with their old religious deities and rituals.<sup>225</sup> Christian Adibasis in the area do not stop practicing their traditional festivals, but they practice them under the supervision of the ‘Father’ (priest) of the Church during Easter, Christmas, and the English New Year.<sup>226</sup> Due to the conversion of religion, the Church is involved in Adibasi festivals. K. Kisku was telling me that the government is helping poor Adibasis for celebrating Christmas, although *Sanatan* Adibasis are not receiving any financial help from the government<sup>227</sup>.

Moreover, they follow their distinct customary laws and traditions regarding ‘*panchayet shalish*’ (hamlet court) system, inheritance, marriages, born and naming, oral history. Though most Adibasis still make and drink traditional *haria* in every occasion and trying to be distinct from Bangalee communities<sup>228</sup>, I observe that many Adibasis are leading towards accommodating the Bangalee way of life and their new religious cultures into Adibasi cultures. The former Chairman of the Phulbari sub-district, who was one of the central leaders of the *Phulbari Khoni Andolon*, was telling me with frustration:

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<sup>223</sup> Popova-Gosart, *supra* note 9 at 100.

<sup>224</sup> Cherobin Hembrom confirmed that Santals are being converted into Christianity, some of them also converted into Islam too. The Dhanjuri Church was established in 1906.

<sup>225</sup> Interview with S. Baske. Ratanpur Village, Birampur, March 06, 2016.

<sup>226</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>227</sup> Interview with D. Baske. Ratanpur Village, Birampur, March 09, 2016.

<sup>228</sup> Cherobin told me that converted Christians are not using and drinking *haria* as their sacred deity any more.

“Adibasis themselves do not want to be ‘Adibasi’ because they are so marginalized that they cannot protest publicly. Moreover, they are losing their distinctiveness by the influence of the Church and NGOs. Their main identity was their culture, their livelihood, dress, languages, festivals, rituals, etc., but due to converting into Christianity, they now have to follow the Church’s rule and the Father’s order. Churches and NGOs are polluting their distinctiveness by engaging them into different religious functionalities and detaching them from Santal’s customs and traditions.”<sup>229</sup>

He observed that one of his friends who has a close relationship with Christian missions, he started introducing himself as a Christian, not an Adibasi. They must struggle to keep their identity safe from the polluting influence of the dominant culture in society.<sup>230</sup> There was a case found in the Birampur Land Revenue Office where a man named Kanai Nunua was claiming himself as a Santal man and was trying to buy and register a piece of land from another Santal man. When the land officer informed a *Mandal* to confirm that if this man is a Santal or not. The *Mandal* reported the officer that ‘Nunua’ is neither a Santal clan (title) nor any of the Adibasi clans in Bangladesh. Therefore, Kanai Nunua cannot be an Adibasi. Later it was proved that he was a Bangalee man who tried to forge the land deed.<sup>231</sup>

Furthermore, considering the current debate of the existence of Adibasi in pre-colonial settings in Bangladesh, I argue that the Indigeneity of people would not be suspended if any community is forced to leave their ancestral place and resettle involuntarily in another location of the same geographical area. However, the question arises whether those communities be still considered as Indigenous to a region or country if they are migrated from another area that was not colonized or occupied by colonial rulers? Giving the above instance, are they going to lose their ‘Indigenous’ or ‘Adibasi’ identity? What about not speaking their distinct languages or becoming economically

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<sup>229</sup> Interview with A.I.B., Phulbari Bazaar, March 14, 2016.

<sup>230</sup> Interview with A.I.B., Phulbari Bazaar, March 14, 2016.

<sup>231</sup> Interview with P. Murmu, Boro Bukshi, Birampur, Dinajpur, March 3, 2016.

stable and educated? Alternatively, can we say, once an Indigenous is always an Indigenous, no matter what happens after? What about the self-expressed identity of people who are native speakers of an Indigenous language, do live in a community with rituals and social institutions different from that of the cosmopolitan culture, and continue to adopt markers of ethnicity such as hairstyles and clothing and who nevertheless do not identify as Indigenous?<sup>232</sup>

#### **4.4.3. Recognition Politics in Bangladesh**

At the international level, Bangladesh has ratified the ILO Convention No. 107 on 22 July 1972, which is now closed for further ratification but remains valid for those countries that have ratified it but have not ratified the ILO Convention No. 169. Since Bangladesh has not ratified Convention No. 169, the government has obligations to adopt provisions for Indigenous and Tribal populations under the Convention no. 107. Bangladesh became a party to the International Convention on Elimination of All Forms of Discrimination in June 1979. Bangladesh is one of the eleven countries that abstained from voting when the UNDRIP was adopted by the UN General Assembly in 2007, reasoning that there are no ‘Indigenous peoples’ in Bangladesh, and ‘therefore, Bangladesh has no responsibility to implement its international law obligation’.<sup>233</sup> Nevertheless, Bangladesh has promised several times to work together with Indigenous peoples for the implementation of the UNDRIP.<sup>234</sup> As Bangladesh is a member state of the UN, the country is an automatic party of the UDHR and the UN charter. In this regard, Bangladesh is obliged by the UN’s mandates. The Bangladesh government has ratified the ICESCR on 5 October 1998 and the

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<sup>232</sup> Andrew Canessa, “Who is indigenous? Self-identification, indigeneity, and claims to justice in contemporary Bolivia.” (2007) *Urban Anthropology and Studies of Cultural Systems and World Economic Development* , at 209.

<sup>233</sup> Binota Moy Dhamai and Pallab Chakma, “Bangladesh” in *The Indigenous World-2015*, (Copenhagen: IWGIA, 2015) at 294-302.

<sup>234</sup> Pallab Chakma, “Fight for indigenous rights in Bangladesh continues” (August 9, 2016), *The Daily Star*. Online: <<https://www.thedailystar.net/opinion/human-rights/fight-indigenous-rights-bangladesh-continues-1445536>>

ICCPR in 2000 but did not sign optional protocols of both covenants. The covenants have provided declarations and reservations upon ratification, accession, or succession for each of the countries.<sup>235</sup> The ICESCR has delivered the obligation for the Bangladesh government to implement at the country level. Article 1 under the ‘Declarations’ states: “It is the understanding of the Government of the People’s Republic of Bangladesh that the words “the right of self-determination of Peoples” appearing in this article apply in the historical context of colonial rule, administration, foreign domination, occupation, and similar situations.” The Declarations also state that the government has to “implement the said provisions in a progressive manner, in keeping with the existing economic conditions and the development plans of the country”, and the government has to adopt the Covenant’s provision in the Constitution and the relevant legislation of Bangladesh. The Bangladesh government has made reservations on specific provisions<sup>236</sup> which Germany and the Netherlands strongly opposed.<sup>237</sup> The ICCPR also provides some directions towards Bangladesh to implement its guiding principles.

As part of international law obligation and to end the debate on Indigenous or Adibasi identity and recognition of Indigenous peoples in Bangladesh, the Ministry of Cultural Affairs formed a committee in 2009 to identify the ethnic groups in Bangladesh.<sup>238</sup> Executive heads of all districts, who were asked to make a list of Indigenous groups, sent a list of 228 community names collected from the whole country to the Ministry. After carefully examining the list (excluding 27 Indigenous communities that are listed in the 2010 SEGCI Act) and visiting some places to identify the ethnic groups, the committee by the Ministry of Cultural Affairs finally decided to include a

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<sup>235</sup> UN Treaties. Online: <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en#EndDec)>

<sup>236</sup> Article, 1,2, 3, 7, 8, 10 and 13 of the said Covenant.

<sup>237</sup> See here in number 18. <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=en#18](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en#18)>

<sup>238</sup> Dhamai and Chakma, *supra* note 232.

total of 50 Indigenous groups on the list.<sup>239</sup> However, Indigenous organizations and activists are not satisfied with the initiatives taken by the Ministry, which they believe are ill-motivated and attempt to deny Indigenous people real recognition.<sup>240</sup> In 2013, the Bangladesh government preempted a legislative proposal entitled “Bangladesh Adibasi Rights Bill” that had been submitted by the Caucus, aimed at ensuring the recognition of Adibasis as ‘Indigenous peoples’ or ‘Adibasi’ and protecting their rights.<sup>241</sup> However, the bill was never tabled by the government in the Parliament, arguing that if the bill was presented as a private bill, “the recognition of the ethnic minorities as Adibasi” would be a political issue, which the government wants to avoid.<sup>242</sup>

N. Mardi, a Santal woman from an Adibasi hamlet of the mining area, claimed that the government is trying to disregard the existence of Adibasi in Bangladesh. Moreover, the government is assimilating Adibasi communities into Bangalee cultures so that Adibasis forget their traditional practices.<sup>243</sup> Again, their culture, language, spiritual belief, customs, festivals, everything is different from dominant Bangalees. Adibasi communities of the mining area are diverse; for example, their physical appearance is different, they speak in distinct languages, they wear their traditional dresses, celebrate traditional rituals, make and drink *haria*, their men and women work in the field, they hunt animals and gather foods from the forest. I observe that all characteristics of Indigenous peoples in internationally accepted definitions are also found in Adibasi communities in my research area.

N. Mardi protested the government’s position and demanded the government to recognize all self-identified Adibasi communities as the universally accepted term ‘Indigenous peoples’ or the

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<sup>239</sup> Pallab Chakma and Bablu Chakma, “Bangladesh IW 2019” in IWGIA.

Online:<https://www.iwgia.org/en/bangladesh/3446-iw2019-bangladesh>

<sup>240</sup> *Ibid.*

<sup>241</sup> Binota Moy Dhamai and Sanjib Drong, “Bangladesh” in *The Indigenous World-2014*, (Copenhagen: IWGIA, 2014) at 324.

<sup>242</sup> *Ibid.*

<sup>243</sup> Interview with N. Mardi, Lakshipur, Phulbari, March 07, 2016.

locally accepted term ‘Adibasi’ so that the rights of marginalized communities of the country are protected.<sup>244</sup> Another Santal elderly woman strongly opposed the government’s forced term ‘small ethnic minority’ and ‘tribes’, because it will not guarantee any rights embodied in international law. She contended that most of Adibasis are not aware of the rights.<sup>245</sup> Adibasi leader Rob Soren rejected the term ‘small ethnic minority’ which, according to him, is an assault on all Adibasis of Bangladesh. Adibasis feel dissatisfaction with the imposition of this term on them. He added that he would be happy to be known as a ‘Santal’ and as an ‘Adibasi/Indigenous’, but not as an ‘upojati’, a ‘tribes’ nor as a ‘small ethnic minority’. He claimed that if there is a ‘small’, there should be a ‘large’. Adibasis are proud of their ancient history, and they would not tolerate being identified as other than Adibasi or Indigenous peoples.<sup>246</sup> B. Murmu expressed his anger in the following words: “A huge number of dominant Bangalees think that ‘Santal’ is the name of an animal. They do not consider the Santal and other Adibasi communities as human beings. They do not want to understand that the Santal is one of the earliest ethnic communities in the region.”<sup>247</sup>

T. Murmu, a school teacher from the Santal community, told:

“We want recognition as Adibasi. There are different ethnic groups living in this area. I am a Santal; nobody can denounce my identity. Now the question is- if Santals are Adibasi or not. Identity should emerge from ethnicity, not religion. I have no problem if the government wants to recognize me as a Santal. Besides Santals, I want all other communities to be recognized as such.”<sup>248</sup>

Adibasis in Bangladesh are claiming that since they have clear distinctiveness regarding linguistic, cultural, and socio-political means and they identify themselves as ‘Indigenous’, they

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<sup>244</sup> Interview with N. Mardi, Lakshipur, Phulbari, March 07, 2016.

<sup>245</sup> Interview with D. Baske, Ratanpur Village, Birampur, March 09, 2016.

<sup>246</sup> Interview with Rob Soren, Dhaka, April 11, 2016.

<sup>247</sup> Interview with B. Murmu, Dhakundah, Birampur, March 01, 2016.

<sup>248</sup> Interview with T. Murmu, Dhakundah, Birampur, March 02, 2016.

demand a separate status in the constitution as ‘Adibasi’.<sup>249</sup> Adibasi farmer P. Murmu claimed that the term ‘Adibasi’ can still be found in many government official documents. He contended that governments are never in favor of marginalized Adibasi people; dominant Bangalees are getting all benefits and opportunities. Muslims and Hindus of the area get financial help during their religious festivals, but Adibasis are given very little importance.<sup>250</sup> Political leaders tempted Adibasis with various mandates during the election times, and after getting elected, they forget everything they promised. K. Kisku claimed:

“We organized seminars, assembly, workshops demanding to incorporate Adibasi recognition in the Constitution. When the government called Adibasis as ‘small ethnic minority’, they felt assaulted and marginalized. Many Adibasis fought in 1971 for the independence of the country. However, the government is still confused about their position, which is unfortunate.”<sup>251</sup>

Adibasis who are aware of their rights and recognition are concerned about the role of the Adibasi leaders to push the government for their recognition. Cherobin Hembram blamed Adibasi leaders and organizations who supposed to help Adibasi; instead, they are harming the rights of Adibasi communities since they have no courage to go against the government's decision but agree with them in exchange of their personal benefits. He claimed that there are four Adibasi members in the Parliament, but they never protested when the bill (he meant amendment of the Constitution) was tabled and passed. They could have walked out or could have said to the government, “suspend me, but recognize Indigenous people by inserting clear provisions in the constitution”. Moreover, Adibasi leaders are blamed for the recent language debate.<sup>252</sup> The government pre-empted to

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<sup>249</sup> Sanchay Chakma, “The Legal Rights Situation of the Indigenous Peoples in Bangladesh: Juridical Rights and the Relation with the State and the Non-Indigenous Populations.” (1996) 80 IWGIA document 151.

<sup>250</sup> Interview with N. Mardi, Lakshipur, Phulbari, March 07, 2016.

<sup>251</sup> Interview with K. Kisku., Phulbari, March 07, 2016.

<sup>252</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

introduce six Adibasi languages in the schools of Adibasi regions. Yet, the project is suspended for the Santali language; other languages would be implemented soon. Santal leaders are divided into two groups, some leaders are supporting writing in Roman alphabets, and some are supporting *Ol Chiki*. There is also another group that wants to write Santali language in the Bangla alphabets. They argue that it would be easier to learn.<sup>253</sup> Rob Soren was telling me that people who converted Christianity want Roman alphabets because the church and priests wish to it in that way. The supporters of Roman alphabets argue that Santals have never written alphabets, and then it was scripted in Roman alphabets through which everything can be pronounced easily. When *Ol Chiki* was introduced in the 1920s, which is close to Sanskrit scripts, Santals became happy. Soon, they understood that there are many words that cannot be pronounced with *Ol Chiki*. If Santali language is written with the Bangla alphabets, the language would be lost forever.<sup>254</sup> My observation is that the debate is helping the state to misrecognize the community.

#### **4.4.3.1. Only Bangalees are “People” in Bangladesh?**

Despite strong demands from Indigenous peoples to be recognized as ‘Adibasi’, “all ‘people’ shall be regarded as Bangalees as a nation”<sup>255</sup> provision was inserted in the Constitution through the 16<sup>th</sup> Amendment in September 2014 which was done to revive the spirit of the First Constitution.<sup>256</sup> By incorporating this clause, the government intended to include them as dominant Bangalees, which is a threat to further self-determination of Adibasi or Indigenous peoples in

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<sup>253</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>254</sup> Interview with Rob Soren, Dhaka, April 11, 2016

<sup>255</sup> Article 6(2) of the current Constitution reads as follows: “the peoples of Bangladesh shall be known as Bangalees as a nation, and the citizens of Bangladesh shall be known as Bangladeshis”.

<sup>256</sup> The Constitution of the Peoples Republic of Bangladesh was adopted on the 4<sup>th</sup> November of 1972 after the victory of independent country on 16<sup>th</sup> December 1971. To date the Bangladesh Constitution has been amended sixteen times. The phrase “citizens of Bangladesh shall be known as Bangalees” provision was inserted in the First Constitution adopted in 1972. This above-mentioned phrase regarding nationality was removed and inserted a new phrase “citizens of Bangladesh shall be known as Bangladeshis” by the Fifth Amendment in 1979.

Bangladesh. The insertion of the above clause in the Constitution ensured the political and cultural dominance of Bangalees within the state.<sup>257</sup> The supremacy of ‘Bangalee’ nationality over all ethnic groups of Bangladesh is a disavowal of cultural distinctiveness.<sup>258</sup> Although the Supreme Court of Bangladesh in a recent (July 2017) judgment stated that the 16<sup>th</sup> Amendment is invalid, as such, the provisions it inserted in the Constitution would be invalid as well.<sup>259</sup> Therefore, the assimilation process would not be stopped.

Manabendra Narayan Larma (also known as MN Larma) was an Adibasi leader from the Chakma community. He was the only legislature member of Bangladesh’s inaugural parliament from the CHT. When ‘all people of Bangladesh shall be regarded as Bangalee’ provision was inserted in the draft Constitution in 1972, he protested.<sup>260</sup> Larma stated in the parliament:

“Under no definition or logic can a Chakma be a Bangalee or a Bangalee be a Chakma. A Bangalee living in Pakistan cannot become or be called a Punjabi, Pathan, or Sindhi, and any of them living in Bangladesh cannot be called a Bangalee. As citizens of Bangladesh, we are all Bangladeshis, but we also have a separate ethnic identity, which, unfortunately, the Awami League (the then ruling party) leaders do not want to understand.”<sup>261</sup>

Most of my respondents identified and called themselves ‘Adibasis’, not ‘Bangalees’. They have similar frustrating feelings about what MN Larma expressed 48 years ago regarding the non-recognition of Adibasi peoples in Bangladesh. When I asked a Santal leader: “Will you feel comfortable to be known as a Bangalee?” He replied:

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<sup>257</sup> Dr. Amena Mohsin, *The Politics of Nationalism: The Case of the Chittagong Hill Tracts, Bangladesh* (Dhaka: University Press Ltd., 1997) at 92.

<sup>258</sup> Saleem Samad, “State of Minorities in Bangladesh: From Secular to Islamic Hegemony.” (1998) *Country Paper presented at ‘Regional Consultation on Minority Rights in South Asia*.

<sup>259</sup> Dhaka Tribune, “16th Amendment scrapped, parliament loses power to impeach SC judges” (July 3<sup>rd</sup>, 2017).

Online: <<https://www.dhakatribune.com/bangladesh/court/2017/07/03/sc-16th-constitutional-amendment-illegal/>

<sup>260</sup> Bushra Hasina Chowdhury, “Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord.” ACDIS Occasional Paper (2002).

<sup>261</sup> Stephen May, Tariq Modood, and Judith Squires, *Ethnicity, Nationalism, and Minority Rights*. (Cambridge University Press, 2004) at 136-137.

“I am not a Bangalee. We two (pointing at me) have dissimilarities in many senses. I am proud to be a Bangladeshi, but I am not a Bangalee. Bangla is not my mother tongue. I have my own language and ethnicity. Again, according to the Constitution, I am not a ‘people’. Then who I am? I have no existence in the country. All Adibasis rejected to be ‘Bangalees’.”<sup>262</sup>

Therefore, the Constitution extends a guarantee for Bangalees only. In the name of the majoritarian rule, Adibasis have been marginalized politically, economically as well as culturally.<sup>263</sup> Adibasis feel that they have no power to protest and convey their messages to the government as they are marginalized, and nobody hears their demands.<sup>264</sup> A Santal elderly woman stated:

“I heard the government is trying to tag us as Bangalee, but we call ourselves Adibasi Munda. This is not only us, local Bangalees and other local ethnic communities also call us ‘Adibasi’ in general. We are Adibasi because we are a distinct community, follow our diverse societal values and ethics, we have our different language, culture, and religious beliefs. Though we are living here time immemorial, we are marginalized in the country and about to be displaced.”<sup>265</sup>

A Munda farmer who lives in the close vicinity of the mining area, started by introducing himself as “I am a Munda as ‘people’ and Pahan<sup>266</sup> is our clan title. I am an Adibasi, I am also a citizen of Bangladesh, but I am no way a Bangalee.”<sup>267</sup> Cherobin Hembrom told me with sheer frustration that the government and policy-makers want to remove the term ‘Adibasi’ and ‘Indigenous’. Their intention is to make all Adibasis either ‘Bangalee’ or stateless ‘refugees’, as

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<sup>262</sup> Interview with Rob Soren, Dhaka, April 11, 2016.

<sup>263</sup> Mohsin, *supra* note 257 at 103.

<sup>264</sup> Interview with D. Baske. Ratanpur Village, Birampur, March 09, 2016.

<sup>265</sup> Interview with D. Baske. Ratanpur Village, Birampur, March 09, 2016.

<sup>266</sup> Pahan is the religious head of the Munda people and acts as a representative of the villagers. However, all Munda people use ‘Pahan’ as their surnames. Many Bangladeshi scholars have identified Munda people as Pahan people. Pahan titled people I have interviewed, told me that they are Munda people, not Pahan people. Pahan is one of their clans.

<sup>267</sup> Interview with H. Pahan, Koromtoli Hamlet, Birampur, February 29, 2016.

like Rohingya<sup>268</sup>. According to him, this is one kind of genocide. He said that he is against eliminating the term ‘Adibasi’ or ‘Indigenous peoples’ from Bangladesh. I saw tears in his eyes when he was telling me that there will be no existence of Adibasis, not even the imposed term ‘small ethnic minority’ or ‘tribes’ in Bangladesh. As I mentioned earlier, Adibasis may speak in Bangla, but it is only for their survival because if they want to survive in society, they must deal with Bangalee people. Nonetheless, Adibasis are not Bangalees at all. They are Bangladeshi as citizens, but can never be Bangalees. In Bangladesh, there are around 45 ethnic communities, including Bangalee. There should not be any ‘sub-nation’ or ‘upojati’ or any type of class division in a country. Protesting the government’s position, Cherobin stated: “if we are *kkhudro nrigosthi* (small ethnic group), then Bangalees are *brihot nrigoshthi* (large ethnic group).”<sup>269</sup> He then asked by pointing at me, “if we call you ‘large ethnic group’, will you accept it? If you feel insulted or dishonored, please stop using the ‘small ethnic group/minority’ term to mean us. We feel affronted too if you call me by that name.”<sup>270</sup>

Ram Soren was telling me that the non-recognition of Adibasi is unfortunate through which Adibasis would be more marginalized and persecuted. As citizens of the country, Adibasis have similar rights as Bangalees have, which has been guaranteed by the Constitution under Article 27.<sup>271</sup> The cultures Adibasis abide by, the customs they follow, the festivals they celebrate, the language they speak, all are distinct and unique. When an Adibasi newborn comes to the Mother Earth, he/she starts accommodating himself/herself into an Adibasi traditional belief system.

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<sup>268</sup> According to Human rights watch, “The Rohingya have faced decades of discrimination and repression under successive Burmese governments. Effectively denied citizenship under the 1982 Citizenship Law, they are one of the largest stateless populations in the world. Restrictions on movement and lack of access to basic health care have led to dire humanitarian conditions for those displaced by earlier waves of violence in 2012 and 2016.”

<sup>269</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>270</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>271</sup> Interview with Ram Soren, Phulbari Bazaar, March 11, 2016.

Then how should they be regarded as Bangalees? Ram claimed, “I am a Santal, an Adibasi, not a Bangalee, but a Bangladeshi citizen.”<sup>272</sup>

#### 4.4.3.2. Implied Recognition?

As part of the government’s plan to remove the term ‘Indigenous’ or ‘Adibasi’ from all the laws, policies, documents and publications of the Bangladesh government, and to establish the government’s claim of not having Adibasis in the country, several legislative amendments have been passed by the government without consulting Indigenous peoples whose interests will be directly affected.<sup>273</sup> However, in Bangladeshi law, various provisions specifically use ‘Adibasi’ to mean Indigenous peoples. The SEGCI Act 2010 uses the term ‘*Khudro Nrigoshthi*’ (small ethnic minority) referring to Adibasi or Indigenous peoples. However, when explaining the meaning of the term ‘*Khudro Nrigoshthi*’ in the definition section, the legislation uses the term ‘Adibasi’.<sup>274</sup> Although the Bangladesh government is not directly using ‘Indigenous’ in their official documents, they use ‘tribes’, ‘minor races’, ‘ethnic sects and communities’ in the Constitution, and other legal instruments are using ‘small ethnic minority’, ‘tribal peoples’, ‘aboriginal’, ‘hillman’, ‘Adibasi’, etc. Adibasis have argued that the state has impliedly recognized Adibasi or Indigenous peoples in the country since the provisions of various legislations support their existence and their distinctiveness. For example, the State Acquisition and Tenancy Act 1950 uses the term ‘Aboriginal Castes’ and ‘Tribes’; and states that “an Aboriginal cannot sell or transfer his/her land

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<sup>272</sup> Interview with Ram Soren, Phulbari Bazaar, March 11, 2016.

<sup>273</sup> Binota Moy Dhamai and Sanjib Drong, “Bangladesh” in *The Indigenous World-2012*, (Copenhagen: IWGIA, 2012) at 337.

<sup>274</sup> Article 2 of the SEGCI Act.

to a dominant Bangalee without the prior permission of state-endorsed authority”.<sup>275</sup> The CHT Regulation-1900 uses the term ‘Hillman’ to mean distinct ethnic people live in the CHT.

#### **4.4.3.3. Why does the Bangladesh Government not Recognize Indigenous Peoples?**

The rights of Indigenous peoples embedded in international law would enable the communities to fight for self-determination and some other rights, such as participate in the decision-making process and access to natural resources. A local Bangalee leftist activist and a Santal young boy both have similar tones regarding ‘reasons for not recognizing Indigenous peoples by the Bangladesh government’. They think that if Adibasis get recognition, they will get similar opportunities (in some cases, they will get more benefits) under international law obligations. In a discussion earlier of this chapter, I have argued that although the country did not ratify the ILO Convention No. 169, Bangladesh would be bound by the ILO Convention No. 107. Furthermore, Bangladesh is concerned about implementing the UNDRIP at the country level, though the country did not ratify the Declaration yet. However, the government’s eternal promise to the UN system for the implementation of Indigenous peoples’ rights made a catastrophic situation for itself. If the government accepts the UNDRIP any time, Adibasis of Bangladesh would be entitled to the right to self-determination and access to political, legal, economic, and cultural rights. The government may have concerns about several provisions, especially on Article 30 of the Declaration. Article 30 states:

“1. Military activities shall not take place in the lands or territories of Indigenous peoples unless justified by relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

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<sup>275</sup> Sections 96 and 97 of The State Acquisition And Tenancy Act, 1950 (East Bengal Act No. Xxviii Of 1951), [16th May, 1951] Online: < [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=241](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=241)>

2. States shall undertake effective consultations with the Indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.”

Adibasi communities in the CHT are being suppressed through militarization and violence created and instigated by settlers. The Bangalee settlers are brought from various parts of Bangladesh to the CHT to stop Adibasis’s fight for self-determination. Since the government has permanent military camps in the CHT region, which is the home of eleven Adibasi communities, to suppress their self-determination struggle, it would not accept the UNDTRIP provision laid out in the Article 30. However, there is a way to make the Bangladesh government accountable for adopting the UNDRIP provisions in national legislation by implementing the Sustainable Development Goals (SDGs) commitments by the UN General Assembly in 2015. Bangladesh has taken the National Action Plan to fulfill its commitment.<sup>276</sup> Moreover, there are several goals, targets, follow-up and reviews regarding Indigenous peoples<sup>277</sup> the countries have to consider. Until now, Indigenous peoples have not been consulted and engaged in this process, although a meaningful engagement in national development is one of the significant components of UNDRIP.<sup>278</sup> So it is imperative that Adibasis of the country be engaged in SDGs, their voices are heard, and their rights respected, protected and fulfilled in a spirit of UNDRIP.

According to an Adibasi leader, “If Adibasis get recognition, there will be no ethnic discrimination. If they get constitutional recognition, the future generation will benefit.”<sup>279</sup>

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<sup>276</sup> Chakma, *supra* note 249.

<sup>277</sup> In 2030 Agenda for sustainable development, Indigenous peoples are referred 6 times in various SDGs. Out of six, three times in the political declaration; two times in the targets under SDG 2 on Zero Hunger (target 2.3) and SDG 4 on education (target 4.5); and one time in the section to follow up and review that calls for engagement and empowerment of Indigenous peoples in implementing the agenda in country level. There are also two indicators that directly refer Indigenous peoples such as 2.3.2 and 4.5.1, and few other indicators that are relevant for Indigenous peoples such as 1.4.2 and 5.a.1. on land rights.

<sup>278</sup> Chakma, *supra* note 249.

<sup>279</sup> Interview with Ram Soren, Phulbari Bazaar, March 11, 2016.

Another Adibasi teacher insisted that many communities throughout the world who are marginalized and threatened to be abolished by losing their cultural, language, spiritual, and social distinctiveness be recognized and identified as Indigenous peoples. Bangladeshi ethnic communities are needed to be recognized by the government as Adibasi or Indigenous peoples because they are largely marginalized. Another Adibasi leader was telling me during the interview that how he and other Adibasi leaders negotiated in different occasions with government bodies and protested the decision of recognition of Adibasi or Indigenous peoples. He argued that if the trend of non-recognition continues and if Adibasis do not oppose, then there would be no Adibasi or Indigenous peoples in Bangladesh. Adibasis would be endangered, as Adibasi lands are being alienated by the majority and influential Bangalee people.<sup>280</sup>

The government officials of Bangladesh acknowledge ‘Adibasi’ as ‘Indigenous peoples’, and for that reason, they are abstaining from using both ‘Indigenous’ and ‘Adibasi’ in their official documents. Nevertheless, the Bangladesh government is not directly using ‘Indigenous’ in their official documents, they use the near term ‘tribes’ in the Constitution, and other legal instruments are using ‘tribal peoples’, ‘aboriginals’, ‘hillman’, ‘small ethnic minority’ and ‘Adibasi’.

#### **4.5. Construction of Indigenous Identity or Indigeneity**

Indigenous identity adheres to ‘groups’ whose identity as distinct peoples necessitates a certain lifestyle, threatened by nation-states or by corporations to Indigenous political and economic structures<sup>281</sup> where each person conforms to collectivity as a member of people, community, ethnicity, tribe or nation.<sup>282</sup> The evolution of using the term ‘Indigenous peoples’ has a long history

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<sup>280</sup> Interview with Rob Soren, Dhaka, April 11, 2016.

<sup>281</sup> Popova-Gosart, *supra* note 9 at 87.

<sup>282</sup> Silvia Büchi et al. *Indigenous Peoples, Environment and Development*, (Copenhagen: International Working Group for Indigenous Affairs, 1997) at 16.

in Europe and became popular during the process of decolonization.<sup>283</sup> Groups who are struggling for their identity as ‘Indigenous peoples’ find that any recognition of their rights by a state will not be achieved easily.<sup>284</sup> Through their continuous struggle, Indigenous peoples are now realizing that they have the power to establish their identity and rights in society.<sup>285</sup> In this way, identities of Indigenous peoples are often delimited within the dominating systems of their states, although sometimes they constitute a majority of the population.<sup>286</sup>

The increasing importance of the term ‘Indigenous peoples’ is connected to the role of transnational networks, which helps to construct, organize, and transmit resources that legitimize and produce Indigeneity.<sup>287</sup> The notion of Indigeneity is used to describe Indigenous peoples as ‘nations/peoples’ who struggle for their political autonomy. Altamirano-Jiménez’s ‘articulation of Indigeneity’ theory explains how meanings are produced through the historical situation and social practices.<sup>288</sup> The root of the theory can be traced from Stuart Hall’s ‘the theory of articulation’ that states, “it enables us to think how an ideology empowers people, enabling them to begin to make some sense or intelligibility of their historical situation, without reducing those forms of intelligibility to their socio-economic or class location or social position.”<sup>289</sup> Stuart Hall insists that identity bridges the gap between the personal and the public worlds; what he understands as the relation between the ‘inside’ and the ‘outside’.<sup>290</sup>

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<sup>283</sup> Dean and Levi, *supra* note 30 at 5.

<sup>284</sup> Büchi et al. *supra* note 282 at 18.

<sup>285</sup> Brian Goehring, *Indigenous Peoples of the World: An Introduction to Their Past, Present, and Future. Purich's Aboriginal Issues Series*. (Saskatoon: Purich Publishing, 1993) at 51.

<sup>286</sup> Popova-Gosart, *supra* note 9 at 89.

<sup>287</sup> Altamirano-Jimenez, *supra* note 3 at 20.

<sup>288</sup> *Ibid.*

<sup>289</sup> Lawrence Grossberg, “On Postmodernism and Articulation: An Interview with Stuart Hall.” (1986) 10.2, *Journal of Communication Inquiry*, at 53.

<sup>290</sup> Stuart Hall, “Introduction: Who Needs Identity” in Stuart Hall and Paul Du Gay, eds. *Questions of Cultural Identity*, (SAGE Publications, 1996).

According to Altamirano-Jimenez, “the concept of articulation is useful in characterizing the diversity of peoples making Indigeneity claims and multi-scalar production of Indigeneity politics.”<sup>291</sup> One of the most important issues in the ‘articulation of Indigeneity’ is the question of “who is included and who is excluded”. This process of inclusion and exclusion of Indigenous identity have been shaped through colonial and post-colonial encounters with Indigenous peoples.<sup>292</sup> Altamirano-Jiménez shows how colonial powers, networks, host-states, and international agencies have developed and imposed their narrow and exclusionary definitions of Indigenous peoples. Contemporary nation-states use this strategy of forming exclusionary definitions to deny the existence of Indigenous peoples in their territory.<sup>293</sup> Consequently, the continuous colonial process pulls Indigenous peoples away from their self-constructed identity towards ‘Aboriginal’, ‘Indian’, ‘Scheduled Tribe’, ‘Scheduled Caste’, ‘Tribal’, ‘Native American’ or ‘Ethnic Minority’, which is an authoritative assault on Indigenous identity.<sup>294</sup> Bob Joseph, the founder of Indigenous Corporate Training Inc., and member of the Gwawaenuk Nation states that the term ‘Native’ is considered uncivil and rarely used in respectful conversations. He added, “Usage of the word ‘Indian’ in Canada is decreasing due to its incorrect origin and connections to colonizer policies and departments such as the Indian Act, the Indian Department (precursor to Indigenous and Northern Affairs Canada), Indian Agent, Indian residential schools, etc.”<sup>295</sup> Although the term Aboriginal peoples was a new step, there has been resistance from many groups

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<sup>291</sup> Altamirano-Jimenez, *supra* note 3 at 4.

<sup>292</sup> *Ibid.*, at 20.

<sup>293</sup> *Ibid.* at 19.

<sup>294</sup> Alfred and Corntassel, *supra* note 15 at 599.

<sup>295</sup> Bob Joseph, “Indigenous or Aboriginal: Which is Correct?” (Sept. 21, 2016), CBC News-Opinion. Online: <https://www.cbc.ca/news/indigenous/indigenous-aboriginal-which-is-correct-1.3771433>

as they argue that the root meaning of the word ‘ab’ is a Latin prefix that means ‘away from’ or ‘not’. And so Aboriginal can mean ‘not original’.<sup>296</sup>

There are places where various terms such as ‘Native Americans’ (the USA), ‘Aboriginal peoples’ (Australia), Maori (New Zealand), Scheduled tribes (India), Tribal (Bangladesh) are used officially in the country level. However, countries who accepted the UNDRIP started using the term ‘Indigenous peoples’. For example, the Canadian government has started using ‘Indigenous peoples’ term officially from 2018 in place of ‘Aboriginal peoples’ as part of their commitment towards implementing UNDRIP nationally.<sup>297</sup> The UNPFII states that the term ‘Indigenous’ has prevailed as a generic term for many years.<sup>298</sup> In some countries, there may be a preference for other terms, including Tribes, First peoples/nations, Aborigines, Ethnic groups, Adibasi/Adivasi, Janajati, but they should be treated equally in international and national law.<sup>299</sup> Occupational and geographical terms like hunter-gatherers, nomads, peasants, hill people, etc., also exist and for all practical purposes, can be used interchangeably with ‘Indigenous peoples’.<sup>300</sup>

Furthermore, Indigenous peoples want to be recognized as ‘peoples’, not ‘people’. They find the ‘s’ distinction is crucial, which symbolizes the basic human rights as well as land, territorial and collective rights.<sup>301</sup> Whenever we mean an Indigenous group, nation, or community, we would

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<sup>296</sup> Don Marks, “What’s in a name: Indian, Native, Aboriginal or Indigenous?” (Oct. 2, 2014) CBC News-Opinion. Online: <https://www.cbc.ca/news/canada/manitoba/what-s-in-a-name-indian-native-aboriginal-or-indigenous-1.2784518>

<sup>297</sup> Although Canada marks the 22<sup>nd</sup> National Indigenous Peoples Day, 21<sup>st</sup> June of 2018 is the first instance the day is officially called and celebrated as ‘National Indigenous Peoples Day’ as part of the commitment made in international forum to implement UNDRIP. Starting in 1996, it was originally called ‘National Aboriginal Day’. Moreover, while celebrating the ‘National Aboriginal Day’ on 21<sup>st</sup> June 2017, Prime Minister has pledged to rename to ‘National Indigenous Peoples Day’ starting from 2018 to be consistent with the terminology used by the UNDRIP. Moreover, part of NDP’s mandate to make National Indigenous Peoples Day as a statutory holiday, one of the party’s MPs Georgina Jolibois tabled a bill in the parliament, which was endorsed by the Ontario Public Service Employees Union (OPSEU).

<sup>298</sup> The United Nations, *supra* note 1.

<sup>299</sup> *Ibid.*

<sup>300</sup> *Ibid.*

<sup>301</sup> IUCN, *supra* note 73 at 28.

use ‘people’, e.g., the Chakma people, Santal people, Inuit people, etc. However, the whole Indigenous community in a country should be called ‘Indigenous peoples’ of the country. Again, there should have only one name or term by which the world population can easily identify the community groups collectively. For example, the term ‘Indigenous peoples’ is being used and accepted in international law to understand those community groups. There should not have any debate about the universally accepted term. The debate between ‘Tribal’ and ‘Indigenous peoples’ terms should be stopped which is creating confusion to recognize and identify that marginalized group of people as a distinct group. As International law (both hard law and soft law) has provided certain rights and opportunities for fighting their vulnerabilities, they may get access to those rights and benefits by asserting their Indigenous identity.

The UN has continued to use ‘Indigenous’ alone, although ILO has regularly suggested to the UN that it refers to both Indigenous and tribal peoples in its work, following the usage of ILO.<sup>302</sup> The ILO Convention No. 169 is treated as a central feature of international laws contemporary treatment of Indigenous peoples demands<sup>303</sup> that include an additional criterion of ‘Tribal peoples’ along with an emphasis on ‘historical continuity’ in its legal definition of ‘Indigenous peoples’, which will be applicable in all member states.<sup>304</sup> The ILO Convention No. 169 refers to ‘peoples’ and not to ‘populations’. It refers to ‘tribal peoples’ but not to ‘semi-tribal’ peoples. However, there are regions of the globe where the tribal population is the Indigenous population, and this can be established by historical evidence.<sup>305</sup>

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<sup>302</sup> The ILO shows the reason of using both tribal peoples and Indigenous peoples as: The two terms ‘Indigenous peoples’ and ‘tribal peoples’ are used by the ILO because there are tribal peoples who are not ‘indigenous’ in the literal sense in the countries in which they live, but who nevertheless live in a similar situation – an example would be Afro-descended tribal peoples in Central America; or tribal peoples in Africa such as the San or Maasai who may not have lived in the region they inhabit longer than other population groups. See also: UNPFII, *supra* note 67.

<sup>303</sup> Anaya, *supra* note 133 at 58

<sup>304</sup> Kingsbury, *supra* note 66 at 420.

<sup>305</sup> Beteille, *supra* note 10.

The World Bank Operational Directive 4.20 definition used broader criteria to identify Indigenous peoples where both the much-debated terms ‘Tribal’ and ‘Indigenous peoples’ were used expressly to mean certain distinct groups.<sup>306</sup> However, the Directive preferred to use ‘Indigenous peoples’ to understand all groups. Paragraph 3 of a new Operational Policy 4.10 of the World Bank provides the identification of Indigenous peoples which states:

“because of the varied and changing contexts in which Indigenous peoples live and because there is no universally accepted definition of ‘Indigenous peoples’, this policy does not define the term. Indigenous peoples may be referred to in different countries by such terms as “Indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “minority nationalities,” “scheduled tribes,” or “tribal groups.”

Therefore, OP 4.10 does not differentiate among ‘Indigenous peoples’, ‘tribal population’, and other terms used by states to mean distinct ethnic communities or tribal populations in various countries. In this regard, most of the ethnic groups who are claiming themselves as ‘Indigenous peoples’ but recognized by their governments as different names, can be identified as Indigenous peoples if we follow the World Bank’s directives and policies.

Bob Joseph contends, “Go with what they are calling themselves”<sup>307</sup> and as such, they can be called in different names in their state boundaries according to the group’s intentions: such as, Indigenous peoples of Bangladesh and India recognize themselves and are also known as ‘Adibasi’, in Canada ‘First Nations’ ‘Inuit’ and ‘Metis’, in the USA ‘Native Americans’ or ‘American Indians’, in Australia ‘Aboriginal’, in Latin America ‘Indians’ and ‘Amerindians’ etc. But whenever the communities are discussed in the international forum, they must be called as a single term Indigenous peoples. There are thousands of distinct communities that have their

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<sup>306</sup> Sia Spiliopoulou Akarmanik, “The World Bank and Indigenous Peoples” in Nazila Ghanea and Alexandra Xanthaki (eds) *Minorities, People and Self-Determination* (Martinus Nijhoff Publishers, 2005) at 95.

<sup>307</sup> Joseph, *supra* note 295.

community names. In Bangladesh, there are at least 45 ethnic communities who identify themselves as Indigenous peoples or Adibasi. In Bangladesh, the groups are using various terms such as Indigenous communities from plain lands use the term ‘Adibasi’ and 11 Indigenous communities from the CHT use both ‘Adibasi’ and ‘Jumma’, which I found confusing for their proper recognition. Adibasi groups have various names such as the Santal, Chakma, Marma, Tripura, Khasia, and Garo. They can be called by their community names, as mentioned above, during local and national discussions.

#### **4.6. Conclusion**

The disregarded communities of Bangladesh have emphasized the need for official recognition as ‘Adibasi’ or ‘Indigenous peoples’. They have also accentuated the importance of recognition of their right to land and control over natural resources. The Adibasi representatives, leaders, and activists have expressed their concern about development issues related to using land despite the signing of an agreement with the government.<sup>308</sup> However, the marginalized communities of Bangladesh meet the requirements of the international legal concept of ‘Indigenous peoples’. The claim of the distinct ethnic communities in Bangladesh to the status of Indigenous peoples cannot be defeated on the ground of a lacking or unclear definition or for the common excuse that the entire or Bangalee population of Bangladesh are Indigenous.<sup>309</sup> Moreover, one major challenge persists, as Bangladeshi Adibasi or Indigenous peoples are not recognized legally, and non-governmental development agencies are unlikely to gain government approval for their projects

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<sup>308</sup> Ahmed, *supra* note 27 at 51.

<sup>309</sup> *Ibid.*

and development initiatives if they use the term Adibasi or Indigenous peoples in their description of activities.<sup>310</sup>

In the above discussion, I have reviewed various definitions of Indigenous peoples in international law. According to the definitions, Indigenous peoples are those people who have distinct identities and form non-dominance in society with long-standing persecution and marginalization history. In the case of the Indigenous situation in Bangladesh, after reviewing oral histories, participant observation and interviews from Adibasi communities (especially Santals and Mundas) of the Phulbari mining area, it has been determined that Adibasi communities are the ‘peoples’ who can be identified as Indigenous peoples under international law. In my analysis, I have shown that Adibasis in the mining region retains most of the characteristics which have been identified by scholars and international institutions that I have used for my analysis. Most of the respondents recognized and identified themselves as ‘Adibasi’, which they mean to understand the universally accepted term ‘Indigenous peoples’. Moreover, local Bangalees also identified them as Adibasi, and they are habituated to call them ‘Adibasi’. Many respondents claimed that their ancestors had settled in the area long before Bangalees had settled in the area. Moreover, the historical documents I have reviewed also supported that the communities existed in the area of time immemorial. Some even said that Adibasis migrated and settled in the mining area and other parts of Bangladesh from Jharkhand and Nagpur of current India (Bangladesh was also a part of India before 1947). However, in all instances, it is proved that Adibasi existed in the area before the British colonial rule.

Adibasis are victims of colonial and post-colonial oppression and persecution. Their rights are violated, their territorial lands are being alienated and grabbed by dominant Bangalee people with

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<sup>310</sup> Dhamai and Chakma, *supra* note 233.

the help of the government. Adibasis have tradition and customs of maintaining kinship networks, and they have strong ties with natural resources and their traditional knowledge. Interviewees also claimed that they maintain a sacred oral history of what they believe, maintain their religious and cultural functionality by following their tradition and customs, have distinct languages which they practice among their communities. Through all of this, Adibasis find themselves as completely distinct communities than dominant and majority Bangalees. The festivals and rituals Bangladeshi Adibasi communities observe are also unique in nature. Furthermore, Adibasis are struggling to retain their distinct identity, and sometimes they resist for self-determination. As their properties are being illegally grabbed, alienated and dispossessed by dominant Bangalees, their demand is to establish a separate land commission to deal with this matter and return their lands. They also demand to recognize their language, culture, and traditions.

## CHAPTER V

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### PHULBARI KHONI ANDOLON: AN INDIGENOUS ENVIRONMENTAL JUSTICE MOVEMENT

#### **5.1. Introduction**

Adibasi communities in the Phulbari mining area are now carrying out a subsistence livelihood based on agricultural and small-scale business activities. Though they are discriminated against socially with unequal treatment, which I have shown in Chapter IV of this dissertation, they are happy with their existing economic and social settings. They feel that any changes would affect their livelihood negatively. They fear to become landless if any large-scale project, especially open cast mining, is undertaken in their area. Although most of the people of the Phulbari mining region are poor farmers, they have their own mechanisms to overcome the existing situation. Many Adibasis are working as day laborers in other peoples' croplands. Many of them have their private lands where they cultivate three-crop agricultural products year around. They do not want any destruction or any development in their lands which, they expect through previous experiences elsewhere, would ultimately make them refugees. The National Committee to Protect Oil, Gas, Mineral Resources, Power and Ports of Bangladesh (NCBD) successfully educated local people through their campaign, research, and analysis that any benefit to the government from exploring and exporting coal through the open-pit mining over 30 years would be less than the profits the local people would get from agricultural and small businesses activities. People understood that the project would not be economically worthwhile for them.

Environmental degradation has significant implications for Indigenous peoples' rights due to

their close affiliation with land and natural resources.<sup>1</sup> James Anaya states that as part of their right to self-determination, Indigenous peoples have the right to decide whether they will allow a development project in their territory or not.<sup>2</sup> This is also guaranteed in the UNDRIP. Hence, to establish their control over development projects, Indigenous peoples mobilize and resist both the state and transnational and multinational corporations (TNCs and MNCs).<sup>3</sup> During the 18 months of educating people about the impact of the Phulbari open-pit coal project, motivating them to raise voices, and inspiring them to attend the protest rallies, Adibasi vowed to sacrifice their lives to save their livelihoods, lands, and resources of the mining region. My Adibasi respondents consistently shared their concerns about how the potential for mining activity threatened their identity as ‘Adibasi’ or ‘Indigenous peoples’ because they would lose their sacred relationship with the forest. Some of the mining areas include Sal forests and marshlands where Adibasi live. The place where they live is sacred to them, as they manage surrounding land and resources traditionally and customarily for generations. They knew that if the company could successfully develop mining in the area, they would lose their current environmental settings and ecological circumstances, and ultimately, they would never get back to their traditional lifestyles. The change triggered by the open-pit mine would be impossible to reverse.<sup>4</sup> This consciousness inspired Adibasi protesters to speak in broad opposition to resource exploitation: “we do not want any mining in our region which would push us giving away our Indigeneity.” Some of my Adibasi and Bangalee respondents were also concerned about the possible destruction of the ecosystem of the

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<sup>1</sup> Shawkat Alam, “Collective Indigenous Rights and the Environment” in Shawkat Alam et al. eds, *Routledge Handbook of International Environmental Law* (London: Routledge, 2012) at 588.

<sup>2</sup> James Anaya, “Report of the Special Rapporteur on the Rights of Indigenous Peoples.” (2012) *Human Rights Council (A/HRC/21/47)* at 7.

Online: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47_en.pdf)

<sup>3</sup> Ciaran O’Faircheallaigh, “International Recognition of Indigenous Rights, Indigenous control of Development and Domestic Political Mobilisation.” (2012) 47.4 *Australian Journal of Political Science* at 532.

<sup>4</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

Sundarbans since the company planned to transport the extracted coal through the river of the forest.

Whiteman and Mamen emphasize that the ‘cumulative social and environmental effects’ of mining mean that Indigenous peoples must often resist against not just one mine, but rather an entire mining sector because building mining infrastructure such as roads, ports, railways also negatively affect local livelihoods and biodiversity.<sup>5</sup> The authors argue that conflicts throughout the world, especially in the global South, between Indigenous peoples and the project proponents have often resulted because of misrecognition of the right to land and other territorial rights, neglecting traditional beliefs on land and resource management, absence of access to information about proposed and existing mining operations, lack of involving Indigenous peoples in decision-making process on land access and mine exploration and development plans.<sup>6</sup> Indigenous peoples also resist the negative social, economic, and environmental impacts of mineral exploration, and seek to rectify environmental and organizational injustice through demands of greater participation in decisions and project development process.<sup>7</sup> Their demands are often ignored by corporations, and they get involved in conflicts with state-sponsored law enforcement agents.

Bullard and Johnson call for the environmental justice movement to identify some firm objectives for eliminating existing unequal enforcement of environmental regulations, policies, and practices. These environmental regulations and policies often prevent some individuals and groups from participating in decision-making.<sup>8</sup> These problems could be eliminated if existing environmental, health, housing, and civil rights laws were vigorously enforced in a non-

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<sup>5</sup> Gail Whiteman and Katy Mamen, *Meaningful Consultation and Participation in the Mining Sector?: A Review of the Consultation and Participation of Indigenous Peoples Within the International Mining Sector* (Ottawa: North-South Institute, 2002).

<sup>6</sup> *Ibid.* at 1.

<sup>7</sup> *Ibid.*

<sup>8</sup> R D Bullard & G S Johnson, “Environmentalism and public policy: Environmental justice: Grassroots activism and its impact on public policy decision making” (2000) 56:3 J Soc Issues, at 559.

discriminatory way. Urkidi and Walter study the plurality of the environmental justice movement, discursive framework, and the distributive dimensions of injustice where they illustrate and identify the emergence of three dimensions of environmental justice, namely distribution, recognition, and participation in the anti-mining movements.<sup>9</sup> These three notions of justice were all mentioned by Schlosberg in his definition of justice, “at various times, justice is defined as equitable distribution, recognition, and participation.”<sup>10</sup> Some scholars argue that the environmental justice movement can lead to environmental sustainability or just sustainability.

In this chapter, my analysis of social and political processes ties together an understanding of equitable distribution, recognition, and participation in the decision-making process to arrive at an environmental justice framework.<sup>11</sup> In other words, I examine the claims of local and Adibasi communities in the *Phulbari Khoni Andolon* against the various theoretical understandings of what motivates actors in the environmental justice movement. In relaying three narratives (Adibasi accounts, local and national activists’ accounts, and transnational advocacy groups’ accounts of the resistance movement) I have addressed in Chapter III, I explore the reasons why the movement was seen as successful. The following parts analyze if the efforts of these players fit within the framework of the environmental justice movement, as it manifests in the global South.

## **5.2. Why did Adibasi Protest in Phulbari?**

I had asked my Adibasi respondents about the reason for protesting the coal extracting project, which is said to bring economic benefit to the country. Their answers were varied. However, most

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<sup>9</sup> Leire Urkidi & Mariana Walter, “Dimensions of environmental justice in anti-gold mining movements in Latin America” (2011) 42:6 *Geoforum* at 683.

<sup>10</sup> David Schlosberg, “The Justice of Environmental Justice: Reconciling Equity, Recognition, and Participation in a Political Movement”, in Andrew Light and Avner de Shalit, (eds.), *Moral and Political Reasoning in Environmental Practice* (Cambridge, MIT Press-2003) at 78.

<sup>11</sup> *Ibid.*

of the respondents were concerned about losing their agricultural and household lands and fearing to be displaced permanently from the area. According to them, Adibasis of the Phulbari mining area had been facing various vulnerabilities throughout their existence. They are never recognized, and all decisions are imposed on them. In the case of the mining project, the government never asked for their consent to lease their lands to a MNC. The foreign company had not consulted adequately with Adibasi communities or their traditional institutions. The company had continued deceiving local people with various temptations by appointing *Dalal*. According to a local Adibasi leader, Adibasis of the mining area were the first communities who started raising their voices against the projected open-pit mining.<sup>12</sup> Adibasis confirmed with NCBD activists during the campaign period in their hamlets, “we would die to stop mining.”

Furthermore, Adibasis were so angry that they were ready to be outlawed, but the organizers of the movement did not let that happen.<sup>13</sup> This part of the chapter offers an analysis based on the rights and interests of Indigenous peoples, or Adibasis of Phulbari reflected in EIA and what happened in the field. I have identified the following reasons why Adibasi communities had been involved in resisting the open-pit mining in their region: realizing past injustices and misrecognition; lack of participation (inadequate information, consents acquired by deception, and deficient consultation); population displacement and improper plan of resettlement; false promise and fear of not getting compensation and share of benefits; environmental degradation; water and food insecurity; foreign company; and corruption and lack of transparency. All the issues are analyzed in turn based on the claims of the company through the ESIA and Adibasis.

### **5.2.1. Realizing their Experience of Vulnerability and Misrecognition**

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<sup>12</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>13</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

The conflict between economic development, environmental protection, and recognition of human rights exhibits in the livelihoods of Indigenous peoples.<sup>14</sup> Moreover, the communities in the areas where the resources are located tend to carry a disproportionate share of the negative impacts of development through reduced access to resources and direct exposure to pollution and environmental degradation.<sup>15</sup> The adverse effects of extractive industries on Indigenous communities are often enhanced by their lack of access to natural resources.

Paragraph 1 of the IFC Performance Standard 7 and the World bank's Operational Policy (OP) number 4.10(2) recognize that Indigenous peoples are among the most marginalized and vulnerable sections of the world population. Their economic, social, and legal status limits their capacity to protect their rights and interests in their surrounding environment and restricts their ability to receive benefits from development projects. Performance Standard 7 further expands:

“Indigenous peoples are particularly vulnerable if their lands and resources are degraded. Their languages, cultures, religions, spiritual beliefs, and institutions may also come under threat, and consequently, Indigenous peoples may be more vulnerable to the adverse impacts associated with project development than non-Indigenous communities. This vulnerability may include loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and diseases.”

The dignity, rights, traditional knowledge, and interests of Indigenous peoples to protect their cultural identities and preserve their traditional and ancestral lands and resources are receiving increasing recognition within the international development community. Various international legal instruments<sup>16</sup> establish Indigenous peoples as international legal actors and confer rights on

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<sup>14</sup> Bogumil Terminski, *Mining-induced Displacement and Resettlement: Social Problem and Human Rights Issue*. Working paper. (Vancouver: Simon Fraser University, 2012).

<sup>15</sup> Lila Barrera-Hernandez, “Indigenous Peoples, Human Rights and Natural Resource Development: Chile's Mapuche Peoples and the Right to Water” (2005) 11 Annual Survey of International & Comparative Law at 6.

<sup>16</sup> Agenda 21, the Rio Declaration on Environment and Development, the Universal Declaration of Human Rights (UDHR), the ILO Convention No. 169, the World Charter for Nature, the Convention on Biological Diversity (CBD), the UNDRIP, Convention on Access to Information, Public Participation in Decision-making and Access to

them. Most of the international hard laws and soft laws recognize their rights to participation, cultural identity, traditional lands and territories, and self-determination in natural resources development.<sup>17</sup> It is also identified that the increasing recognition of social and cultural diversity is in the interest of society and is not an obstacle to national development or economic stability.<sup>18</sup> Therefore, the development process should accommodate full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous peoples.<sup>19</sup>

IUCN recognizes that if all project-affected people, in most cases, Indigenous peoples, are not involved effectively and fully in all stages of the activity, sustainability strategies can never succeed. Such involvement enables them to protect their interests in any development project and ensure sustainable development in their territory.<sup>20</sup> Having a long connection and environmental ethics, Indigenous peoples uphold their traditional cultures, values, and beliefs for managing natural resources. Though the trend of recognizing the role Indigenous peoples play in sustainability is insufficient, it is evolving. The preamble of the Convention on Biological Diversity (CBD) (para 12) states:

“Recognizing the close and traditional dependence of many Indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations, and practices relevant to the conservation of biological diversity and the sustainable use of its components.”

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Justice in Environmental Matters (Aarhus Convention), The Vienna Declaration and Programme of Action, The 1992 Convention on Biodiversity

<sup>17</sup> Whiteman and Mamen, *supra* note 7.

<sup>18</sup> ADB, “Bank’s Policy on Indigenous Peoples” (1998). Online: <  
<https://www.adb.org/sites/default/files/institutional-document/33441/files/policy-indigenous-peoples.pdf>> ADB’s Indigenous Peoples Policy, para 18.

<sup>19</sup> IFC Performance Standard 7. IFC, *supra* note 61.

<sup>20</sup> IUCN, *Indigenous Peoples and Sustainability: Cases and Actions* (Utrecht, The Netherlands: International Books, 1997) at 32.

However, the provision identifies that environmental and economic benefits accruing from using Indigenous traditional ecological knowledge (TEK) should be shared with Indigenous peoples.<sup>21</sup> Chapter 26(1) of Agenda 21 states that any strategy for sustainability involving Indigenous peoples has to respect their traditional way of managing resources such as their sacred oral history, traditional knowledge, and local decision-making structures.<sup>22</sup> Ellis argues that by promoting the use of their traditional knowledge and its recognition in environmental or resource management, Indigenous peoples necessarily advocate an increased role for the holders of Indigenous TEK.<sup>23</sup>

In Bangladesh, Indigenous peoples are not being recognized by the government as ‘Indigenous peoples’. The reason behind the exclusion is the government’s position on the recognition of ‘Indigenous’ or Adibasi people, which I have discussed in the previous chapter. Asia Energy, the company responsible for implementing the open-pit coal project, claimed that they followed guidelines of different international financial institutions such as the World Bank, ADB, and IFC regarding Adibasi communities of Phulbari.<sup>24</sup> Civil society members, environmental and Indigenous NGOs, and activists of the *Phulbari Khoni Andolon* showed their concerns on different occasions about fears of local and Adibasi communities regarding their displacement, which would violate their human and fundamental rights.

Section 3.2 of the Indigenous Peoples Development Plan (IPDP) of the ESIA states that only 2,200 out of 49,487 people to be displaced are Adibasis.<sup>25</sup> However, nearly half (48.25%) of the total affected households identified in the draft Resettlement Plan (RP) belong to groups

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<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.* at 89.

<sup>23</sup> Stephen C. Ellis, “Meaningful Consideration? A Review of Traditional Knowledge in Environmental Decision Making.” (2005) *Arctic* at 68 & 69.

<sup>24</sup> Asia Energy PLC, “Indigenous People’s Development Plan (IPDP)”, In *ESIA of Phulbari Coal Project*, (NSW: Asia Energy Corporation (Bangladesh), 2006).

<sup>25</sup> *Ibid.*

recognized as being socio-economically vulnerable. According to environmentalists and Adibasi leaders, the number of displaced Adibasi population would be several times higher than estimated.<sup>26</sup> It is perceived that one factor contributing to lower estimates of the number of Adibasi people to be displaced is the denial of the ‘Indigenous’ status of an unknown number of people affected by the project. A footnote of Section 3.2 of the IPDP reveals that this estimate excludes households from groups that are more appropriately classified as ‘ethnic minority’ groups rather than ‘Indigenous’ or ‘Adibasi’.<sup>27</sup> Although Santal, Munda, and Mahili communities are recognized as ‘Indigenous peoples’ in line with international law and legal instruments by the company through IPDP of the ESIA regardless of the Bangladesh government’s denial situation, there are certain self-identified Adibasi groups such as the Karmakar, Horizon, Mahato, Rajbangshi were excluded. The Karmakar is one of the twenty-nine Adibasi communities that had their official recognition as an Adibasi negated in a highly contested government gazette published in 2010.<sup>28</sup> G. Karmakar, a farmer from the Karmakar community, claimed, “although the mining project would destroy my households and agricultural lands, the company consultants never came to talk to my family and me. The government never treated us an Adibasi, although we are distinct as like Santal and some other communities.”<sup>29</sup> Therefore, such denials of the Adibasi identity by states and corporations are frequently applied to ignore Indigenous people’s rights in international conventions and instruments.<sup>30</sup>

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<sup>26</sup> Jennifer Kalafut, “Phulbari Coal Project: A Displacement Disaster in the Name of Development”, in *Phulbari Coal Project: Studies on Displacement, Resettlement, Environmental and Social Impact*, (Dhaka: Samhati Publications: Dhaka, 2008) at 19.

<sup>27</sup> Asia Energy Plc, *supra* note 24 at 27

<sup>28</sup> *Ibid.* at 62.

<sup>29</sup> Interview with G. Karmakar, Dhontola, Birampur, March 10, 2016.

<sup>30</sup> Kate Hoshour, “The Indigenous Peoples Development Plan for the Phulbari Project, Bangladesh” (2012) International Accountability Project.

According to Section 4, Volume 4 of the ESIA, Adibasis from Mahili people are among those to be displaced;<sup>31</sup> still, IPDP for Asia Energy's Phulbari Coal Project does not record a single meeting with members of the Mahili community.<sup>32</sup> The methodology for the IPDP included a Resettlement Survey (RS) designed to determine the number of Adibasi households to be displaced but was suspended just one month after it was initiated in February 2005. The suspension was done without showing any reason in the IPDP.<sup>33</sup> The draft RP, which the IPDP produces in its final report, seems vague since it does not provide details of the resettlement procedure and rehabilitation program. Due to the lack of any information on current patterns of land use in either of the two proposed resettlement sites for Adibasis, it is unclear if either side has any agricultural land available for purchase, leasing, or sharecropping.<sup>34</sup> Therefore, the removal of Adibasis from their customary lands to make way for the Phulbari open-pit coal project would be a continuation of historical patterns of disregard for the Indigenous land rights in Bangladesh.<sup>35</sup>

One of the issues both my Adibasi and activist respondents raised was that the decision to develop coal mining in Phulbari was discriminatory. It was easy for the government policy-makers to decide because most of the population in Phulbari are Adibasi and Bangalee farmers. They said that the government considers poor farmers and Adibasi as powerless classes and violates the law; consequently, they never consider consulting the communities and engaging them in decision-making processes. They pointed out that if the coal reserve was found in Dhaka, where millions of people live and all administrative offices, military bases, and the airport are situated, the government would never think of exploring for coal. The policy-makers had not considered the

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<sup>31</sup> Asia Energy Plc, *supra* note 24.

<sup>32</sup> Hoshour, *supra* note 30.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

livelihoods of poor farmers and Adibasis, agricultural productions, sacred places, archeological sites, and the environment. My key respondent Cherobin Hembrom told me, which I believe arrived in his mind from frustration, “the government policy-makers and other rich people who want open-pit coal mining in our region in the name of development should interchange their places with us; they will move here, we will move to their places, then they would understand our pain.”<sup>36</sup> I argue that this is the politics of inequality. These inequalities arise from broader political-economic forces that exert their influences at the local level and result in many types of environmental health threats.<sup>37</sup>

According to Iris Marion Young, “the lack of recognition is an injustice not only because it constrains people and does them harm, but also because it is the foundation for distributive injustice”.<sup>38</sup> Young further argues that a lack of recognition causes damage to both oppressed communities and the image of those communities in the larger cultural and political sphere.<sup>39</sup> Nancy Fraser also insists on highlighting the lack of recognition. She argues that we have to look at the ‘why’ of inequity in order both to understand and remedy it.<sup>40</sup> Both scholars identify a direct link between a lack of respect and recognition, and a decline in a person’s membership and participation in the greater community, including the political and institutional order.<sup>41</sup> Schlosberg also points out that the lack of recognition is an injustice because it harms by constraining people from their basic rights. It is also the foundation of distributive injustice.<sup>42</sup> Thus, if someone is not recognized, he or she cannot properly participate in any process. In this respect, David Schlosberg

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<sup>36</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>37</sup> Harris, Ali, “The Political Economy of Environmental Inequality: The Social Distribution of Risk as an Environmental Injustice.” *Speaking for Ourselves: Environmental Justice in Canada* (2009) at 108.

<sup>38</sup> Iris Marion Young, *Justice and the Politics of Difference*. (1990)

<sup>39</sup> *Ibid.*

<sup>40</sup> Nancy Fraser, “Rethinking Recognition.” (2000) 3 *New Left Review*.

<sup>41</sup> David Schlosberg, “Reconceiving Environmental justice: global movements and political theories.” (2004) 13.3 *Environmental Politics*, at 519.

<sup>42</sup> *Ibid.*

argues that justice must focus on the political process as a way to address both the inequitable distribution of social goods and the conditions undermining social recognition.<sup>43</sup> In the case of the Phulbari project, the denial of Indigeneity of the Karmakar, Horizon, and other self-identified Adibasi communities means that they will effectively be excluded from any provisions made for Indigenous peoples because they do not hold formal title deeds.<sup>44</sup> This would be injustice from the part of the government and the company involved because they do not recognize those people as Indigenous peoples or groups. Since they would not be recognized as Indigenous peoples, they could not participate in the process of decision making, through which justice can be established.

Adibasis were important actors in the *Phulbari Khoni Andolon*, although NCBD's active role shaded their participation in the movement. Rob Soren said, "I was in the backstage, and nowhere can you see me in media reports, although I played a vital role in organizing the event."<sup>45</sup> His statement exposes the normative story of the lack of Adibasi recognition in every level of society. He mentioned that since the inception of Bangladesh, even before 1947, Adibasis, especially Santals, actively took part in various democratic movements, but their contributions had never been recognized.<sup>46</sup> Adibasis have been marginalized and discriminated against by colonial powers, state actors, and societal structures in different periods, which still exist today. Although the current government had promised in their election mandates to improve Adibasi lifestyles and economic situations, which is guaranteed by the Bangladesh Constitution as fundamental rights, the government eliminated the special opportunity for the "backward section of people". The government disapproved of their longstanding demand for recognizing their identity in the

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<sup>43</sup> *Ibid.*

<sup>44</sup> Hoshour, *supra* note 30.

<sup>45</sup> Interview with Rob Soren, Dhaka, April 11, 2016

<sup>46</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

Constitution. The government, on various occasions, instructed all government and non-governmental bodies not to use the term “Adibasi.”<sup>47</sup>

The environmental justice movement started in response to environmental inequities, threats to public health, unequal protection, differential treatment, and discrimination received by the poor and people of color<sup>48</sup>, which Robert Bullard terms ‘environmental racism’. According to Bullard and Johnson, environmental racism is one form of environmental injustice, which is fortified by different government bodies.<sup>49</sup> Schlosberg makes a connection between the environmental justice movement and environmental racism, both concerned with low-income communities and the disproportionate risks they face.<sup>50</sup> In this case, Adibasis thought that they must be displaced because the government was supporting the company. Adibasis know that the government is powerful, and they have all mechanisms to eliminate and displace them. They identified that they would bear disproportionate risk and exposure to environmental hazards. When they realized that the government and the company had been ignoring their participation as actors in the decision-making process, they resisted as a last resort. Moreover, they have prior experience from Barapukuria and Modhyopara mining that if the mine is developed without proper measures, their life would be at stake which was not taken into consideration by the company. The company did not consider local people as important actors in the decision-making process. They had no choice but to display their demands through protests.

Rebecca Tsosie argues that environmental justice for Indigenous peoples must be consistent with the promotion of their self-governance. Therefore, traditional Indigenous institutions must be

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<sup>47</sup> The Daily Prothom Alo, “Govt calls for avoiding word ‘adivasi’” (August 7, 2014). Online: <https://en.prothomalo.com/bangladesh/news/51716/Govt-calls-for-avoiding-word-%E2%80%98adivasi%E2%80%99>

<sup>48</sup> Robert Bullard, “Decision Making.” in L. Westra, & B. Lawson, *Faces of Environmental Racism*, (Lanham: Rowman Littlefield, 2001).

<sup>49</sup> Bullard and Johnson, *supra* note 8 at 559.

<sup>50</sup> Schlosberg, *supra* note 41 at 78.

appropriately recognized for upholding their rights.<sup>51</sup> However, a system of governance is required for environmental justice to ensure the participation of all stakeholders in the decision-making process.<sup>52</sup> Leah Temper's new proposal for the environmental justice framework in the settler-colonial context also highlights the need for recognizing and engaging Indigenous self-governing authority besides their participation in the decision-making process.<sup>53</sup> The right to FPIC confirms that traditional Indigenous institutions must be discussed when a project proponent goes to the area and seeks permission. Therefore, it is the company's responsibility to make sure that Indigenous self-governing authorities are involved in the decision-making process. In the ESIA process of the Phulbari Coal Project, people attending a consultation and survey meetings are a self-selected group and, as such, are not representative of all affected Indigenous people. All *Mandals*, I had interviewed of the mining region, mentioned that the company organized meetings at individual levels. The company consultants did not involve *Mandals* in focus group discussion, although they govern Adibasis through their traditional governing system. The company never asked *Mandals* to give any input.

### **5.2.2. Meaningless Participation/Procedural Justice**

The right to receive information, the right to impart information, and the right to participate in environmental decisions are three of the significant rights those combined environmental due process. The right to participate in the decision-making process is a basic human right that applies

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<sup>51</sup> Rebecca A Tsosie, "Indigenous People and Environmental Justice: The Impact of Climate Change." (2007) 78 University of Colorado Law Review at 1625.

<sup>52</sup> Farid Ahmed, "A Bottom up Approach to Environmental Justice in the Context of Bangladesh." In *Indigenous Peoples and Bangladesh Environment*, (Dhaka: BELA and BEN, 2008) at 49.

<sup>53</sup> Leah Temper, "Blocking pipelines, unsettling environmental justice: from rights of nature to responsibility to territory." (2019) 24.2 Local Environment.

to all applicable areas.<sup>54</sup> These rights are increasingly being regarded as international and national legal norms. Principle 23 of the World Charter for Nature exemplifies this trend:

“All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment and shall have access to means of redress when their environment has suffered damage or degradation.”<sup>55</sup>

Again, Principle 24 of the same Charter extends that, “Each person has a duty to act in accordance with the provisions of the present Charter; acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met.”<sup>56</sup>

The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the International Convention on the Elimination of Racial Discrimination (ICERD) that calls for state parties to ensure equal rights for Indigenous peoples concerning effective participation in the decision-making process.<sup>57</sup> The Committee urges not just for consultation, but also informed consent with its interpretation of the rights of Indigenous peoples in applying the ICERD.<sup>58</sup> In General Recommendation No. 23, CERD requires state parties to ensure that Indigenous peoples have equal rights to participate in public life and that no decisions relating directly to Indigenous peoples are to be taken without their informed consent.<sup>59</sup> Ultimately, CERD has used the framework of protecting Indigenous peoples

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<sup>54</sup> Laura. S. Ziemer, “Application in Tibet of the Principles on Human Rights and the Environment.” (2001) 14 Harv. Hum. Rts. J. at 264.

<sup>55</sup> United Nations, *World Charter for Nature* (1982). Online: <https://www.un.org/documents/ga/res/37/a37r007.htm>

<sup>56</sup> *Ibid.*

<sup>57</sup> O’Faircheallaigh, *supra* note 3 at 532.

<sup>58</sup> Tara Ward, “The Right to Free, Prior, and Informed Consent: Indigenous Peoples’ Participation Rights within International Law.” (2011) 10, NW. UJ Int’l Hum. Rts. at 57.

<sup>59</sup> OHCHR, General Recommendation No. 23: Indigenous Peoples. (General Comments) 1997. Online: <  
<file:///Users/mohammadhasan/Downloads/cerd.pdf>>

from any form of discrimination in practicing their right to participation and right to FPIC.<sup>60</sup> As Indigenous peoples articulate the injustices they face and seek solutions to the problems, there is a need for a meaningful participatory approach for engaging them in the subsequent development activities.<sup>61</sup> If any development activity takes place in the Indigenous territory, it has to be formulated within a collaborative framework where all the actors will actively participate in the decision-making process. The participatory approach attempts to respect their traditional knowledge and construct a development partnership based on trust.<sup>62</sup>

Meaningful participation in the environmental decision-making process requires that the concerned community is informed of actions with environmental effects, giving a basic understanding of environmental issues, and giving the right to express one's opinion regarding environmental affairs. It also requires an effective means of redress are available to the victims of both ecological harm and violations of procedural rights.<sup>63</sup> Environmental justice demands the right to participate as equal partners at every level of decision making, including needs of assessment, planning, implementation, and evaluation.<sup>64</sup> Iris Marion Young contends that state agencies have the responsibility to make decisions about the distribution of risk. She also argues that communities should have the right to participate in the decision by having the power to approve or disapprove of any project.<sup>65</sup>

The provision of participatory rights of procedural justice plays a vital role in the

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<sup>60</sup> Margaret Satterthwaite and Deena Hurwitz, "The Right of Indigenous Peoples to Meaningful Consent in Extractive Industry Projects" (2005) 22.1 *Arizona Journal of International and Comparative Law*, at 2.

<sup>61</sup> Andrew Grey, "Development Practice and Indigenous Peoples" in *Indigenous Peoples, Environment and Development*. (Copenhagen: International Working Group for Indigenous Affairs, 1997) at 293.

<sup>62</sup> *Ibid.* at 290.

<sup>63</sup> Bogumil Terminski, "The Concept of Human Security as a Tool for Analysing the Consequences of Development-induced Displacement and Resettlement." (2012) *Available at SSRN 2028491*.

<sup>64</sup> Julian Agyeman, *Sustainable Communities and the Challenge of Environmental Justice*. (New York: New York University Press, 2005) at 189.

<sup>65</sup> Iris Marion Young, "Justice and Hazardous Waste." (1983) 5 *The Applied Turn in Contemporary Philosophy: Bowling Green Studies in Applied Philosophy* at 174.

environmental decision-making process in EIA mechanisms. Although Asia Energy had mentioned that they had conducted full consultation, most of my respondents from Adibasi communities told me that they were ignored in their focus group discussions and individual level consultations. The company consultants did not ask for any consent. They said that they do not know about free, prior and informed consent and therefore, there is no question of FPIC happened towards them. There is no document available in their languages, nor the state language Bangla. As such, most of the community members had no chance of gaining knowledge about the project and its outcome and impacts. The document was not circulated to people who would be affected. Although there is a volume called IPDP in the ESIA, including resettlement and rehabilitation, potentially affected people were not adequately consulted.

#### **5.2.2.1. Inadequate Access to Information**

Satisfactory access to environmental information strengthens participatory mechanisms in the environmental management process. Successful implementation of any project depends on a corresponding duty of government agencies or companies to report regularly on their activities by confirming the right to environmental information.<sup>66</sup> Most of my Adibasi respondents told me during interviews that the company neither consulted appropriately nor took proper consent from them. Before submitting and publishing the EIA and attaining an environmental clearance certificate (ECC) from DoE, the company conducted surveys and consultation processes. My Adibasi respondents told me that they were unaware of the project even during the survey. Consultants had been collecting information about their family members and household goods. When they asked consultants about the household survey, they had not responded to local people.

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<sup>66</sup> Jona Razzaque, "Environmental human rights in South Asia: towards stronger participatory mechanisms." (2004) in UNEP and Geneva Environment Network, at 33.

The concealed the information of mining. A Santal farmer was telling me, “some foreign consultants came to our hamlet for the household survey. We asked them the reason for the survey, but they could not answer properly. Then they developed roads and started boring on our lands in different places. We saw they found coals and other minerals.”<sup>67</sup> H. Pahan, a farmer from the Munda community, told me that they did not know about the mining until consultants visited their households for surveys. Most of my respondents told me that the government had decided to develop the mine without consulting local people. Before that, the company started boring in various places in 2003. Adibasi people asked the company technicians about the reason while drilling on their agricultural lands, but they did not get answers from them. Adibasis did not understand what was going on. However, at one point, the company started rebuilding roads in the mining area.

During the consultation process, the information the company consultants had provided was not clear to them. They just informed local people that if the mine is developed, they would be benefitted. Consultants did not say anything about the negative impact of open-pit mining on residents and local biodiversity. S. Mardi was recalling the company’s activities and saying that consultants had organized focus group meetings with some Adibasi communities as part of their consultation process where they told local people that they would be benefitted if the mine is developed through jobs and compensation schemes. However, they did not inform about the process of the mining and loss incurred due to the mining activity. Some respondents complained that the consultants also did not tell them that a foreign company would construct the mining.

Giving examples of mining projects in the global North such as Germany, Australia, Canada, and the USA, the company consultants said the area would not be destroyed, drinking and

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<sup>67</sup> Interview with P. Murmu, Boro Bukshi, Birampur, Dinajpur, March 3, 2016.

cultivating water would be provided through developed technology. They also said that there would not be water and air pollution. As Adibasis of Phulbari were not informed properly, they assumed that the mining would be underground like Barapukuria mining in neighboring sub-district. Some of my respondents said that they were educated by NCBD activists during the campaign for the *Gherao Kormosuchi* occurred on 26<sup>th</sup> August 2006 that there would be open-pit mining, which would affect their livelihoods and local biodiversity. That was the first instance when Adibasis had known that there would be open-pit mining by destroying their agricultural lands, households, sacred places, forests, and educational institutions. Soon after hearing the negative consequences of the open-pit mining project, Adibasi leaders and traditional institutions (*Manjhi Parishad*) members told consultants that they do not want open-pit mining in Phulbari. After knowing the process of open-pit mining, people got scared that they must leave their houses and agricultural lands. However, they had no mechanism of fighting against decisions made by the government but started mobilizing to protest.

As most of the Adibasis of Phulbari are not formally educated, they did not know about the ultimate loss and risks they would face for the project, and consequently, some of them consented. The company provided misinformation throughout the process.<sup>68</sup> The general people in Bangladesh are not aware of the harm of development projects due to lack of information and lack of their participation in the decision-making process.<sup>69</sup> W. Mardi told me that he collected a huge book (ESIA report) from the local Asia Energy office which was written in English. He only understood maps of the area and mining footprints. Since most of the local people do not understand English, according to him, the report should have published in the Bangla language; in

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<sup>68</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>69</sup> Abdullah Al Faruque, *Environmental Law: Global and Bangladesh Context* (New Warsi Book Corp.: Dhaka, 2017) at 349.

that case, local people could easily understand what the company's plan is and how would they deal with the concerns of Adibasi communities.<sup>70</sup>

S. Mardi told me that the company only reported the benefits; they did not inform about the expected losses. Moreover, they were not accurately informed about the compensation either. Most of my respondents told me the company consultants reported that the mining would benefit the country and the local area; people would be economically benefitted. Consequently, some of them gave consents which were not informed, nor attained freely. S. Mardi mentioned:

“We had not given consent to the project, although the company had acquired consents from some people through deception and temptation. We also identified that the government should have consulted with us before deciding to develop an open-pit coal mining on our lands.”<sup>71</sup>

#### **5.2.2.2. Consent Acquired by Undue Influences**

Paragraph 3 of both the World Bank's Operational Directive (OD) 4.20 and Operations Policy (OP) 4.10 state,

“Because of the varied and changing contexts in which Indigenous peoples live and because there is no universally accepted definition of ‘Indigenous peoples’, this policy does not define the term. Indigenous peoples may be referred to in different countries by such names as ‘Indigenous ethnic minorities’, ‘aboriginals’, ‘hill tribes’, ‘minority nationalities’, ‘scheduled tribes’, or ‘tribal groups’.”

From this perspective, if Adibasis are not even recognized, they cannot exercise the right to decide whether they want the project or not in their area. I argue that since some Adibasi communities of the Phulbari region are recognized as Indigenous peoples by the company,

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<sup>70</sup> Interview with W. Mardi, Sonajuri, Birampur, March 16, 2016.

<sup>71</sup> Interview with S. Mardi, Sonajuri Hamlet, Birampur, March 06, 2016.

regardless of the government's misrecognition they are enabled to exercise the right to FPIC. ADB's Indigenous Policy identifies that there is dignity in all cultures, that there should be equality in opportunity for all segments of society, and that all sections of peoples deserve an equal chance of access to participation and benefits of development.<sup>72</sup> Article 7 (1) of the ILO Convention No. 169 clearly states:

“The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation, and evaluation of plans and programs for national and regional development which may affect them directly.”<sup>73</sup>

Although FPIC is an exclusive right for Indigenous peoples through which they can decide, as individuals or as groups, about their political status and pursue their economic, social and cultural development, project proponents or states should apply FPIC in every case engaging not only Indigenous peoples but also all project-affected communities unless it is clearly exhibited that the impact of the proposed project would be minimal and the project is in the public interest.<sup>74</sup> The consent they express must be free from any pressure, and in possession of all relevant information regarding the proposed activity and its potential impact.<sup>75</sup> FPIC allows all project-affected Indigenous peoples to be well informed about all aspects of the project and give consent to a project

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<sup>72</sup> ADB, *supra* note 18.

<sup>73</sup> ILO, *Convention concerning Indigenous and Tribal Peoples in Independent Countries* (ILO C169) (1989). Online: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)

<sup>74</sup> Food and Agriculture Organization (FAO), *Free, Prior and Informed Consent: An Indigenous Peoples' Right and a Good Practice for Local Communities, Manual for Project Practitioners* (Paris, 2015) at 17. Online: <http://www.fao.org/3/a-i6190e.pdf>

<sup>75</sup> Anaya, *supra* note 2.

or their territories.<sup>76</sup> Once they have given their consent, they can withdraw it at any stage by exercising their right to self-determination.

Article 10 of UNDRIP states that Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. James Anaya states:

“.....companies should conduct due diligence before proceeding or committing themselves to proceed, with extractive operations without the prior consent of the Indigenous peoples concerned and conduct their own independent assessment of whether or not the operations, in the absence of Indigenous consent, would be in compliance with international standards, and under what conditions. If they would not be in compliance, the extractive operations should not be implemented, regardless of any authorization by the state to do so.”<sup>77</sup>

The decision-making process should reflect the concern for all citizens and contribute to improve the situation of the majority of people and to minimize the number of displaced people. Decisions to resettle thousands of displaced people in remote regions of a country should be completed through consultation.<sup>78</sup> My Adibasi respondents pointed out that the company consultants accomplished consents with deception. They lied. They bribed to local journalists and influential political leaders to force Adibasis to give consent to the project. The company also gave false promises to local Adibasi people during the consultation process. They tempted poor Adibasis with money, jobs, and model towns, which they believed would not get. Some people were tempted by the company’s undue strategy and consented, but most of the people ultimately were with this movement and actively participated.

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<sup>76</sup> FAO, *supra* note 74 at 18.

<sup>77</sup> *Ibid.*

<sup>78</sup> Terminski, *supra* note 63.

P. Murmu recalled that the company consultants organized a meeting where they gave money and food to people who attended and asked them after briefing about only the benefits the mining would bring to the local area “if you would be happy to see the development of your area?” Some of them consented without knowing the consequences for their future. The company completely ignored taking permission from local Adibasi people whether they want mining or not. They directly informed local people that the government would evict them using force.<sup>79</sup> The key respondent of my research Cherobin Hembrom rightly pointed out that any development that harms local communities cannot be treated as development. He questioned, “development for whom? If it is for the country and its citizens, the population should be considered first. If people are not satisfied with any project, the government should not go forward with that project.”<sup>80</sup> Since development occurs for people, if people say ‘no’, nobody should step forward. People will decide whether they want development or not.<sup>81</sup>

### **5.2.2.3. The Company Failed to Consult and Engage Adibasi Communities**

O’Faircheallaigh argues that the powerless in society are, in fact, the least likely to participate in the decision-making process, both because they lack the resources to do so, and they often find the processes involved mysterious and intimidating.<sup>82</sup> Consultation with Indigenous peoples and their representatives in the project development process will ensure better decision-making. Prior consultation between government, corporations, and Indigenous peoples is recognized as an essential mechanism in extractive resource development processes, as the dialogue often results in

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<sup>79</sup> Interview with P. Murmu, Boro Bukshi, Birampur, Dinajpur, March 3, 2016.

<sup>80</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>81</sup> Interview with S.J., Dhaka, April 12, 2016.

<sup>82</sup> Allan P Dale & Marcus B Lane, *Strategic Perspectives Analysis: A Procedure for Participatory and Political Social Impact Assessment* (1994).

either community acceptance or rejection of a project. Involving local and Indigenous peoples in the early phase of the decision-making process reduces the possibility of further conflicts among residents and the policymakers including creating greater trust in the process.<sup>83</sup> Article 6(1) of the ILO Convention No. 169 instructs states to consult with Indigenous communities through genuine representatives maintaining proper procedures in any project development in their territory. Moreover, the same provision requires that Indigenous peoples can freely participate at all levels of the decision-making process within the nation-state. Article 6(2) of the same Convention affirms that consultations have to be in good faith with the object of reaching an agreement with the affected Indigenous peoples.

Although Asia Energy responds in their documents stating that they are concerned about the importance of meaningful participation of Adibasis in the Phulbari project as it has significant adverse effects, actual consultation with affected Adibasi communities has been grossly inadequate.<sup>84</sup> The Public Consultation and Disclosure Plan (PCDP) for the Phulbari Coal Project also states that focus group discussions have been held with various categories of people within the project, with emphasis on vulnerable and special interest groups, including Indigenous groups.<sup>85</sup> However, my respondents told me that they were not adequately informed about the mining decision, the process of mining and the impact of mining. Their right to FPIC, participation, and self-determination in Phulbari were not upheld properly. This is a clear showcase of injustice towards Adibasi communities of Phulbari.

In this current case, Section 1 of Volume 4 of the ESIA for the Phulbari Coal Project' states, "Consultation with stakeholders is an ongoing process, and will continue to be conducted

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<sup>83</sup> Razzaque, *supra* note 66.

<sup>84</sup> Hoshour, *supra* note 30.

<sup>85</sup> Asia Energy Plc., "Public Consultation and Disclosure Plan (PCDP)" in *ESIA for Phulbari Coal Project*, (NSW: Asia Energy Corporation, 2006).

throughout the project development, forming a key component of design, development, implementation, and operation of the project.”<sup>86</sup> The company has failed to consult with local stakeholders for more than five years, but the company is continuing its efforts to force the project forward. Adibasis of Phulbari would be displaced from at least five administrative unions of the Phulbari, Birampur, and Nawabgonj sub-districts, but consultation has been limited to one union of Phulbari only.<sup>87</sup> In addition to that, the documentation of these consultations with Adibasi communities is also inadequate.<sup>88</sup>

It is widely acknowledged that the knowledge of local communities and the participation of Indigenous peoples in decision-making for sustainable development are crucial for the protection of local ecosystems. Mushkat contends that the full involvement of the major stakeholders in environmental decision-making and implementation must be transparent involving varying relations of civil society and the private sector.<sup>89</sup> I talked to some local and national Adibasi NGOs whose names are included in the list of NGOs the company consulted, but they denied and told me that they were never consulted. The chief executive of a leading national environmental NGO told me that the company did not communicate with her. She does not have any idea of how the company used her name and her NGO as ‘consulted’. She said, “I was never formally invited. I never gave my formal consent to discuss with the company. That’s a total lie that they mentioned in the EIA document.”<sup>90</sup> A local Adibasi NGO spokesperson told me that the company had contacted the NGO to get information and statistics about Adibasi households, but they never

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<sup>86</sup> *Ibid.* at 22.

<sup>87</sup> Hoshour, *supra* note 30.

<sup>88</sup> *Ibid.*

<sup>89</sup> Roda Mushkat, “Public Participation in Environmental Law Making: A Comment on the International Legal Framework and the Asia-Pacific Perspective” (2002) 1 Chinese J Int’l L 185.

<sup>90</sup> Interview with S.R.H., Dhaka, April 17, 2016.

invited them to participate in any consultation or meeting.<sup>91</sup> Asia Energy did not contact Bangladesh Paribesh Andolon (BAPA) formally. But they recruited some BAPA members as their consultants and had ‘golden handshakes’. The company wanted to purchase other BAPA members.<sup>92</sup>

IPDP of the ESIA states, “Despite the question and concerns that have been raised during the consultation process, Indigenous peoples have appeared supportive of the project, participating in the consultation process through attendance at meetings and responding to the various surveys.”<sup>93</sup> IPDP further states that just over seventy percent of respondents from Indigenous households agreed with the statement, “the coal project is necessary for the development of the country”.<sup>94</sup> I identify that these are very questionable and vague claims. The actual scenario is different now because the consultants did not inform those people about the project.<sup>95</sup> Attendance at meetings and responding to surveys cannot be equated with support for the project, particularly in light of the very detailed and grave concerns about the project expressed by Adibasi communities. Survey respondents may use the survey to express their opposition and concerns rather than support for the project.<sup>96</sup>

When I was talking to Adibasi communities as part of my research activities, they claimed that they were not properly consulted, and the company achieved some consents through undue processes. As a *Mandal* of his hamlet, R. Mardi presided over many meetings with other members of the council involving Adibasi men and women. He identified that the company failed to consult with Adibasis properly. Some of my respondents whose households and lands are included in the

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<sup>91</sup> Interview with K. Kisku., Phulbari, March 07, 2016.

<sup>92</sup> Interview with S.J., Dhaka, April 12, 2016.

<sup>93</sup> Asia Energy Plc, *supra* note 24 at 45

<sup>94</sup> *Ibid.* at 47.

<sup>95</sup> Hoshour, *supra* note 30.

<sup>96</sup> *Ibid.*

mining footprint told me that the company consultants never consulted with them. The government did not consult with the community, not even with community leaders, about the decision to develop the project in their locality. They were not involved in any decision-making process. There was not a single hearing held involving local and Adibasi communities regarding the project. Many Adibasis claimed that they were deceived because they were not properly consulted. I find the perception the Adibasi communities perceive is clear, “if you want to explore natural resources on our lands, take permission from us with proper consultation.”

### **5.2.3. Population Displacement and Resettlement**

Many resource extracting projects have similar negative outcomes regarding environmental impacts, displacement, and resettlement of local and Indigenous peoples. It is observed that most of the mining projects worldwide are in Indigenous territories and involve negative environmental impacts, displacement, and resettlement of Indigenous peoples and violation of human rights.<sup>97</sup> As stated, various MNCs, TNCs, and multilateral financial institutions are involved in developing large-scale resource extraction projects, dams, military bases, and toxic waste sites in Indigenous areas, which would inevitably affect the conditions of living of Indigenous peoples.

Omar Faruque studies company-community conflict in local settings, drawing on corporate practices of mining companies and shows that companies adopt various strategies to minimize conflict. The author, through qualitative research, finds that instead of addressing the complex issues such as displacement and eviction of local people, the transnational company in Phulbari tried to convince them with economic gain.<sup>98</sup>

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<sup>97</sup> UNDESA, *State of the World's Indigenous Peoples*. Vol. 9. (United Nations Publications, 2009) at 6. Online: <[http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf)>

<sup>98</sup> M. Omar Faruque, “The Politics of Extractive Industry Corporate Practices: An Anatomy of a Company-Community Conflict in Bangladesh.” (2017) *The Extractive Industries and Society*.

Terminski argues that Indigenous peoples are particularly vulnerable to the consequences of displacement and resettlement because they cannot adapt to a new situation due to inadequate mechanisms.<sup>99</sup> Indigenous peoples have their traditional way of managing resources around them, but most of the traditional resources would be missing in new places. The author argues that the displacement of people leads to a violation of many individuals and collective human rights.<sup>100</sup> Adibasi communities in the Phulbari region were very much concerned about losing their Indigeneity. If the project is implemented and if they are displaced from their existing households and social settings, they would not be able to practice their cultural and social festivals and rituals on which their identity exists. There are hundreds of religious and archeological sites in the mine footprint. One of my respondents mentioned, “the mine would kill our identity as ‘Adibasi or Indigenous’ because we must be displaced from our homes and resettled in a new place where we cannot practice our religious, cultural and sacred rites, rituals and festivals as we are practicing now.”<sup>101</sup> He mentioned those cultural practices are their base of human integrity. W. Mardi, a Santal farmer, said:

“There was no problem of developing a mine in the region if that would improve our lifestyle and would benefit the country. We vastly depend on working and cultivating in agricultural fields. Hundreds of thousands of Bangalees and Adibasis of the Phulbari mining region would have been displaced if the mining had been developed. We would not get a similar life in our new place. Since the open-pit mining project would affect our livelihoods, we strongly protested.”<sup>102</sup>

An Adibasi leader reported discriminatory treatments by the government agencies towards Adibasis. He said that Adibasis in Bangladesh had experienced various hurdles: a riot situation in

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<sup>99</sup> Terminski, *supra* note 63 at 4-5

<sup>100</sup> *Ibid.*

<sup>101</sup> Interview with Rob Soren, Dhaka, April 11, 2016

<sup>102</sup> Interview with W. Mardi, Sonajuri, Birampur, March 16, 2016.

1947 during the India-Pakistan partition, India-Pakistan war in 1965, and Bangladesh's war of independence in 1971.<sup>103</sup> They also know the Adibasi displacement and marginalization experience in the CHT due to the development of a hydropower dam on the Kaptai Lake, which was built in 1962 and at least 100,000 Adibasi Chakma, Marma, Tripura, and eight other Adibasi communities were displaced and permanently lost their lands. The government later brought Bangalees from various parts of the country and settled them in the traditional lands of 'Adibasi'<sup>104</sup>. Adibasis of the CHT never got back to their original and traditional lands, and they are still fighting for their survival and self-determination. The state's policy-making and implementing machinery are depriving them of repression. Through these experiences, they knew once they allow the foreign company to develop open-pit mining, they would be displaced and could never return to their ancestral homes.

The fear of displacement from livelihoods, fertile croplands and limited opportunity of the social sector played a vital role in the motivation of the protesters to join the *Phulbari Khoni Andolon*. Adibasis were motivated to protest because they knew from their previous and ancestral history of deprivation that open-pit mining in the area would make them vulnerable to state repression, and it would be impossible for them to deal with the new situation. They were self-educated to recognize that if they were displaced from their lands, they would never return to their agricultural lands, households and sacred places.<sup>105</sup> If the company would have developed mining in that area, at least fifty thousand Adibasis would be permanently displaced. An Adibasi Santal elderly woman told me that they went to the *Gherao* and aftermath protests because they did not want to be dislocated. She said, "the government can extract coal when they have money and have

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<sup>103</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>104</sup> Adibasi of CHT are collectively known as Jumma.

<sup>105</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

their own technology, but by consulting local people, not through the foreign company and not with open-pit mining.”<sup>106</sup>

An Adibasi respondent was motivated to protest the company when he heard from a consultant that they would provide a single room for a whole family as part of their resettlement plan. I find his question, “how can we manage to live with family and domestic animals in a single room?” was valid, as most Adibasi households have domestic animals such as cattle, goats, ducks, and hens on which their livelihoods also depend; thus, they need larger spaces for taking care of them.<sup>107</sup> The company’s resettlement plans have not provided clear indications of ‘how much household property they would get.’

ICESCR and ICCPR (Article 1), Agenda 21 (Paras. 7.6 and 7.9 (b)), Para 2(h) of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) (Article 27), Habitat II and III have kept various provisions of right to adequate housing and settlement for people and the obligation of states to refrain from illegal eviction and displacement. However, displacement or forced eviction would violate the right to protection and housing as well as the rights to freedom of movement. Moreover, problems affecting the displaced people as a result of establishing such projects are very difficult to envisage in the category of violation of the law. The Committee on Economic, Social, and Cultural Rights concluded that forced evictions or involuntary displacement are prima facie incompatible with the requirement of the ICESCR, and all persons should possess a degree of security that guarantees legal protection against displacement.<sup>108</sup>

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<sup>106</sup> Interview with D. Baske. Ratanpur Village, Birampur, March 09, 2016.

<sup>107</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>108</sup> Para 8(a) of General Comment No. 4.

Adibasis could not believe the company's promise about the resettlement plan of building a larger community in the name of an 'ideal village', which they think is not feasible. Since Adibasis understood that if the mine is implemented, they could not stay in their homes, they would lose their agricultural properties: 'there is no point of living' and 'begging would be their ultimate destination' despite having their lands on which they depend,<sup>109</sup> so they resisted. P. Murmu said that he would never transfer his lands to anyone, even to the government. He had recalled Adibasis' struggle to survive in the area. He pointed out that once Adibasis leave the area, they cannot return to their original place. He said that living in his house and attaining his land is his right to live. He was ready to die for protecting his lands and consequently, he joined the movement wholeheartedly.<sup>110</sup>

#### **5.2.4. False Promise and Fear of Unfair Treatment regarding Compensation**

One of the seventeen environmental justice principles confirms that environmental justice protects the right of all victims of environmental injustice to receive full compensation and reparations for damage as well as quality health care.<sup>111</sup> The United Nations Basic Principles and Guidelines on Development based Evictions and Displacement states that "Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size, and value or better."<sup>112</sup> The Bangladesh Constitution guarantees that 'no citizen should be deprived of their right to life and property'.<sup>113</sup> If the government,

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<sup>109</sup> Interview with W.Mardi, Buchki Hamlet, Birampur, March 05, 2016.

<sup>110</sup> Interview with P. Murmu, Boro Bukshi, Birampur, Dinajpur, March 3, 2016.

<sup>111</sup> Ageyman, *supra* note 64 at 189.

<sup>112</sup> UN Human Rights Council, Basic Principles and Guidelines on Development Based Evictions and Displacement (2007) at 68. Online: <https://undocs.org/A/HRC/4/18>

<sup>113</sup> Article 32 and 42 of the Bangladesh Constitution.

following the law, wants to take those rights away for implementing a development project, compensation must be paid.<sup>114</sup> Laws that regulate environmental programs in a particular sector usually allow objections to be raised and provide for compensation for all rights and interests affected by relevant projects. Therefore, all people who are adversely affected have the right to ask for compensation.<sup>115</sup> Although compensation may do justice to the victim for a time being, the injury that would happen can be irreparable or may require a long time to recover.

The project's draft RP also states that most displaced households will become landless because there is no provision in the plan that Adibasis would receive land for land as compensation.<sup>116</sup> The lack of land-for-land compensation in the Phulbari Coal Project violates both national and international regulations.<sup>117</sup> Adibasis claimed that they do not want money; they want similar types of agricultural lands. The government and the company, in this case, are responsible for compensating and relocating those displaced people in their reclaimed lands or properties in a safe environment. If the government or the company does not comply accordingly, it will be a violation of international law.<sup>118</sup>

The company consultants told Adibasi people that if the mine is implemented in their area, they would not have to work, they would easily be able to lead their entire life with the compensation the company would provide. They would have small businesses, and many would get jobs in the mining industry. Many Adibasis agreed to transfer their lands, as the company promised to provide several times higher price than the actual market price of lands. My key informant Cherobin Hembrom said:

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<sup>114</sup> Mohiuddin Farooque, *Selected Writings of Mohiuddin Farooque: Environmental Order, the Security of Survival*, (Bangladesh Environmental Lawyers Association (BELA): Dhaka, 2004) at 152.

<sup>115</sup> *Ibid.*

<sup>116</sup> Asia Energy Plc., "Draft Resettlement Plan" in *ESIA of Phulbari Coal Project*, (NSW: Asia Energy Corporation (Bangladesh), 2006).

<sup>117</sup> Kalafut, *supra* note 26.

<sup>118</sup> Ageyman, *supra* note 64 at 181.

“The company and the government agencies tempted us with undue benefits, but we somehow understood that we would not be benefitted in any way. Local people did not understand how they are going to be benefitted. They primarily believed the company’s temptation, but when they understood the reality, they started mobilizing themselves and protested.”<sup>119</sup>

The company consultants later told Adibasis that the government had sold their lands to Asia Energy for mining which is a complete lie. Adibasi people were told that the government would acquire their lands without giving compensation. However, they would pay well if they give consent to them. They surveyed about their households, listed the price of everything they belong to, which they used to write with pencils. They were anxious and scared that the company would erase the price they promised during the survey and would write the new price.<sup>120</sup>

Everyone in Phulbari knows that neither they nor the country would benefit from the project. According to them, the company would not provide proper compensation, which they learned from two neighboring mine development processes. Referring to the Barapukuria Underground Mining and Madhyapara Hardrock Mining, which are situated only a few kilometers from Phulbari mining area, one of my respondents said:

“People whose properties were acquired for mining, they have not received proper compensation as companies promised. They had not received land for land compensation either. Now we found that the promises were false. I know a person who was once a landowner of an acre, now he is working as a day laborer. The money he received has been spent in a few years. Most of the people who lost their properties and got compensation are now destitute in a similar way.”<sup>121</sup>

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<sup>119</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>120</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>121</sup> Interview with S. Baske. Ratanpur Village, Birampur, March 06, 2016.

Adibasis understood that the mining project would destroy their households and displace them from their ancestors' lands, they would not get actual prices of the alienated lands, and they would not get proper compensation, and subsequently, they would be destitute, marginalized, and powerless.<sup>122</sup> Even in circumstances where agricultural lands and households fell within the compensation scheme, Adibasis believe that compensation could not be valued properly. Some Adibasi respondents also told me that the borderline households and agricultural lands of the mine footprints would also be affected, but those affected lands or households would not be covered under the compensation scheme. This matter was not discussed or was not taken into consideration, and consequently, the owners of those lands were not consulted. An Adibasi leader stated:

“I can be an example of this situation. I have seen the map of the projected plan and found that some of my agricultural lands are included in the planned map, but my house is not included in the map. According to the map, I would not be displaced but I have to face all the negative impacts of open-pit mining. I would get ashes and burning heat. It is not only people of the mining region but also the surrounding communities would be directly affected.”<sup>123</sup>

The concern that “people who would be affected invisibly, would not be compensated” was firmly constituted among Adibasis, and influenced them to attend the protest rally and assemblies. Although people whose agricultural lands and households fall under a planned map would be compensated as ‘damages for land loss,’ this compensation would never be valued properly. Adibasis could easily understand that most of the affected people would never benefit from the Phulbari Coal Project. During the survey period, landowners who do not cultivate their lands did not receive compensation for boring or damaging their lands. However, sharecroppers received compensation for losing their crops. W. Mardi was telling me that there were six pillars (for each

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<sup>122</sup> Interview with K. Kisku., Phulbari, March 07, 2016.

<sup>123</sup> Interview with Ram Soren, Phulbari Bazaar, March 11, 2016.

pillar he got 33 BDT or 0.5 CAD) on his lands and as he was cultivating the lands, he received compensation. Some respondents said if they would have known that the government has leased a company to extract coal by destroying their lands, they would never give consent to bore in their lands.

When Adibasi heard that they would be more affected and would lose all agricultural lands with less compensation, Adibasi community leaders, their traditional institutions, and some Adibasi NGOs of the Phulbari mining region started opposing the project strongly.<sup>124</sup> Mobilization around the value of fostering agricultural production, small businesses and household craft rather than coal mining motivated people to join the movement.<sup>125</sup> Changing the voices of Adibasi protesters from low to high inspired them to continue and get more involved in the protest. When they heard a committee was formed in Phulbari town to protest, they went forward and showed their interest to protest. The project is going to represent a clear breach of multiple rights. The right not to be deprived of one's own resources, the right not to be deprived of one's livelihood, and the right to both life and family life will not be respected. Therefore, the lives of displaced people will be disrupted for unwanted hazardous activity. In the case of the Phulbari Coal Project, the government must take responsibility to protect the rights of local and Adibasi peoples. Also, the government must engage the company to ensure environmental justice for all.

### **5.2.5. Claiming a “Fair Share” of Benefits Accruing from the Project**

The Phulbari open-pit mining project would destroy houses, educational institutions, religious institutions, and agricultural lands permanently. While it would make powerful people more

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<sup>124</sup> Interview with N. Pahan, Belpukur Hamlet, Birampur, March 11, 2016.

<sup>125</sup> Interview with T. Murmu, Dhakundah Hamlet, Birampur, March 06, 2016; Anu Muhammad, *Phulbari Koyla Khoni: Kar Lav, Kar Kkhoti*.

prosperous, it was not done for the community and the country as a whole.<sup>126</sup> An Adibasi leader told me with frustration:

“Some advantaged people of the country would be benefitted from this project. Those are nobody but policy and decision-makers. They make plans, lease out natural resources to foreign corporations, displace and relocate poor people. Some of them already made huge money for their double-standard actions. This project would never benefit people who live in Phulbari, Briampur, and Nawabgonj. The majority of people have to lose everything.”<sup>127</sup>

Critics of the neoliberal policy argue that through these sorts of development projects, the government only sees the benefits of corporations and the government instead of seeing the benefits of citizens or the country as a whole. The government does not see the benefits of local people; instead, TNCs are being benefitted through the government’s policies. Some Adibasis bargained with the company consultants at an individual level. One of my Adibasi respondents told a consultant, “if any mineral resource is found under our lands, that belongs to us, we are the owner of that resource.” The consultants reminded him that the government would forcefully evict them anyway; in that case, they would lose their compensation. Like him, some other respondents said that they should have shared in the mineral resource found on their lands. However, Cherobin does not think that way. He said:

“Although I have not seen anyone who claimed the share, I don’t see any problem of claiming the shares from the company or the government. We are the people who would lose everything, which can never be valued. Although we would get price compensation for our lands, we cannot buy lands with the compensated money in this land-scarce country.”<sup>128</sup>

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<sup>126</sup> Interview with Ram Soren, Phulbari Bazaar, March 11, 2016.

<sup>127</sup> Interview with Ram Soren, Phulbari Bazaar, March 11, 2016.

<sup>128</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

Cherobin told me that when he understood that they could not stop mining in their region, the government might evict them, and for that reason, he asked for several times more price of their lands and household goods. Their argument was if the government provide them the same number of agricultural lands in another location, they will leave the place for the better interest of the country. Moreover, Adibasi communities had decided after discussion in *Manjhi Parishad* meetings that since they must leave their lands permanently, the government must provide the same quality and quantity of agricultural lands for them in another place. The government must settle the prices of houses, household goods, and cattle, trees, etc. reasonably. Adibasis also decided and told consultants and policy-makers that people who want coal mine should move to Phulbari, and people of Phulbari go to their places. Cherobin Hembrom told that people who did not go through the refugee situation would not understand their pain. Other people may want development projects in Adibasi areas, but they would never leave their place for mining. He said, “now, we can demand a mine development in Dhaka and evacuate the whole city, they would never leave their place.”<sup>129</sup>

#### **5.2.6. Environmental Degradation Risk and Health Insecurity**

The Phulbari Coal Project would lead to severe pollution of air, water, and soil that has plagued communities living with coal extraction and coal-fired power plants, with grave health impacts on the local people. Environmental degradation and negative impacts on local biodiversity, drinking and irrigation water scarcity, climate change, and public health were other concerns for local Adibasis.<sup>130</sup> They learned about the destructive impacts of open-pit mining through NCB

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<sup>129</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>130</sup> Interview with Rob Soren, Dhaka, April 11, 2016

campaigners, who showed documentary films on open-pit mining projects in different places and educated the villagers effectively. They understood that if the project would have been developed, people could not lead their normal life in the region.<sup>131</sup> An open-pit mining method needs water of the whole area to be drained and the topsoil to be removed. This could cause deforestation and loss of productivity of agricultural lands.

My Adibasi respondents told me that their livelihood largely depends on forest and wetlands. They collect flowers for their cultural festivals, which they observe for centuries. They use dry leaves and bunches of forest trees for cooking. They hunt fishes from nearby wetlands. Adibasis manage their surrounding natural resources sacredly using their traditional knowledge, which learned from their thousand years of ancestral traditions. They identify nature as ‘God’.<sup>132</sup> They knew that if the project had been implemented, everything would be destroyed. They are also concerned about the Sundarbans forest. An Adibasi leader told me that this sea-lying largest mangrove forest has been saving the country from huge destruction of cyclones.<sup>133</sup>

Local people would face various health problems too. Extracted coal would create dust and pollute air and soil, which in various ways that would affect the human health of the local communities. An NGO worker told me that one of the major concerns of Adibasis and other protesters to attend the *Phulbari Khoni Andolon* was environmental degradation, which ultimately would affect their health. He said, “although my village is five kilometers far from the minefield, villagers would be affected due to mining activities.”<sup>134</sup> He learned about the impact of mining from the Barapakuria coalfield. He said, “I was observing the environmental change of the local area as part of my work in my organization and found that the Barapukuria mine contributes

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<sup>131</sup> Interview with C. Mardi., Lakshipur Hamlet, Phulbari, March 07, 2016.

<sup>132</sup> Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, April 05, 2016.

<sup>133</sup> Interview with Rob Soren, Dhaka, April 11, 2016

<sup>134</sup> Interview with K. Kisku, Phulbari, March 07, 2016.

various ecological problems. For example, the production of coconuts and other fruits has drastically decreased.”<sup>135</sup>

### **5.2.7. Water and Food Insecurity**

Water scarcity throughout the country is visible. Water is not seen in small rivers, which are affecting irrigation throughout the country. Bangladesh has a network of hundreds of small rivers, meaning that water pollution in one area can spread over a large area. The Phulbari Coal Project would divert the Little Jamuna River and suck an aquifer dry for more than 30 years.<sup>136</sup> The river is crossing the mining footprint. I have seen during my field activities that the water level of the river already went down. To implement the mining project in Phulbari, a huge area needs to be cut to reach coal that lies 150m to 250m below the surface. To prevent the mine from flooding and to keep the mine pit dry, huge pumps would run 24 hours a day for the whole mining period. Thus, the mining operation would need to pump up to 800 million liters of water a day out of the mine. The discharged water often contains large quantities of toxic shock syndrome (TSS), total dissolved solids (TDS), and hard and heavy metals, which contaminate the surface and groundwater. This water is sometimes acidic and pollutes the water system.<sup>137</sup> The acid mine drainage may render water sources undrinkable and contaminate groundwater needed for agriculture for centuries to come. Water will also be polluted from washing of coal, risking pollution of surrounding water bodies.<sup>138</sup> My Adibasi respondents told me that water quality in the close vicinity of underground mining in Barapukuria became toxic. One of my respondents told

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<sup>135</sup> Interview with K. Kisku, Phulbari, March 07, 2016.

<sup>136</sup> H. Withanage, Bangladesh: Phulbari Coal Mine -“Losses beyond Compensation”. *Bankwatch*. (Quezon City, Philippines: NGO Forum on ADB, 2008)

<sup>137</sup> R. K. Tiwary, “Environmental Impact on Coal Mining on Water Regime and its Management.” (2001) *Water, Air, and Soil Pollution*, at 186.

<sup>138</sup> *Ibid.*

me that people of Barapukuria are not getting enough water from underground tube-wells, which are largely affecting the production of agriculture. Moreover, the taste of drinking water which they collect through tube-wells turned bad. My Adibasi and Bangalee respondents informed me that the water in the area changed sometime after the company started functioning.

Due to mining drain out, the groundwater in an area covering about 500 square kilometers would be lowered.<sup>139</sup> In this case, wells would no longer provide enough water for farmers. Underground water is the most significant source of water for drinking, cooking, washing, bathing, and other domestic purposes in the area. The pond-water and river-water are not used for drinking or cooking by the Adibasis but is used for irrigation purpose. The dry season is the toughest time for getting water through deep tube wells for every purpose since the water level of the groundwater-surface goes down. Since farmers of the mining area produce rice twice a year, they need water frequently for irrigation. Most of my respondents pointed out that although they are getting enough water for drinking and irrigation now, the vast use of water in the mine operation would largely affect their agricultural production. Once the mining is finished, Asia Energy plans to create a huge lake, providing freshwater, fisheries, and recreation; according to the company. But after more than 30 years of digging, water will be toxic.<sup>140</sup> Since their livelihoods are dependent on agriculture and the water scarcity is obvious due to the mine operation, they resisted.<sup>141</sup>

Adibasis are most concerned about losing their agricultural lands on which they depend most. Adibasis consume rice three times a day for a living and claimed that they would be affected most due to a shortage of food. Most of the areas of the mining footprint cover agricultural lands, which

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<sup>139</sup> Withanage, *supra* note 136 at 27.

<sup>140</sup> *Ibid.*

<sup>141</sup> Interview with J. Baske, Dhanjuri Hamlet, Birampur, March 05, 2016.

would have been destroyed completely. Moreover, the production of crops would be largely affected by contaminated air, soil, and water.

### **5.2.8. Foreign Company and Lack of Transparency**

Some of the Adibasi respondents told me that if it were a domestic company, the resistance would not have been so strong. They were concerned that foreign investors, in the name of investing and helping the country through extracting natural resources, are stealing national resources by destroying local ecology and livelihoods. But some disagreed and contended that they were scared because transnational corporations have a direct connection with the government, and the government always wants to protect them, which was seen throughout organizing the movement. Asia Energy, with the help of the government's law enforcement and security agencies, repressed the protesters and solidarity groups, which I have shown in the previous chapter. Consequently, many people could not attend the protest because they were scared and hopeless.

An Adibasi farmer from the Munda community expressed that the experience of corruption in the Barapukuria coal and power plant project and Modhyapara hard rock mining<sup>142</sup> also worked to motivate people to join the *Phulbari Khoni Andolon* since landslides are happening more often.<sup>143</sup> Adibasi and other protesters have still firmly believed that the company will start developing open-pit coal mining in the Phulabri region by creating pressure on the government. Indicating corruption at Barapakuria Coal Mining, W. Mardi told me that *Dalal* of the company made huge money out of doing nothing, but villagers who lost their lands are landless now and becoming refugees as unexpected impacts of the mining. Local people who would have been evicted from

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<sup>142</sup> Both the mining projects are situated within the vicinity of the Phulbari mining footprint.

<sup>143</sup> Interview with N. Pahan, Belpukur Hamlet, Birampur, March 11, 2016.

their lands did not get proper compensation. People learned from the observation and did not agree with the open-pit mining process.

Although the Prime Minister has said that the government will not develop a mass destructive project in Phulbari, which will cause damage to the country's natural resources and local farmers and Adibasi people, protesters cannot solely rely on her statement. They want to break ties between the government and the company so that the company cannot continue their share businesses in London's AIM. Furthermore, people have known through transnational networks and advocacy groups—later published by Wikileaks—that the US government has been continuously planning to implement the project, as 60% of the company's shares are owned by USA companies.<sup>144</sup> A prominent environmental lawyer told me that it is common everywhere in the world. This is the double standard of the donor agencies in the global South where they bring MNCs from the global North into the scenario. Donor countries do not do this practice in their own countries. But they go to the global South and corrupt their officials through bribes and undue gifts. When local people were informed by NCBD and other solidarity groups about the company's corruption and power, they found a new spirit to resist the company. As Ram Soren told me, "Asia Energy lost all credibility, and we will not allow the company in Bangladesh."<sup>145</sup>

### **5.3. Tactics of the Environmental Justice Movements in Phulbari**

The environmental justice movement involves various tactics such as road or long marches, petitions, rallies, coalition, and community empowerment through litigation, violent and

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<sup>144</sup> Huffington Post, "Big Coal WikiLeaks Emergency in Bangladesh: Does Obama Support Removal of 100,000 Villagers?" (May 24, 2011). Online: [https://www.huffingtonpost.com/jeff-biggers/big-coal-wikileaks-emerge\\_b\\_840037.html](https://www.huffingtonpost.com/jeff-biggers/big-coal-wikileaks-emerge_b_840037.html)

The guardian, "WikiLeaks cables: US pushed for reopening of Bangladesh coal mine" (December 21, 2010). Online: <https://www.theguardian.com/world/2010/dec/21/wikileaks-cables-us-bangladesh-coal-mine>

<sup>145</sup> Interview with Ram Soren, Phulbari Bazaar, March 11, 2016.

nonviolent direct action. In fact, a central debate in environmental justice scholarship is over the relative efficacy of legal strategies versus ‘direct action’. In the following few paragraphs, I compare various tactics of the environmental justice movement as observed in Phulbari.

### **5.2.2. Representative Suit and PIEL**

Since the right to life and property is a fundamental right under the Bangladesh Constitution, the right should be enforceable as a prerogative by the High Court Division (HCD) of the Supreme Court of Bangladesh (SCB) through exercising extra-ordinary jurisdiction.<sup>146</sup> The court may issue an interim order for upholding someone’s right to life and property. However, the HCD cannot exercise the jurisdiction if the order affects the implementation of any development project. Therefore, the order can only be given if it is not liable to prejudice the program or if the order prejudices a development project in any manner, no ad interim injunction can be issued.<sup>147</sup> Mohiuddin Farooque, the pioneer of public interest environmental litigation (PIEL) and environmental justice movement in Bangladesh, argues that if the case is allowed to proceed against a development project without the power of the court to issue an ad-interim injunction, there is no jurisdiction to allow the case.<sup>148</sup> He states that ad interim injunctions/orders are made to protect the ends of justice. If the court cannot exercise that extra-ordinary jurisdiction, affected communities would be deprived of their rights because the due process of civil litigations takes a long time. If a plaintiff gets a decree in favor of him after 15 years through civil litigation, the proper justice would not be served. Because in the meantime, the project may be implemented. Although such a decree can only help the plaintiff to get compensation, local people must face the

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<sup>146</sup> Article 102 of the Bangladesh Constitution

<sup>147</sup> Article 102(4). See also, Farooque, *supra* note 114 at 153.

<sup>148</sup> *Ibid.*

disproportionately negative impact of the project.<sup>149</sup> The Bangladesh Code of Civil Procedure of 1908 has a provision of the representative suit where a representative on behalf of affected communities can file a petition to the court of justice to protect their rights (only to seek compensation as a remedy).

PIEL is considered as an effective strategy to ensure environmental justice in South Asian countries, especially in India, Pakistan, and Bangladesh. It can provide innovative and accessible remedies to the people affected by environmental degradation or development projects. PIEL is a vehicle through which people can be aware of their right to environment, making environmental justice accessible to the common people and enhancing their participation in the environmental decision-making process.<sup>150</sup> In India, a PIEL can be filed only against the state government, central government, municipal authorities or any other authority that comes within the purview of a 'state' under Article 12 of the Indian Constitution. The litigation can be brought in the Supreme Court of India under Article 32 of the Indian Constitution, in the High Court under Article 226 of the Constitution, and in the Court of Magistrate under Section 133 of the Criminal Procedure Code.<sup>151</sup> But in Bangladesh, a PIEL is only filed in the HCD of the SCB through a writ petition to challenge the action of the public bodies or individuals violating environmental law and regulations. It prohibits the alleged industry or body from violating environmental law and regulations by obtaining pre-emptory order to perform a specific duty in public law.<sup>152</sup> PIEL also enables the accountability of the government for its failure to protect the environment and human lives. Moreover, it extended the meaning of the fundamental rights under the Constitution of Bangladesh

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<sup>149</sup> *Ibid.*

<sup>150</sup> Faruque, *supra* note 69 at 354.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.* at 349.

to ensure everyone is entitled to live in a healthy environment.<sup>153</sup> According to Abdullah Al Faruque, many conflicts can be avoided and resolved if civil society and NGOs are engaged in the decision-making process.<sup>154</sup> PIEL is considered as ‘participation’ because the suit engages complainants and respondents in the court’s court process.

The availability of PIEL in Bangladesh is a result of relentless efforts by environmental lawyers and NGOs. In that process, many human rights and environmental NGOs have set their priority issues for PIEL, and by instituting PIEL before the Supreme Court of Bangladesh, NGOs have been making governmental agencies accountable to perform their duties by enforcing environmental regulations.<sup>155</sup> However, the practice of PIEL instituted by NGOs through a writ petition to the SCB to protect the environment and human dignity was not achieved easily in Bangladesh. BELA is a pioneer in introducing PIEL in Bangladesh and has filed many PIEL for the protection of the environment and human life. There was a question among judges whether an NGO or an individual, who is not affected by any action of a public body or any development project, has *locus standi* (standing right) as there was no clear direction, understanding, and manifestation in the Constitution or any statute. Article 102 of the Constitution allows ‘any person aggrieved’ to file a suit in these cases. In *Dr. Mohiuddin Farooque vs. Bangladesh*, Ccivil Appeal No. 24 of 1995, the apex court resolved the issue of *locus standi* in PIEL and extended the phrase ‘any person aggrieved’ to ‘any person with sufficient interest’. The petitioner was the Secretary-General of BELA and he achieved *locus standi*.<sup>156</sup> There are some other cases through which environmental NGOs and individuals have instituted PIEL on ‘sufficient interest’ grounds.<sup>157</sup>

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<sup>153</sup> Farooque, *supra* note 114 at 152.

<sup>154</sup> *Ibid.*

<sup>155</sup> Faruque, *supra* note 69 at 348-349.

<sup>156</sup> Farooque, *supra* note 114 at 7.

<sup>157</sup> *Md. Idrisur Rahman v. Shahiduffin Ahmed and others* 51 (1999) DLR, AD, 162. *Syeda Rizwana Hasan vs. Bangladesh & Ors* 9 ADC (2012) 816

Moreover, the judgment also recognized the right to a healthy environment by analyzing the constitutional guarantee.<sup>158</sup> Therefore, the court can initiate legal reforms by filling the gaps between law, policies and institutional frameworks through PIEL. The judges in Bangladesh through *suo moto* rule have redressed injustices committed by government agencies in contravention to the fundamental rights guaranteed by the Constitution.<sup>159</sup>

I asked a BELA spokesperson if the organization could file a PIEL against Asia Energy or the government. She said that since a PIEL cannot be filed against the company and therefore, the court would not hear about the issue of the case. In this regard, BELA or anybody who has *locus standi* could file a writ against the government, but the writ would not stand against the government, because the court may reason that there is no valid agreement between the company and the government, and the project did not harm anybody yet, and their rights were not violated. Any affected person or any NGO could file a suit before the environmental court about the validity of the EIA, but since DoE accepted the company's EIA which they published later and granted an environmental clearance certificate, the court, in practice, might not hear the case.

### **5.3.1. Violence, Repression and 'Occupying Streets'**

#### **5.3.1.1. Phulbari Khoni Andolon**

Most of the respondents of my research stated that 'occupying the street,' is an effective way to achieve justice for people in the Bangladeshi perspective. During interviews, my respondents shared multiple examples of cases of harassment of Adibasis and non-Adibasis in the mining footprint. Many protesters were beaten by both by *Dalal* and security forces before, during, and after the movement. When protesters heard that 'three or more people were killed', they occupied

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<sup>158</sup> *Ibid.*

<sup>159</sup> Faruque, *supra* note 69 at 354.

the street as their weapon to show their strength. During the four-day protest in Phulbari in 2006, thousands of local people occupied major streets. Adibasi men and women who could not attend the rally on 26<sup>th</sup> August 2006, they cooked, and feed protesters sang, and danced with traditional dresses on Dhaka-Dinajpur Highway by blocking all communication with the capital city which inspired hundreds of protesters. They were unmoved until the six-point demands were signed by the government and NCBD, although security forces tortured unarmed protesters. There were multiple clashes between protesters and security forces reported during this period.

The government assured the company that they could implement the project despite having huge local resistance. During the campaign stage of the movement, the government deployed law enforcement agencies to suppress the protesters from the very beginning of the mobilization. The company personnel only contacted influential local people, whom they thought, could influence poor farmers. They manipulated those people with bribes and other undue amenities without making any connection with the mass of people. According to one of my respondents, company consultants bribed local administrative authorities. *Dalal* was empowered with huge money and power. The company provided money, and the local administration sheltered them. *Dalal* and other company agents on different occasions tried to break the ties which were built among protesters. They used different tactics to stop the movement.

James Anaya, in his “Report of the Special Rapporteur on the Rights of Indigenous Peoples” of UN General Assembly, states:

“Many cases have come to the attention of the Special Rapporteur in which Indigenous individuals or communities have suffered repression for their opposition to extractive projects. In several of the cases, Indigenous individuals and groups opposing extractive

projects have been met with acts of intimidation or violence, including violence resulting in death.”<sup>160</sup>

Anaya demands that states must adopt necessary measures to secure the rights of Indigenous peoples so that they can express their disagreement with mining development in their territories. The states and companies must provide training to their security forces to protect Indigenous communities from any act of intimidation and violence.<sup>161</sup> Anaya also recommends that companies who are developing resource extractive projects should take reasonable measures to protect Indigenous cultural and social patterns by adopting sensible policies and practices following relevant human rights standards.<sup>162</sup> Justifying the demands of various environmental justice leaders, Bullard and Johnson argue that no community or nation, in any race or color, should be allowed to become a victim of environmental degradation. In connection with the arguments of Anaya, the authors claim that companies and governments have often exploited local Indigenous communities through their unsound and risky operations.<sup>163</sup> The communities are also economically deprived due to unequal political power arrangements in society.

In the case of the Phulbari Coal Project, concerned international organizations including the UN urged the Bangladesh government to stop the project. James Anaya, including six other Special Rapporteurs<sup>164</sup> of the UN, issued a joint press release on 28<sup>th</sup> February 2012, calling for an immediate halt to the project and conveyed their concerns about violations of fundamental human rights of hundreds of thousands of people, including Indigenous peoples.<sup>165</sup> They stated,

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<sup>160</sup> Anaya, *supra* note 2 at 7.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

<sup>163</sup> Bullard and Johnson, *supra* note 8 at 558.

<sup>164</sup> The group of seven independent experts consists of Mr. De Schutter, Ms. Albuquerque, Ms. Rolnik, Mr. Anaya and Mr. Kiai, as well as Frank La Rue, Special Rapporteur on freedom of opinion and expression; and Magdalena Sepúlveda, Special Rapporteur on extreme poverty and human rights.

<sup>165</sup> Foil Vendanta, From Phulbari to Niyamgiri! (20 December, 2012). Online: <http://www.foilvedanta.org/news/from-phulbari-to-niyamgiri/>

“Displacement on this scale, particularly of Indigenous peoples, is unacceptable without their free, prior and informed consent, and poses an immediate threat to safety and standards of living.”<sup>166</sup> The experts warned the government of Bangladesh that the “Phulbari coal mine should not be allowed to proceed because of the massive disruptions it is expected to cause.”<sup>167</sup> In the wake of the protest, a Bangladesh Supreme Court Committee recommended the project be stopped as they found it to hurt the environment and Indigenous peoples. The court later asked the company to come up with proposals for an environmental rehabilitation project and compensation to meet the demands of protesters.<sup>168</sup>

I identify that the *Asia Energy Office Gherao Kormosuchi* against the company was successful because the outcome of the movement reflected the demand of all people. Throughout the period, the protesters had been repressed by security forces, local powerful political leaders, and their goons. Many people could not protest publicly due to political pressures and criminal charges brought against them. Their anger was great, which was reflected in the *Phulbari Khoni Andolon*. In the following two sections, I incorporate examples of Bangladeshi direct action campaigns as part of environmental justice movements. The first one occurred between 2005 and 2007 (concurrently with the Phulbari resistance movement), where Adibasi communities occupied streets and became successful without forming a coalition with national and transnational organizations. I am illustrating two other environmental movements where protesters are still fighting to be successful.

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<sup>166</sup> United Nations, “Open-pit coal mine project in Bangladesh threatens human rights – UN experts” (28 February, 2012), UN News. Online: <https://news.un.org/en/story/2012/02/404922-open-pit-coal-mine-project-bangladesh-threatens-human-rights-un-experts#.UXIIsbU3vzx>

<sup>167</sup> *Ibid.*

<sup>168</sup> Sadid A. Nuremowla, *Resistance, rootedness and mining protest in Phulbari*, DPhil Thesis. University of Sussex, (2012) at 11.

### 5.3.1.2. Garo Movement to Protect Madhupur Forest

As part of the Forest Department of Bangladesh's strategy to construct eco-parks aiming to protect the remaining forest resources and to create employment for local people, an eco-park project called the Madhupur National Park Development, popularly known as the Madhupur Eco-park, was planned to be constructed in the Madhupur forest in 1999. The Department would construct a boundary wall occupying 3000 acres out of the 21,000 acres of the total forest land. The World Bank and ADB supported and financed this eco-park project by giving loans to the Department.<sup>169</sup> The proposed project would create picnic spots, lakes, ponds, and guesthouses to provide recreational facilities for promoting eco-tourism. Moreover, a road would be built along the boundary wall so that visitors could walk around the forest.<sup>170</sup> The government's concern was that national forests were being destroyed by local people, although Adibasi Garo<sup>171</sup> and Koch<sup>172</sup> communities, who have been living in this forest for several hundred years, rejected the allegation.<sup>173</sup> Their livelihoods largely depend on forest resources, which they manage traditionally. They also cultivate bananas and pineapples. They believe that 'forest is the Mother' because their survival depends on the forest, and there is no point in 'killing their Mother'. Moreover, many cluster villages are surrounded by this core area of the forest, where many Bangalees migrated lately. They cleared some portions of forestlands and grabbed Adibasi

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<sup>169</sup> Sadia Drong, "Problems and Issues of Garo and Koch Community in so-called Eco-Park Project of B'desh" (4 December, 2008) in Asia Indigenous Peoples Pact (AIPP). Online: <https://aippnet.org/problems-and-issues-of-garo-and-koch-community-in-so-called-eco-park-project-of-bdesh/>

<sup>170</sup> The Forest Department Project Proposal, 2000.

<sup>171</sup> The Garo, also known as Mandi, is one of the Adibasi communities live in north-central and north-eastern parts of Bangladesh. This is the only community in Bangladesh who maintains matriarchy. They are mostly converted into Christianity now but have distinct cultural and social identity from other communities.

<sup>172</sup> The Koch is an ethnic community living in the North-Central and Northern regions in Bangladesh. Koch belongs to the Tibetan-Burman branch of Mongolians. They are very small number now in Bangladesh. There are a large number of Koch live in India in different states like Koch Bihar, Jalpaiguri and Meghalaya.

<sup>173</sup> Farid Ahmed and Nicholas P. Low, "Environmental Justice Dialogues and the Struggle for Human Dignity in the Deciduous Forest of Bangladesh." In *Environmental Justice in the Anthropocene*, (Colorado State University, 2017).

people's agricultural and traditional lands. They claimed that the government also alienated their lands in the name of various projects.<sup>174</sup> The Department started a rubber plantation project in the forest by wiping off 8,000 acres of Sal forest with the loan from ADB and the World Bank. According to Adibasi communities, banana and pineapple plantations are largely being affected due to the commercial rubber plantation.<sup>175</sup>

In this case, Adibasi Garo claimed that they heard the news from media reports and later from the local administration. The government never asked the surrounding communities whether they want the eco-park or not. They were never consulted, and therefore, they were not involved in the decision-making process. Hearing the news of the eco-park, local Garo started resisting the government's decision, believing that the eco-park project will, directly and indirectly, affect their livelihood. The project would obstruct their freedom of movement, which is guaranteed by the Bangladesh Constitution.<sup>176</sup> They formed small groups in each village to discuss the issue, formed a coalition with some NGOs, and contacted media. They also formed a committee named the Committee for Indigenous Peoples' Land Rights and Environmental Preservation (CIPLREP) to protect their interests.<sup>177</sup> The Committee negotiated with Department officials, local administration, and respected ministers to halt the project and submitted a ten-point demand to the government. However, in most cases, the meetings failed to reach a firm solution. They organized several protest rallies, focus group discussions, human chains, roadblocks, assemblies and street events against the project.

During the protests that started in 2000, many Adibasi Garos were arrested, tortured, and repressed in ways such as filing false criminal cases against protest leaders. A Garo activist named

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<sup>174</sup> *Ibid.*

<sup>175</sup> Sadia, *supra* note 169.

<sup>176</sup> Article 36 of the Bangladesh Constitution.

<sup>177</sup> Ahmed and Low, *supra* note 173.

Piren was killed, and several were injured on January 3, 2004, when security forces and the forest department's guards opened fire on a rally organized by the Committee. The project was suspended, and the Department was silent until January 2007 when a military-backed new government came into power. But the death of an Adibasi leader named Choles Ritchil by RAB force geared the movement up at a new pace.<sup>178</sup> Protesters occupied the street until the government declared the project was suspended. Both the incidents attracted the attention of political parties, educated professionals and the media, as the Madhupur killings received widespread coverage in the national dailies. The killing of Piren and Richil boosted the spirit of determination in the Garo community. They were now ready to sacrifice everything for their cause. Adibasi Garo protesters did not stop resisting the powerful sectors, although they still have been facing various repressive actions of the administration. Up to 2007, nothing went wrong against their interests. The protesters, through negotiation, could create pressure on the Forest Department and could make the government understand that the forest is their only place for their livelihoods, and they had been depending on it for centuries.<sup>179</sup> Moreover, through their protests, Adibasi Garos pointed out that they must be recognized as Adibasi and, as such, they have the right to participate in the decision-making process. Maybe the conflict could be avoided if they were allowed to explain through public participation that how the project will impact them. In that case, decision-makers could have designed the project accordingly. The current government appointed a Garo member of the parliament to the cabinet in the last two consecutive terms. Like Phulbari mining protesters, Garo protesters also see 'occupy the street until their demands are fulfilled' as the solution to resolve problems in Bangladesh.

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<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*

### 5.3.2.3. Banshkhali and Rampal Movements

In both Phulbari and Madhupur Adibasi protests, there have been violence, killings, arrests, deception, and lack of transparency that coincides with protesters' accounts of the tactic of 'occupying the street.' But the statement is not always true, even in the Bangladesh perspective. While I was researching and conducting my field activities in the Phulbari mining area and Dhaka, Bangladesh, I observed some other events of protest movements stopping at least two coal-fired power plants (Banshkhali and Rampal) which the protesters thought would be harmful and disastrous for residents and the environment. In both cases, local protesters gathered together and protested strongly but failed to stop the operations. The Environmental Justice Atlas (EJATLAS) labeled both movements as failed environmental justice movements; whereas, Phulbari was labeled as successful on their website. I have been trying to understand why the same group (NCBD), who was successful in Phulbari, failed in other environmental justice campaigns in Bangladesh.

In Banshkhali of Chattogram district, at least five local people were killed by the police force in four subsequent protest movements to halt an imported coal-based power plant before April 4, 2016.<sup>180</sup> The controversial joint venture two 660MW coal plants are being built by a joint venture company (JVC) comprising two private companies, one from Bangladesh and another from China, on a forcefully-acquired coastal 600 acres of coastal land even before conducting an EIA.<sup>181</sup> Although the company failed to get an environmental clearance certificate from DoE as of May 6, 2016,<sup>182</sup> and the company suspended the work after the killing incidents, local protesters are

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<sup>180</sup> IC Magazine, Justice for the Banshkhali People (July 7, 2016). Online: <https://intercontinentalcry.org/justice-banshkhali-people/>

<sup>181</sup> The Independent, Deal signed for \$2.5 billion project (17 February 2016). Online: <http://www.theindependentbd.com/post/34279>

<sup>182</sup> Energybd, Banshkhali coal-based plant fails to get environmental clearance, (May 7, 2016). Online: <http://energynewsbd.com/details.php?id=562>

worried about their future.<sup>183</sup> The Committee to Protect Households and Graveyards organized a protest rally where thousands of local people joined together to protest and ask the company to stop developing the project in Gondamara, Banshkhali. Police and local goons attacked and killed four people and left hundreds injured.<sup>184</sup> However, police filed criminal cases against more than 3000 protesters, who left their villages to avoid arrests. The local protesters claimed that the raids were being conducted to foil their movement against a coal-fired power plant there.<sup>185</sup> The locals alleged that JVC's local agents forced them to sell their lands to the company. Some of them were deceived as well.<sup>186</sup> They think that since the company is allegedly a close ally of the current ruling party, they would easily take over the place for building coal-fired power plants disregarding the local outcries.<sup>187</sup>

Due to my field activity in Phulbari, I could not attend a five-day long march from Dhaka to Rampal organized by NCBD in April 2016 as part of the ongoing protest, a joint venture coal-based power plant in Rampal of Bagherhat District. The protest began several years ago among residents threatened with displacement by a JVC project in the event of a deal between Bangladesh's Power Development Board (PDB) and India's National Thermal Power Corporation (NTPC). The JVC decided to set up a 1350MW coal-based power plant at Rampal, a few kilometers away from the Sundarbans forest, at the cost of \$1.5 billion.<sup>188</sup> The Bangladesh government acquired 1,834 acres of farmlands without the consent of the people by using the

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<sup>183</sup> New Bangladesh, "Banshkhali power plant construction suspended." (8 April 2016). Online: <http://www.newbangladesh.com/english/details/13309>

<sup>184</sup> New Age, "3,000 villagers prosecuted for Banshkhali killing" (April 6, 2016). Online: <http://archive.newagebd.net/218214/banshkhali-killing/>

<sup>185</sup> *Ibid.*

<sup>186</sup> IC Magazine, *supra* note 180.

<sup>187</sup> *Ibid.*

<sup>188</sup> EJAtlas website: <https://ejatlas.org/conflict/rampal-thermal-power-plant-rampal-bangladesh>

police force and local goons even before the EIA was completed.<sup>189</sup> The residents are poor farmers and fishermen whose livelihood depends on agriculture and shrimp cultivation. People of Bangladesh started protesting when they came to know that the plant would devastate the Sundarbans and farmlands, displace local people, and disrupt their livelihoods. NCBD organized another long march to stop this project in 2013 when twenty thousand participants demanded an immediate halt to the project.<sup>190</sup> In May 2015, more than forty environmental groups signed a declaration in a conference in Dhaka denouncing the Rampal coal-fired power plant for its potential “to cause significant damage to the unique ecosystem of the forest.”<sup>191</sup> The activists pointed out that the contract for the power plant is non-transparent and unequal. Many alleged that the Indian government would be more beneficial than the Bangladesh government. The protestors requested the government to explore an alternative site and means to generate energy without destroying the Sundarbans. Multiple protests and mobilizations against the project have also happened in India.<sup>192</sup>

NCBD has been assisting both Banskhali and Rampal protesters by providing information and strategies. None of the demonstrations that local people organized were able to attract national or international media and solidarity groups’ attention as the *Phulbari Khoni Andolon* did. Moreover, they are not as directly involved in this protest as they were involved in the *Phulbari Khoni Andolon*. On the other hand, the government and companies learned from the Phulbari experience. Since protests were not organized strongly like Phulbari and the media was silent on the government’s repression, the project proponents in both cases created terror situations so that

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<sup>189</sup> Banktrack, “Equator Principles of the Rampal Coal Fired Power Plant Project, Bangladesh”, (June 2015). Online: [https://www.banktrack.org/download/rampal\\_equator\\_principles\\_full\\_analysis\\_pdf/rampal\\_equator\\_principles\\_full\\_analysis.pdf](https://www.banktrack.org/download/rampal_equator_principles_full_analysis_pdf/rampal_equator_principles_full_analysis.pdf)

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.* at 3.

<sup>192</sup> Shahnaj Begum, “UNESCO again recommends relocating Rampal plant” The Daily Observer (November 2, 2016). Online: <http://www.observerbd.com/details.php?id=41416#sthash.S25LhOkZ.dpuf>

protesters could not mobilize large numbers. Additionally, national solidarity and other groups are under surveillance. As a result, those groups cannot support them even after local protesters contacted them. Protesters were barred from meetings, assemblies, and rallies. Moreover, local protesters are being harassed at different times.

#### **5.4. Does the Phulbari Khoni Andolon Constitute an “Environmental Justice Movement”?**

Toffolon-Weiss and Timmons Roberts argue that direct actions and violent protest tactics are not always successful. According to the authors, groups with unified, centralized, and bureaucratized structures were more successful than groups with more decentralized organizational structures. But, the use of a legal strategy combined with other strategies, such as demonstrations and lobbying, by protesters can lead to a successful outcome.<sup>193</sup> In my analysis, the *Phulbari Khoni Andolon* was successful because local, national and transnational environmental activists are tied together. An impression built in Bangladesh that ‘occupying the street’ can bring success, but only ‘occupying the street’ alone cannot be fruitful unless the whole movement is unified and centralized. The *Phulbari Khoni Andolon* was well planned and moved forward with the local-national-transnational alliance. I have mapped out and analyzed the *Phulbari Khoni Andolon*, which, I believe, is part of the global environmental justice movement, with some elements distinct to the global South

I describe how this environmental justice movement requires two types of actors such as grassroots groups (Phulbari Rokkha Committee (PRC), Jatiyo Adibasi Parishad (JAP), NCBD and

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<sup>193</sup> Melissa Toffolon-Weiss and Timmons Roberts, “Who wins, who loses? Understanding outcomes of environmental injustice struggles.” In David Naguib Pellow and Robert J. Brulle’s *Power, Justice, and the Environment* (2005).

Adibasi leaders) and network groups (BAPA, Bangladesh environment network (BEN), and transnational environmental justice organizations (TEJOs)). Grassroots groups engage actively in physical participation in the field, and network groups maintain coalitions with grassroots groups by providing support and encouragement and by pressuring the project's proponents and state actors. Local grassroots groups are multi-political groupings, civil society members, and NGOs who desire to protect their homelands, natural resources, and the environment from destruction. These groups including civil society demand for economic reform, transparent, accountable, and participatory governance, and action against corruption and human rights abuses.<sup>194</sup>

Organizing the *Phulbari Khoni Andolon* was not limited to local considerations of the impact of the open-pit mining on local and Adibasi communities of the Phulbari mining area. Some local activists, NGOs, and national campaign groups collaborated in the process of forming the concepts of resistance, which is inspired by the discourse of environmentalism, nationalism, and anti-colonialism that ultimately resulted in the 26<sup>th</sup> August Phulbari movement. In this case, local communities and activists were facilitated by the national groups to raise their voices against the open-pit mining involving the interaction of national and local understandings. Their conception was to protect the national interest and the rights of the affected people.

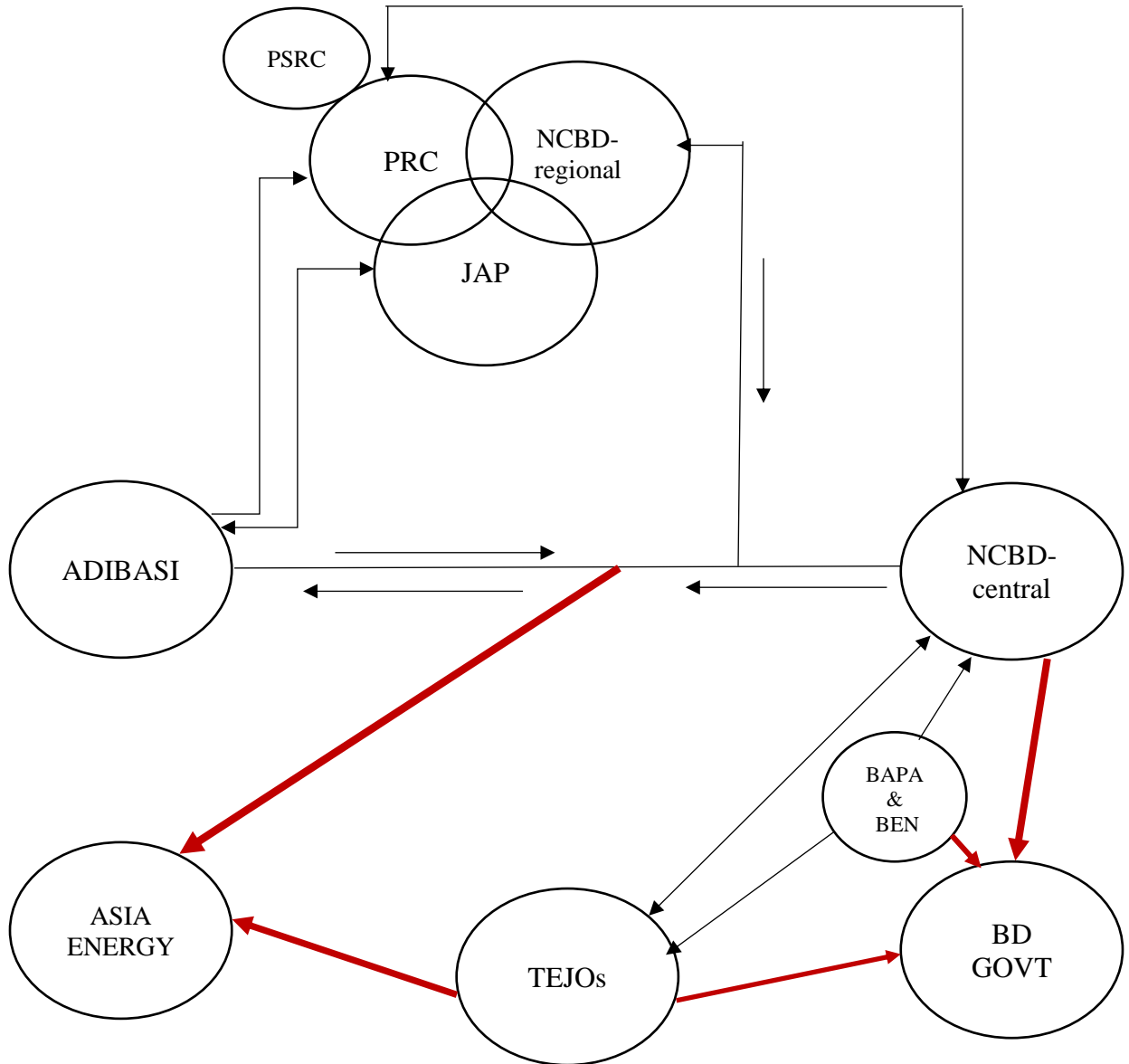
Most of the network groups are NGOs and advocacy groups who have technical expertise and professionalism. They can emerge from both host-states and home-states and from other countries who work with solidarity. They help the local grassroots with academic and policy research and provide information related to projects in their territory, which ultimately assists in building a successful resistance movement. TEJOs are inspired by the global discourses of environmentalism

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<sup>194</sup> Kishan Khoday and Usha Natarajan, "Fairness and International Environmental Law from Below: Social Movements and Legal Transformation in India." (2012) 25.2 *Leiden Journal of International Law* at 418.

in the global South.<sup>195</sup> They create pressure on the company and both host-state and home-state governments through their research, publications, and activism.

*Chart 1: Coalition Mapping of the Phulbari Movement: Pressure, Power, and Knowledge*



**Red arrows: Pressure created by different actors on the company and the governments**  
**Black arrows: Connections and coalitions made (mutual, and one-sided communications)**

<sup>195</sup> Nuremowla, *supra* note 168 at 8.

Local and national protesters, and TEJOs may not share common interests, but they collaborate with others in aiding the communities against the transnational corporation, in this case, Asia Energy, and form a coalition to resist injustice.<sup>196</sup> It is that kind of campaign that establishes environmental justice. However, there is another Adibasi environmental justice movement had been happening simultaneously in Bangladesh, where only local protesters succeeded in fighting an eco-park project of the government's forest department that was believed to harm the livelihoods and subsistence of Adibasi communities.

From the *Phulbari Khoni Andolon* experience, local and national settings of the movement may not completely stop the operation of the open-pit mining, as the company has a great influence over the government. The company has both IFIs and the host government who want the open-cast project to go forward for economic development, although research says the project would harm local livelihoods and would not be beneficial for the country. Again, the company's allies (shareholders) are powerful Western governments and a group of companies who have all sorts of power to implement a project and can apply their influence on host governments.<sup>197</sup> However, they do not take the risk in every case. If they find the opposition or protest is weak, they use their power.

In this case, the coalition between national and transnational network groups has made the *Phulbari Khoni Andolon* strong, which created pressure on the government, the company, and IFIs to keep them away from developing the project. Core movement actors from NCBD have built a coalition with the Adibasi and their traditional governance institutions through which protesters understood their future roadmap for resisting the company. They have educated themselves, motivated themselves, and resisted with the spirit of 'we would rather die.' The movement actors

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<sup>196</sup> *Ibid.*

<sup>197</sup> Huffington Post, *supra* note 144.

have built a coalition with different local and national environmental and Adibasi NGOs and civil society members who have supported them with various resources. When NCBD leaders found that local and national coalition alone may not stop the company from building the project after experiencing the repressive activities in Phulbari, they created coalitions with TEJOs. TEJOs put pressure on the company through its networks, advocacies, and activism. They pressured the host government by publishing reports and organizing protests. IFIs were also driven by their actions; consequently, ADB pulled themselves away from funding the company.

Suzana Sawyer investigates how neoliberal interventions of MNCs victimize local and Indigenous peoples and bind them to protest.<sup>198</sup> She argues:

“A shared concern with neoliberal economic policies of privatization and multinational investment implemented across the country in the resource sector helped formulate unity on a national level. Local people are not just the victims of all-powerful globalizing forces; rather their movement strategies invoke the similar transnational processes ‘that enable the hyper-exploitation under globalization.’”<sup>199</sup>

Sawyer’s observations emphasize that the success of social movements is defined by a successful alliance with outside supporters, such as economic groups and environmental groups, in protesting against state policies that affect local people.<sup>200</sup> Sawyer further argues that the protests against TNCs and their impacts on the land and the rainforests evoke desired conditions of social justice and accountability.<sup>201</sup> In this current case, the protesters and economic and environmental observers viewed the protest as a successful social movement.

Anu Muhammad, a Professor of Economics and the Secretary of NCBD said in an interview:

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<sup>198</sup> Suzana Sawyer, *Crude chronicles: indigenous politics, international oil, and neoliberalism in Ecuador*. (Durham: Duke University Press, 2004), at 15.

<sup>199</sup> *Ibid.*

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.*

“The 2006 Phulbari coal mine movement was a huge experience for us. It has shown how people from different ethnic groups, women, and men, joined the resistance movement even though many from among their leaders were in cahoots with the company. The movement is unprecedented, both regarding the scale of the uprising and the consciousness it has ignited and is still successfully resisting this imperialist grabbing project.”<sup>202</sup>

Muhammad identifies that these counter-hegemonic efforts have mobilized public opinion against anti-people corrupt deals, and in favor of utilizing natural resources for the country’s own people and economy.<sup>203</sup> According to David Pellow, “critical components of all successful social movements include organizing and mobilizing resources, framing grievances and goals, and engaging the political opportunity structures that constrain or enable social change.”<sup>204</sup> Pellow argues that social movements result when the movement actors are excluded from routine decision-making processes. Muhammad points out that in the various cases in Bangladesh, policy and decisionmakers have never considered the outcries for saving natural resources and the environment as well as protecting the rights of poor farmers and Adibasis.<sup>205</sup>

In the case of the *Phulbari Khoni Andolon*, Asia Energy was confident about implementing the project because they knew that the project was backed by the World Bank, IFC, and ADB, and consequently, the government would help them. Whenever local people were asking them about displacement, resettlement plans, and compensation issues, the company could barely inform them. Most of my respondents claimed that the decision of the project development was taken without consulting with them. However, people of the Phulbari mining area were happy to hear

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<sup>202</sup> Manoranjan Pegu, “The Phulbari Movement: Resisting Neo-liberalism in Bangladesh.” (2011) *Sustainability and Ownership in People Centred Advocacy in South Asia*, at 13.

<sup>203</sup> Anu Muhammad, *Development or Destruction: Essays on Global Hegemony and Corporate Grabbing and Bangladesh*. (Dhaka: Shrabon Prokashoni, 2007) at 62.

<sup>204</sup> David N. Pellow, *Resisting Global Toxics: Transnational Movements for Environmental Justice*, (Cambridge: MIT Press, 2007), at 54.

<sup>205</sup> *Ibid.*

that a significant coal reserve was found in their area, and they accepted the decision of mining initially. They thought the project would be underground mining, like the neighboring Barapukuria Coal Project,<sup>206</sup> which, they know, has a lesser impact on environment and livelihoods. When they heard that a foreign company would extract coal through open-cast mining, which would not only displace people but also destroy the ecology, sacred sites, heritage and biodiversity of the whole area, they had no option but to protest. Scheidel et al. argue that environmental justice movements address the impacts of unsustainable and sustainability policies. The actors of movement are, therefore, the most auspicious social forces for promoting sustainability in society to achieve change.<sup>207</sup> Their struggles against unsustainable extraction, which cause harm to human dignity and environment, can qualify for both the environmental justice movement and environmental sustainability.

## 5.5. Conclusion

I argue that the demand for public participation in the decision-making process involving Indigenous and local communities is central to the environmental justice movement and those communities must be recognized properly. In other words, if Indigenous communities' participation is not complete, and their rights and cultural aspects are not recognized properly, this constitutes an environmental injustice. Throughout the discussion of this chapter, I identify that

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<sup>206</sup> Barapukuria coal mine is an underground coal mine at Barapuluria in the Dinajpur District in Bangladesh. The mine is operated by Barapukuria Coal Mining Co. Ltd. (BTMCL), the coal mining subsidiary of a government owned oil, gas and mining company named PetroBangla. The International Accountability Project reports that mining operations at Barapukuria have destroyed roughly 300 acres of land, impacting about 2,500 people in seven villages, as land subsidence of over one meter in depth has destroyed crops and lands and damaged homes. People in 15 villages have also reportedly lost their access to water, as huge quantities of water pumped out for the Barapukuria mine caused a rapid drop in water levels. Source: [https://www.sourcewatch.org/index.php/Barapukuria\\_coal\\_mine](https://www.sourcewatch.org/index.php/Barapukuria_coal_mine)

<sup>207</sup> Arnim Scheidel et al. "Ecological distribution conflicts as forces for sustainability: an overview and conceptual framework." (2018) 13.3 Sustainability science.

the rights and interests of Indigenous peoples (Adibasis) of the Phulbari mining region were not properly recognized, and their participation in the process of decisions was not considered. Although the company has published an EIA by following guidelines of Bangladesh and IFIs where they detailed out every possible outcome for local people and claimed that Adibasi rights were reflected, the findings of this research indicate differently. Adibasis of the Phulbari area think that they were not regarded as important actors due to their identity and vulnerability, and as such, their participation in the process was ignored. Some self-identified Adibasis communities of Phulbari are recognized while some are not recognized as ‘Indigenous peoples’ by the company, although some Adibasi leaders of the area claimed that the company would not have recognized if the current situation would exist that time.

I identify that since Adibasis were not engaged properly, their traditional way of life, land rights and traditional knowledge have not been recognized. I argue that communities, especially Indigenous and other marginalized communities including their self-governing authorities, should have the right to participate in the decision-making process by having the power to approve or disapprove any project. Although Adibasis are enabled to apply their right to FPIC in this regard, the company consultants acquired their consents through undue practices. My Adibasi respondents claimed that the company deceived them by providing wrong and limited information about compensation, displacement, resettlement and false promises during consultations and surveys. However, most Adibasi respondents claimed that they were unaware of the consultation processes as they were not invited. Their concerns were ignored both by the company and the government.

Although Adibasis and other low-income communities articulate that they would face more risks than other sections of citizens of the country, they have not asked for special benefits. Very few Adibasis raised questions about economic value sharing. Consequently, some Adibasi leaders

were very angry and mentioned that policy and decision-makers who live in the capital should exchange their houses and lands. Since they know about the mishandling of compensation through two neighboring mining projects, they feared of agreeing ‘money’ as ‘compensation’. They claimed a similar kind of agricultural and household property as compensation instead of money. However, their claims for land-for-land compensation were ignored. The company consultants nowhere in ESIA mentioned about Adibasi claims of land-for-land compensation. Adibasi and non-Adibasi communities of Phulbari resisted because they thought that they might not be compensated properly due to longstanding lack of recognition of their rights. They argue that the government has the responsibility to make decisions based on the fair distribution of risks and benefits among different actors in the case of mineral resource extraction. But the governments argue that the decision would bring the greatest benefit to the greatest number.

The company’s recent non-transparent activities, ties with powerful actors, and repression experiences made them believe that allowing Asia Energy to develop the project in Phulbari would be disastrous, and their fate would be becoming environmental refugees. My Adibasi and Bangalee respondents frequently mentioned that the company tried to manipulate their straightforwardness through undue practices such as temptation, gifts, threat, intimidation, deception, lies, and repression through security forces and *Dalal*. Moreover, the company consultants misrecognized the rights and traditional lifestyles of Adibasi communities, and consequently, their movements against the company became successful and gained national and international focus. The company failed because local people already were prepared to sacrifice their lives, which I have shown in Chapter III by incorporating their conversations and accounts. They argue that there is a real threat to their social, economic and cultural security, to their health security, to the local environment, and to their right to participate in the decision-making process. All these threats establish a risk to

the recognition of their humanity. Through their movement, Adibasi communities claim that destruction of their livelihoods in the name of development can never bring real development for them. According to them, a problem cannot be solved without addressing the sustainability of the solution which, however, may create new environmental conflicts through a redistribution of environmental benefits and burdens. I argue that all actors, local, national and transnational, who are involved in fighting to stop unsustainability, can be termed as environmental activists. Environmental activists can address this issue of justice through their protests, campaigns, advocacy and solidarity against unsustainable policies.

I have identified two forms that environmental justice movements take in Bangladesh. The first one is through the court process, and the other is through protest or occupying the street to achieve environmental justice for affected communities. The emergence of the environmental justice movement in Bangladesh started with winning a public interest environmental litigation where an NGO achieved standing right in filing a case in the Supreme Court of Bangladesh on behalf of affected communities against a government authority who carried out a development project. Before that, there was no clear direction in the statutes that ‘who has the right to fight’ against the government or public bodies that harm surrounding people and environment. Again, ‘occupying the street’ for protecting the rights and interests of affected communities is seen as another form of environmental justice movement in Bangladesh where some are successful, and some are not. By analyzing some protest movements in Bangladesh, I argue that the success of any environmental justice movement depends on how the protesters are unified and how their claims are presented.

The Phulbari resistance was not only limited to locals, but some national economic and environmental campaign groups also were involved in the protest movement. I have mapped out

the building of a coalition among local protesters, national and transnational environmental justice organizations groups through which everyone is connected to protest the company's illegal activities and the government's repression. Local and national groups collaborated in the resistance, which was inspired by discourses of environmentalism, nationalism, and anti-colonialism. Local communities were encouraged by NCBD in this case to raise their voices against the open-pit mining involving the interaction of national and local considerations. Such communities aimed to protect the national interest and the interest of affected people in the mining region. Other groups, such as international campaign and solidarity groups, also joined with local and national groups. However, local and national public interest groups and protesters, and transnational environmentalist organizations come together to give a general meaning and further momentum to the resistance movement, which falls within the environmental justice movement.

## CHAPTER VI

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### CONCLUSION

The dissertation has examined the claims of Adibasi communities in a coalmine development process in Bangladesh by a London-based multinational corporation that ultimately culminated in violent protests in 2006. The projected mining footprint is densely populated by different ethnic communities, including Adibasis and Bangalees, whose livelihoods depend on agriculture and small businesses. This research identified that some traditional groups of the mining region call themselves ‘Adibasi’, which, to them and the Bangladesh government, is synonymous to the global term Indigenous peoples. Moreover, non-Adibasis or local Bangalees also refer to the distinct groups as Adibasi, and they are comfortable with this term. The dissertation started by synthesizing theoretical and conceptual literature on Indigenous rights, detailed the groups’ struggles against powerful actors, outlined the dominant environmental justice framework, and situated the groups’ resistance in the transnational or global environmental justice movement. By incorporating various theoretical understandings, the research examined the claims of Adibasi communities and other actors and what motivated them to join in the Phulbari resistance movement in Bangladesh. The research focused on the accounts of Adibasi communities and local and national activists in organizing the movement and their ultimate goals. In doing so, the dissertation investigated whether the protesters’ claims fit within the dominant understandings of the environmental justice movement by analyzing environmental justice frameworks such as recognition, distribution, and participation. However, throughout the dissertation, the recognition element played a vital role, and the specific elements of environmental justice movements as they play out in the global South became critical.

The journey of my research started in 2010 when I heard from an Adibasi person during his sharing the movement experience in Dhaka, Bangladesh. My central questions surfaced: How is it possible? Why are they still bearing their spirit of resisting? Why did not they forget their movement experience? Why are they still resisting whenever they hear about the development of open-pit mining in their region? Why do they not want the coal mine though it is said to bring economic gain for the country and the local people? In the aftermath of the movement, many researchers have examined the struggle from multiple angles, but few have considered the Indigenous peoples' own perception of their resistance. I was asked several times during the dissemination of this research in different conferences and informal meetings about whether communities who are demanding their recognition as Indigenous peoples are Indigenous peoples or not. I argue that recognition of the rights and identity of these communities as Indigenous peoples is the most important element in their struggle for justice. Adibasi communities of Bangladesh have consistently demanded official recognition as 'Adibasi' or 'Indigenous peoples'. They have also accentuated the importance of recognition of their rights to land and control over natural resources. Since Adibasi communities of the mining region are not recognized by the Bangladesh state as 'Indigenous peoples', and there are restrictions from the government in using both 'Indigenous peoples' and 'Adibasi' to describe them, national and transnational developmental agencies tend not to recognize them in their description of activities as it goes against the government's interest. In this current case, the company identified only three Adibasi communities as 'Indigenous peoples' in their official documents, which were prepared before the government's current recognition politics. However, the company disregarded some other communities who claim themselves as Indigenous peoples.

After reviewing various definitions and interpretations of Indigenous peoples adopted by scholars that are widely accepted in international law, Chapter IV of the dissertation argues that those self-identified Adibasi groups should be qualified as Indigenous peoples. The research identified some firm features or characteristics for 'being Indigenous' and tested them through the conversations and accounts collected in the project areas. The findings of this research showed that Adibasi communities have most of the characteristics of Indigenous peoples set by international legal instruments to identify their 'Indigeneity'. I argue that a national government does not have the authority to define any people; self-definition and self-identification of any community are enough for identifying or recognizing their status of identity. The claims of Adibasi communities in Bangladesh towards their recognition as 'Indigenous peoples' will not be defeated regardless of the non or misrecognition by the Bangladeshi government, and the rights embodied in international will be applied to those people.

In Chapter II, I focus on the description of the Phulbari Coal Project and conclude that it would be destructive for local people, their livelihood, natural environment, and local biodiversity. The Bangladesh government's neoliberal policy that encouraged MNCs to invest in economic development projects never worked, which the research showed by examining three MNCs' intervention cases in resource extractive projects. The dissertation demonstrates that the governments, in different regimes after the introduction of neoliberal policy, have been dealing with destructive incidents in mineral resources that occurred by MNCs and identified that MNCs are more powerful than many states in the global South regarding benefit sharing. Besides, MNCs often cannot be held responsible for their destructive actions due to their ties with powerful states, financial institutions, and other actors.

Returning to the issue of the Phulbari open-pit coal project, Asia Energy has been selling shares in the London Stock Exchange (Alternative Investment Market) in the name of the ‘Phulbari Coal Project’, which TEJOs and advocacy groups have been protesting arguing that the company is doing illegal business. According to those solidarity, campaign and advocacy groups, the project does not exist, and there is no valid agreement between the government of Bangladesh and Asia Energy. The Bangladesh government recently conceded to activists’ claims about the validity of the contract and has been planning to a lawsuit against the company for continuing to sell shares in the name of the project. International organizations such as UNDP, UNICEF, and UN Rapporteurs have frequently requested the company to scrap the project in Phulbari. ADB, who had assured the company to finance the project, has confirmed that it would stop aiding the project. The second chapter also focused on the importance of EIA in resource extractive industries, which emerged during the neoliberal policy intervention in Bangladesh. The chapter identified that it is important that the rights and interests of Indigenous peoples that they acquired from international legal instruments should be reflected in every process of EIA.

Chapter V answered the central question of the research by articulating the claims of Adibasi communities who thought that they were not adequately recognized as parties of an open-pit coal project. I argue that if Indigenous peoples, their rights and interests, and cultural aspects were appropriately reflected in the decision-making process of a project in their territory, they would receive proper justice. In other words, if these aspects are not recognized, their participation would not be regarded as complete, which is an injustice. The dissertation demonstrates that the demand for ‘complete’ participation involving the affected communities is central to environmental justice. Indigenous communities, including their self-governing authorities, should be enabled to participate in every process of decision-making by applying their recognized rights under the

UNDRIP and by having the power to approve or reject any development project in their territories which will affect their livelihoods.

Through analysis of the field data and other primary research, the dissertation identified that the rights and interests of Adibasi of the Phulbari mining region were not properly recognized, and their participation in the process of decisions was not considered. Adibasi respondents of this research claimed that the project would not only have been a real threat to their social, economic, cultural, and health security, it would negate the close ties with forest and natural environment on which their livelihoods depend. All these threats establish a risk to the recognition of their humanity. Since Adibasi were not appropriately engaged, their traditional way of life, land rights and traditional knowledge have not been recognized. Findings also showed that the marginalized communities were deceived in the process of acquiring their consents, providing information about compensation, displacement, and resettlement and tempted with dreamy benefits and money during the engagement process. Both the government and the company ignored Adibasi concerns and dignity in the process. According to Adibasi respondents, their rights, interests, claims, and demands were not reflected in the EIA because Adibasi communities were not regarded or recognized as ‘people’ or ‘parties’ or ‘actors’ in the decision-making process. The findings show that Adibasi protesters were concerned about their non or misrecognition as important actors and understood that if they were not recognized adequately, they would be ignored in every process of the decision. Their demands for recognition as ‘actors’ or ‘parties’ in the decision-making process and recognition of their rights were justified and strong for establishing environmental justice for themselves.

Additionally, Adibasi protesters were inclined to join the movement because they recognized that they would face more risks than other communities of people in the region for their long

history of marginalization and discrimination, which is explored in Chapter IV. However, the resistance movement did not ask for special favor or benefit for the uneven risks they would face. Adibasi protesters were very careful about the compensation the company and the government offered as their neighbors had been going through discrimination. They were scared that the same thing would happen to them if they allowed the company to develop the project in their locality and found their way to protest the project. Adibasis contended that the government has the responsibility to make decisions based on a fair distribution of risks and benefits among different actors in the case of mineral resource extraction, although the government argued that the decision would bring the greatest benefit to the greatest number.

It is common throughout not only the global South but also in the global North that in the process of determining the approvals for resource extracting projects the voices of Indigenous peoples are rarely heard. Consequently, they find themselves in conflicting situations opposing development projects and project proponents. Because the governments in the global South are not defending the interests of their citizens, foreign companies are waived of their accountability for destructive actions. However, states should prioritize the interests of their citizens. This research identifies some imperative questions accrued from the accounts of Adibasi respondents, such as ‘development for whom’? Is it primarily for the benefit of an MNC, or is it for the benefit of the country and its citizens? Adibasi and non-Adibasi protesters answered these questions and claimed that the open-pit project would destroy their livelihoods in the name of development, which would never bring real benefits for them. In this current case, the action of the Bangladesh government could not ensure that the interests of local farming communities would be established, nor that Adibasis could exercise their rights. Consequently, the protesters challenged the government’s decision on the open-pit coal project and successfully founded a conception among

all citizens that they have been resisting not only because of their own interest but also for the significant interest of the country. Their resistance showed that the country would not benefit to the extent that the foreign company would from developing the project, which can be a lesson for the Bangladesh government.

The misrecognition of Indigenous rights, their distinctiveness, traditional lifestyle and knowledge, and lack of engagement of local people in decision-making from the project proponent had generated inspiration among protesters to join the movements in Phulbari which ultimately became successful and attracted national and international focus. Chapter III incorporated accounts of Adibasi protesters, farming communities, and other Bagalee activists. Through their accounts and conversations, the chapter identified some successful dimensions of their organizing and building of social movements in Phulbari. The popular Phulbari movement started with local initiatives to protect the lives and nature of the area. The local initiatives built a coalition with a national campaign group named NCBD, who successfully motivated all walks of people of the mining region about the negative impact of the open-pit coal project and fought back against the multi-dimensional powerful forces (the government, the company, and financial institutions) through a bloody resistance movement in 2006. Surrounding Adibasi communities, regional and national environmental justice activists aimed to protect the national interests through their demonstrations. They found that fighting against powerful allies such as MNCs, TNCs, IFIs, and the host government will be almost impossible for them; in turn, they built coalitions with different transnational advocacy, solidarity, and environmental justice organizations (TEJOs).

I conclude that the success of any environmental justice movement depends on how those resisting are unified and how their claims are presented. The current case is an example of a successful environmental justice movement where all actors of the Phulbari movement (local,

national, and transnational advocacy groups) tied together to give a general meaning to the resistance movement, which can be included under the banner of the global environmental justice movement. The dissertation also analyzed accounts of key organizers who believe that the Phulbari resistance movement was successful because movement actors and Adibasi people of Phulbari were able to overcome divide-and-conquer tactics attempted by Asia Energy. The findings of this research showed that Adibasi and non-Adibasi farming communities were influenced by the company's unfair practices such as temptation, gifts, threat, intimidation, deception, lies, and repression. The MNC managed to use the state's security forces against protesters. The dissertation examined that the company's recent non-transparent activities, ties with powerful actors and repression experiences, made local and national protesters believe that allowing Asia Energy to develop the project in Phulbari would be disastrous and their fate would be becoming environmental refugees. The research identified two types of environmental justice movements in Bangladesh: public interest environmental litigation and occupying the streets. The first category empowers NGOs to file a writ petition before the Supreme Court of Bangladesh in favor of aggrieved or affected communities against government agencies for establishing their rights. Occupying the street is another completely different kind of environmental justice tactic seen in Bangladesh, where affected communities organize themselves and protest against project proponents to achieve justice. This current case analyzed that the efforts of these players fit within the framework of the environmental justice movement, as it manifests in the global South. I believe the resistance actors should be identified as environmental justice activists.

While this research can inform analysis of mining conflict in Indigenous territories and has demonstrated that these protests form a part of the environmental justice movement in the global South, there are some shortcomings evident. The company representatives were not found after

repetitive efforts, which could ensure the reliability of data from a neutral perspective. The dissertation relied on accounts of Adibasi communities and activists, which critics and scholars can find as inconsistencies of information. However, a large number of data was gathered from ESIA and other documents prepared by the company. Another shortcoming of the dissertation is the data collected from only local Adibasi and some national Adibasi leaders for identifying or recognizing the 'Indigeneity' of Adibasi communities. Since the dissertation could not employ accounts of other ethnic communities who live in other parts of Bangladesh, policymakers and government representatives can question that Adibasi communities of the mining footprint can be identified as Indigenous peoples while others not. However, one of the purposes of this dissertation is to examine whether Adibasi or ethnic communities who are claiming to be Indigenous peoples can establish the status of Indigenous peoples or not under international law. I understand, studying on several self-identified and self-defined Adibasi communities by their accounts and conversations, and historical evidence cannot justifiably refer to other ethnic communities of a country.

In researching the recognition of Adibasi communities and their claims for environmental justice, there are some questions raised which this research could not accommodate. Due to time and financial constraints, the research could not gather data from transnational environmental justice groups through interviews or participant observation. But the dissertation used their online reports, news, blogs, and other resources of their activities in London and other cities for fighting against neoliberal and unlawful practices of Asia Energy. The research even could not use email conversation with two transnational advocacy activists due to the limitations of York University's research ethics protocol, which was expired. Another limitation of the research is that it could not accommodate the analysis and discussion of host-state and home-state responsibilities to regulate

MNCs and TNCs in their respective boundaries. The research acknowledges that there is a limitation under international law in regulating corporations in both home-states and host-states. However, future research should focus on regulating TNCs and MNCs concerning their mining or other development activities on Indigenous territories. Therefore, it is ideal that international communities should consider linking home-state and host-state responsibilities, including accountabilities. Although the research offered analysis on the environmental justice movement through the court process, it could not comprehensively analyze judicial activism, which is seen in South Asian countries. While I suspect that those judges can make a huge impact in this regard, I was not able to establish that in this research.

I anticipate that this empirical research will attract other ethnographic research on the environment, Indigenous peoples, resource extractive industries, and sustainable economic development in the global South. I expect my study will inform the analysis of the contemporary social, political, and economic policy of Bangladesh as well as other states in the global South. My study will also contribute to a better assessment and understanding of the content and processes involved in those cases and provide insights about the resistance that until now have not been documented.

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Global Justice Now website: <https://www.globaljustice.org.uk/about-us>

Mine and Communities website: <http://www.minesandcommunities.org/>

NGO Forum on ADB Website: <https://www.forum-adb.org/background>

Phulbari Solidarity Blog: <https://phulbarisolidaritygroup.blog/>

The London Mining Network Website: <http://londonminingnetwork.org/about/>

### **Documentary Films**

“Phulbari Debona” by NCBD

“The Blood-Soaked Banner of Phulbari” by Zaeed Aziz and Farzana Boby

“Coal Milk” by Molla Sagor