

**INDIGENOUS PEOPLES AND ENVIRONMENTAL JUSTICE: RECOGNITION,
RIGHTS AND REPRESENTATION OF INDIGENOUS PEOPLES IN BANGLADESH'S
ENVIRONMENTAL REGULATORY FRAMEWORK**

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Abstract

Using an Environmental Justice theoretical lens, this thesis explores the extent to which the environmental legislative landscape of Bangladesh has ensured environmental justice for Indigenous peoples. In doing so, the thesis concentrates on three main areas: recognition, rights of Indigenous people under the environmental legal framework as well as their representation in the environmental decision making bodies. The research evaluates Bangladesh environmental laws against standards elaborated in the environmental justice literature on each of these three areas. The research employs a combination of legal and policy analysis, as well as a critical analytical approach as part of its methodology. This thesis contends that the environmental laws of Bangladesh fall short of realizing the rights, recognition and representation of Indigenous people in the environmental legal framework. These shortcomings appear to stem from a combination of factors including the design, scope, limitations and implementation of environmental laws and Constitutional provisions by both the state and the courts.

Dedication

This thesis is dedicated to my loving parents, **Nazrul Islam & Rabeya Sultana**. I love you both and I am truly grateful for all that you have done for me.

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Chapter 1: Introduction

1.1 Introduction

Indigenous peoples continue to be vital to, and proactive in, the diverse ecosystems of their territories, and so have the knowledge and expertise to assist these ecosystems become more resilient.¹ Nevertheless, extensive research and analysis have consistently stated that Indigenous communities are in dire need of significant resources and policy focus, but they often receive the least amount of support.² The Indigenous peoples of Bangladesh and the legal attention available to them in terms of environmental matters are the central themes of this thesis. Such attention covers consideration and access beginning with the adoption of environmental laws, substantive rights as provided in the environmental legislations as well as the continuous decision-making process, and culminating with the implementation of such environmental decisions. The discourse centers on two broad groups of Indigenous peoples in Bangladesh: those inhabiting the Chittagong Hill Tracts (CHT) and the plainland Indigenous peoples dwelling beyond the CHT area. Additionally, the analysis underscores the unique legal instruments that apply to each group in conjunction with the existing environmental legislations and policies of Bangladesh, such as the CHT Peace Accord, which is specifically tailored and applicable to the Indigenous peoples of the CHT. This approach facilitates a concentrated analysis of how distinct legal frameworks influence environmental justice for these two groups, emphasizing the

¹ Victoria Reyes-García et al, "Local studies provide a global perspective of the impacts of climate change on Indigenous Peoples and local communities" (2024) 7:1 Sustainable Earth Reviews 1; James D. Ford et al, "The resilience of indigenous peoples to environmental change" (2020) 2:6 One Earth 532; S.G.J.N. Senanayake, "Indigenous Knowledge as a Key to Sustainable Development" (2006) 2 Journal of Agricultural Sciences 87; Melissa Nursey-Bray et al, "Old ways for new days: Australian Indigenous peoples and climate change" (2019) 24:5 Local Environment 473; Karen Denyer et al, "*Learning from Experience: How indigenous peoples and local communities contribute to wetland conservation in Asia and Oceania*" (2018) Ramsar Convention Secretariat 13 ; Forest Peoples Programme, International Indigenous Forum on Biodiversity, Indigenous Women's Biodiversity Network, Centres of Distinction on Indigenous and Local Knowledge and Secretariat of the Convention on Biological Diversity, *Local Biodiversity Outlooks 2: The contributions of indigenous peoples and local communities to the implementation of the Strategic Plan for Biodiversity 2011–2020 and to renewing nature and cultures. A complement to the fifth edition of Global Biodiversity Outlook* (Moreton-in-Marsh, England: Forest Peoples Programme, 2020).

² Dayna Nadine Scott, "What is environmental justice?" in David Coghlan & Mary Brydon-Miller, ed, *The SAGE Encyclopedia of Action Research* (USA: SAGE Publications Ltd, 2014) 299 ; Deborah McGregor, "Indigenous environmental justice, knowledge and law" (2018) 5:2 Kalfou Journal of Comparative and Relational Ethnic Studies 279.

deficiencies and intersections in legal protection within the wider environmental regulatory framework of Bangladesh.

In Bangladesh, Indigenous peoples³ are crucial for conserving significant swaths of the country's environment, biodiversity and ecosystem.⁴ For example, Indigenous regions support nearly 80% of Bangladesh's overall biodiversity.⁵ They responsibly managed the extraction of environmental resources while prioritizing the preservation of the forest, recognizing the importance of its long-term sustainability for their survival. In the Chittagong Hill Tracts (CHT) area, Indigenous peoples strategically plant various trees and jungles around their houses to shield them from the powerful winds of cyclones and other potential hazards.⁶ On the other hand,

³ There is no universally accepted definition of 'indigenous peoples' in international law or policy, and the Declaration on the Rights of Indigenous Peoples (UNDRIP) is silent on the subject as well. According to a factsheet published by the UN Permanent Forum on Indigenous Issues, UN-system body refrained from adopting any official definition of 'Indigenous' due to the diversity of indigenous peoples. To aid in the contemporary understanding of this term "Indigenous peoples," the factsheet does, however, highlight a number of factors. See United Nations Permanent Forum on Indigenous Issues, "*Who are indigenous peoples?* (United Nations Permanent Forum on Indigenous Issues), online: [https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf]. Several countries refer to indigenous peoples as tribes, aboriginals, first peoples/nations, ethnic groups, hillmen. Tsosie explains that the term mainly refers to the original inhabitants who live on their ancestral lands and preserve their traditional culture, values, and way of life. See Rebecca Tsosie, "Chapter 5: Climate change and indigenous peoples: comparative models of sovereignty" in Randall S. Abate & Elizabeth Ann Kronk Warner, ed. *Climate Change and Indigenous Peoples* (Cheltenham, UK: Edward Elgar Publishing, 2013) 79.

In Bangladesh, tribal people, upajati, indigenous, adibasis, ethnic minority, indigenous Hillman, and hillpeople/hillmen are all terms used by the government in its legal and regulatory documents, as well as in official communication. While they may not have received formal recognition as "Indigenous peoples," it is worth noting that article 23A of the Constitution of the People's Republic of Bangladesh recognizes them as "tribes, minor races, ethnic sects, and communities." Stefania Errico notes that the indigenous peoples of the Chittagong Hill Tracts are referred to as "Pahari" (hill people) or "Jumma" (from the shifting, or jum, cultivation). In contrast, the Indigenous peoples of the plains are generally referred to as "Adivasi." See Stefania Errico, "ILO Convention No. 169 in Asia: progress and challenges" (2020) 24:2-3 *The International Journal of Human Rights* 156. I use the term "Indigenous peoples", "Indigenous Communities" "Indigenous peoples and Communities" to refer to them throughout the thesis, unless I am directly quoting someone/legal instruments who/which use/uses a different term.

Additionally, I employed the terms "Indigenous peoples of the CHT" and "Plainland Indigenous Peoples" throughout the thesis. The term "plainland Indigenous peoples" refers to the Indigenous peoples who live across the nation, except those who are residents of the Chittagong Hill Tracts (CHT) region.

⁴ Md Mostafizur Rahman, "Practice of Indigenous Knowledge System by the Farmers in Maintaining Ecosystem in Bangladesh" (2012) 57:3 *Journal of Agricultural Sciences* 155.

⁵ Mohannad Kamal Hossain, *Bangladesh National Conservation Policy Biodiversity: Flora* (Bangladesh: IUCN and Forest Department of Bangladesh).

⁶ Joydeb Garai, Hok Bun Ku & Yang Zhan, "Climate change and cultural responses of indigenous people: A case from Bangladesh" (2022) 4 *Current Research in Environmental Sustainability* 100130.

it is Indigenous peoples who bear the brunt of the most profound tribulation in relation to the degradation and detriment of the environment.⁷

In Bangladesh, there exist 59 distinct Indigenous groups, who, similar to Indigenous communities globally, face a disproportionate impact from the loss of biological diversity and environmental degradation.⁸ The Appendix includes a map that displays the names and locations of both the CHT and plainland Indigenous peoples of Bangladesh. In Bangladesh, Indigenous peoples are confronted with challenges such as the destruction of forests, a decline in the fertility of the soil, access to land-water rights, the loss of plant and animal species as well as land grabbing.⁹ It is well-documented that the act of depriving and interrupting Indigenous connections with their ancestral lands has resulted in severe and catastrophic outcomes.¹⁰ For instance, the illegal extraction of stones is leading to the depletion of water streams, which poses a significant threat to Indigenous communities in Bangladesh.¹¹ This scarcity of water affects their ability to drink, work, and irrigate their land. The growth of Jhum¹² cultivation is hindered due to the decrease in water level.¹³ Indigenous peoples are being forced to move because there is a severe shortage of water.¹⁴ Consequently, they encounter substantial obstacles pertaining to their livelihoods and deep spiritual ties to their lands and territories, including the practice of land-based rituals, preservation of traditional customs and traditional cultivation practices.¹⁵ Scholars have pointed to environmental management legislations and policies as a contributing

⁷ Ranjan Datta & Barsha Kairy, “Decolonizing climate change adaptations from Indigenous perspectives: Learning reflections from Munda Indigenous communities, coastal areas in Bangladesh” (2024) 16:2 Sustainability 769; Tunvir Ahamed Shohel et al, “Safe water crisis and struggle of climate-vulnerable indigenous communities in southwestern coastal Bangladesh” (2024) 26:3 Water Policy 273.

⁸ Raja Devasish Roy, *Country Technical Notes on Indigenous Peoples’ Issues: People’s Republic of Bangladesh* (IFAD & AIP, 2022) [Roy, “Country Technical Notes”].

⁹ Remeen Firoz & Jonas Dahlström, “Indigenous Communities of the Chittagong Hill Tracts in Bangladesh: Coping with Environmental Perils and Scoping Adaptive Capacities” in Kiran Prasad, ed, *Communication, Culture and Ecology Rethinking Sustainable Development in Asia* (Singapore: Springer, 2018) 113.

¹⁰ McGregor, *supra* note 2 at 280.

¹¹ Satej Chakma, “Development Projects are Illegally Removing Stones from Streams in Bandarban, Bangladesh” (04 August 2022) online: < <https://earthjournalism.net/>> [<https://earthjournalism.net/stories/development-projects-are-illegally-removing-stones-from-streams-in-bandarban-bangladesh>].

¹² The Indigenous peoples use shifting agriculture, also known as Jhum in the area, as a traditional method of growing crops.

¹³ Chakma, *supra* note 11.

¹⁴ *Ibid.*

¹⁵ Ranjan Datta, *Land-water management and sustainability in Bangladesh: Indigenous practices in the Chittagong Hill Tracts* (Routledge, Routledge Contemporary South Asia Series, 2018).

factor to the persistent risks posed to land rights, culture and spirituality.¹⁶ Therefore, inclusion of Indigenous peoples within the framework of national environmental protection action planning processes has the potential to empower them as catalysts for transformative change.¹⁷

Within the context of international environmental law, there is a growing recognition of the significance of Indigenous peoples and their contributions. This recognition is evident in various international environmental agreements, including the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Sustainable Development Goals (SDGs), and the Ramsar Convention. These agreements explicitly acknowledge Indigenous peoples in their texts and strategic objectives. For instance, the CBD's preamble, Article 8(j), 10(c), 17, and 18(4), as well as the First Draft of Post 2020 Global Biodiversity Framework, all highlight the importance of Indigenous peoples. Similarly, the UNFCCC, SDGs (specifically Targets 2.3 and 4.5, along with Indicators 2.3.2 and 4.5.1), and the Ramsar Convention's Strategic Plan for 2016-24, all recognize and address the role of Indigenous peoples. All of these conventions emphasize the importance of government engagement with all stakeholders, including Indigenous peoples, in order to collectively achieve the shared goal of environmental conservation.

As environmental scholar Usha Natarajan has pointed out, environmental justice is characterized by its diversity rather than uniformity, making it valuable for marginalized communities around the world. These communities face unique challenges in specific circumstances that may not be comparable to other situations or different time periods, and these challenges are constantly evolving.¹⁸ Considering this in a national framework, it becomes imperative to duly acknowledge and tackle the multifaceted environmental challenges encountered by diverse communities, including the Indigenous peoples, in order to effectively

¹⁶ *Ibid.*

¹⁷ International Work Group for Indigenous Affairs, News, “Indigenous Peoples call for Climate Action at COP 26” (29 October 2021), online: < <https://www.iwgia.org/en/news.html> > [<https://www.iwgia.org/en/news/4554-indigenous-peoples-climate-action-cop26.html>].

¹⁸ Usha Natarajan, “Environmental Justice in the Global South” in Sumudu A. Atapattu, Carmen G. Gonzalez & Sara L. Seck, ed, *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge: Cambridge University Press, 2021) 39.

uphold the principles of environmental justice. At the domestic level, the enactment of environmental laws, coupled with a proactive judicial response, play a pivotal role in promoting environmental justice within the framework of the nation's governance system. Scholars have pointed out four different characteristics of environmental justice which are distributive justice, procedural justice, corrective justice, and social justice.¹⁹ Bangladesh has yet to effectively uphold the four features of environmental justice in relation to Indigenous communities, despite having an extensive array of environmental laws, policies, and commitments made under major multilateral environmental agreements excluding UNDRIP. A major contributing factor, according to Sarwar, is that the environmental legal framework in Bangladesh does not prioritize the fundamental aspects of environmental rule of law when it comes to drafting, adopting, and implementing environmental legislation.²⁰ In addition, there are a number of issues with the environmental laws, such as a lack of content clarity, procedural complexities and an absence of principles governing the responsibility of authority.²¹

The lack of consideration for Indigenous concerns in the existing environmental laws has led to a situation where Indigenous peoples are unable to effectively utilize the protective measures and enforce their specific rights when violated within the framework of domestic environmental regulations. For example, the key environmental statutes in Bangladesh, namely the Bangladesh Environment Conservation Act (BECA) of 1995 and the Environment Conservation Rules, 2023, are primarily concerned with the control of pollution, environmental clearance certificate and punishment. The existing provisions of the BECA exhibit a lack of meticulousness in their formulation, thereby failing to adequately address the diverse array of challenges encountered by distinct groups within the nation, including Indigenous peoples. Furthermore, under the BECA, pursuing a legal remedy is a complex process. The complicated procedural obstacles severely limit people's access to environmental justice.

¹⁹ Carmen G. Gonzalez & Sumudu Atapattu, "International Environmental Law, Environmental Justice, and the Global South" (2017) 26:2 *Transnat'l L & Contemp Probs* 229.

²⁰ Mohammad Golam Sarwar, "Making a case for Environmental Rule of Law in Bangladesh" *The Daily Star* (8 June 2021), online: <<https://www.thedailystar.net/>>[<https://www.thedailystar.net/law-our-rights/news/making-case-environmental-rule-law-bangladesh-2106989>].

²¹ *Ibid.*

The environmental court²² proceedings can only commence based on the written report provided by the departmental inspector. In addition to that, communities have the ability to access national courts through Public Interest Litigation (PIL). This allows them to protect natural resources and challenge decisions made by government authorities. Prior researchers also point out several negative aspects of PIL. They argue that PIL procedures in Bangladesh are lengthy, expensive, and time-consuming.²³ Furthermore, there is a concern about the insufficient enforcement of PIL judgments and the inadequate penalties for instances of 'contempt of court'.²⁴ It is also true that a Public Interest Litigation (PIL) does not alter the government's policy.²⁵ Public authorities retain the freedom to make the same decision in any other similar situation.²⁶ While it is true that communities can have an impact by utilizing the court system, Jona Razzaque makes a valid point that litigation should not be the only approach communities rely on to influence decisions.²⁷ In order to effectively manage natural resources in a sustainable manner, it is crucial to involve disadvantaged communities, including Indigenous communities, and ensure their active participation throughout the entire process.²⁸ The lack of formal recognition of Indigenous peoples in Bangladesh, coupled with their marginalization, isolation from center of power and environmental governance bodies are inevitably hampering not only their ability to effectively protect their interests in the face of environmental challenges but also their capacity to actively participate in initiatives aimed at conserving the environment.

In addition to the previous legislations and policies, it is regrettable to observe that recently adopted environmental legislations exhibit a conspicuous disregard for the interest and rights of Indigenous peoples. An illustrative instance would be the "Bangladesh Biodiversity

²² The Environment Court Act 2010 Act aims to establish an Environment Court in each district with a Joint District Judge. The judges will handle cases within the court's jurisdiction in addition to their regular duties. So far, Bangladesh has established two environmental courts in Dhaka and Chittagong to exclusively handle environmental offences.

²³ Jona Razzaque, "Participatory rights in natural resource management" in Jonas Ebbesson and Phoebe Okowa, ed, *Environmental Law and Justice in Context* (Cambridge: Cambridge University Press, 2009).

²⁴ *Ibid.*

²⁵ Ridwanul Hoque, "Taking justice seriously: judicial public interest and constitutional activism in Bangladesh" (2006) 15:4 *Contemporary South Asia* 399 at 410.

²⁶ *Ibid*; Razzaque, *supra* note 23 at 123.

²⁷ Razzaque, *supra* note 23 at 123.

²⁸ *Ibid* at 117.

Act" enacted in the year 2017, wherein an absence of legally binding provisions safeguarding the rights and inclusion of Indigenous communities becomes apparent. This particular enactment delegates the responsibility of collecting biodiversity related traditional knowledge to a committee that regrettably lacks the presence of Indigenous representation. Moreover, it is imperative to note the conspicuous dearth of legal provisions concerning the pivotal issue of Indigenous prior informed consent and the establishment of a mutually agreed term for the just and fair distribution of benefits derived from the utilization of obtained biological resources, their derivatives, innovations, practices, and associated knowledge.²⁹

While it is true that Bangladesh ratified International Labour Organisation (ILO) Indigenous and Tribal Populations Convention of 1957 (referred to as ILO Convention No. 107) before the adoption of the Constitution of Bangladesh, it is worth noting that the Constitution does not currently include any provisions recognizing the marginalized communities as “Indigenous peoples”.³⁰ Since the adoption of the 15th amendment to the constitution in 2011, people with diverse ethnic identities have been recognized.³¹ The constitutional provision only focuses on cultural aspects, while important issues regarding the economic, political, environmental as well as land rights of Indigenous peoples are being overlooked.³² The signing of the Chittagong Hill Tracts (CHT) Peace Accord in 1997 engendered a sense of optimism, as it held the promise of enduring tranquilly and progress for only the Indigenous Peoples residing in the CHT region.³³ The Peace Treaty³⁴ encompassed provisions pertaining to the demilitarization of territories, the restitution of land, and the devolution of powers to facilitate the establishment of regional self-governance. Land management, law enforcement, tribal law, equitable societal

²⁹ Imtiaz Ahmed Sajal, “Bangladesh Biological Diversity Act 2017: An Appraisal” (2017) 8 IUCNAEL E-Journal 132.

³⁰ Kawser Ahmed, “Defining 'Indigenous' in Bangladesh: International Law in Domestic Context” (2010) 17:1 International Journal on Minority and Group Rights 47.

³¹ *The Constitution of the People's Republic of Bangladesh*, 1972, art 23A [*The Constitution*].

³² Dwayne Mamo, *The Indigenous World 2023* (Copenhagen, Denmark: Dwayne Mamo and The International Work Group for Indigenous Affairs IWGIA, 2023).

³³ International Work Group for Indigenous Affairs, News, “Chittagong Hill Tracts Peace Accord 25 Years Later: Indigenous Peoples Still at Serious Risk” (30 November 2022), online: < <https://www.iwgia.org/en/news.html> > [<https://www.iwgia.org/en/news/4971-chittagong-hill-tracts-peace-accord-25-years-later-indigenous-peoples-still-serious-risk.html>].

³⁴ Official title of the treaty is the Chittagong Hill Tracts Treaty, 1997. It is also referred to as the Peace Treaty, Peace Accord, CHT Peace Treaty.

governance, juvenile well-being, ecological preservation, and community-based tourism are among the comprehensive array of 33 responsibilities entrusted to the Hill District Councils by the government.³⁵ Nevertheless, despite the passage of a considerable span of time amounting to 26 years since its ratification, the actualization of the treaty's provisions has regrettably failed to materialize, remaining confined to mere theoretical existence rather than manifesting in tangible action. To date, a mere 17 tasks have been assigned, regrettably excluding pivotal responsibilities such as land and land management, environmental protection, the maintenance of law and order, and the enforcement of legal statutes, as explicitly outlined in Article 34 of the Chittagong Hill Tracts Peace Accord of 1997.³⁶ Bangladesh persistently neglects the unique environmental challenges faced by the Indigenous peoples, thereby failing to uphold environmental justice and secure their agency. This is despite global and national data suggesting that empowering them to adopt sustainable practices for natural resource utilization and environmental conservation could enable them to become agents for positive transformation.³⁷

Thus, it is hypothesized that:

- a. Given their current lack of official recognition at the national level, Indigenous peoples of Bangladesh are in dire need of inclusive environmental legislations to protect their rights and interests; and
- b. Neither the challenges Indigenous peoples face nor the opportunities presented by Indigenous agency are adequately addressed by the current body of environmental law and policy in Bangladesh.

1.2 Research Scope and Objectives

In light of the above, the aim of this thesis is to evaluate the extent to which Bangladesh's legislative responses and judicial mechanisms have effectively promoted environmental justice

³⁵ *Chittagong Hill Tracts Treaty*, 2 December 1997 [*CHT Treaty*].

³⁶ Nasrin Akter & Zelina Sultana, "The Post-2020 Global Biodiversity Framework: Recognizing and Integrating Indigenous Knowledge and Practices (IKPs) into Bangladesh's Biodiversity Laws and Policies" (2023) *X Jahangirnagar University Journal of Law* 19.

³⁷ Kyle A. Artelle et al, "Supporting resurgent Indigenous-led governance: A nascent mechanism for just and effective conservation" (2019) 240 *Biological Conservation* ; Victoria Reyes-García et al, "Recognizing Indigenous peoples' and local communities' rights and agency in the post-2020 Biodiversity Agenda" (2022) 51 *Ambio* 84.

for the Indigenous peoples, particularly in terms of their recognition, rights, and representation (hereinafter referred to as the 3Rs) within environmental conservation legislations and policies. While doing so, this thesis pays attention towards the four features of environmental justice: distributive justice, procedural justice, corrective justice and social justice. In his work, R. R. Kuehn references the views of Robert D. Bullard, who advocates for environmental justice as a means to enhance the democratic nature of environmental protection.³⁸ Bullard raises important political and ethical questions regarding environmental justice, asking "who gets what, why, and how much?"³⁹ An analysis of the 3Rs could potentially offer insights into addressing this issue concerning Indigenous peoples. The following is a concise discourse regarding the correlation between the 3Rs and the four environmental justice pillars.

Usha Natarajan argues that distributive justice reorients policymakers to address the underlying systems that perpetuate environmental degradation and inequality among underprivileged, marginalized, and disadvantaged populations.⁴⁰ In light of a nation's limited resources, equitable sharing of environmental damages and benefits is a requirement of distributive justice.⁴¹ It is crucial to establish clear delineations of the specific legal rights and responsibilities of various stakeholders, in this case, Indigenous peoples, in accordance with the challenges they are facing and their respective roles in safeguarding the environment. Conversely, procedural justice looks at fairness in the way a decision is made instead of the final result. Hence, with regard to Indigenous peoples, it is imperative to establish more deliberative decision-making framework that increases access to legal and technical supports, and ensures not only equitable access to decision-makers but also participation in the decision-making process.⁴² Issues of distributive or procedural justice may also be entangled with some acts that give rise to concerns of corrective justice. Corrective justice pertains to the equitable allocation of punishments for legal transgressions and the resolution of damages suffered by individuals and communities. According to Usha Natarajan, corrective justice is more crucial in situations where the vulnerable require safeguarding against the negligent and irresponsible behavior of the

³⁸ Robert R. Kuehn, "A Taxonomy of Environmental Justice" (2000) 30 Environmental Law Reporter 10681.

³⁹ *Ibid* at 10683.

⁴⁰ Natarajan, *supra* note 18 at 49.

⁴¹ *Ibid*; Kuehn, *supra* note 38 at 10684.

⁴² Kuehn, *supra* note 38 at 10683.

powerful.⁴³ Indigenous peoples, being a vulnerable group, require enhanced legal protection and appropriate compensation for infringements in order to address their distress. Therefore, an environmental legal framework should include provisions defining precise legal processes for obtaining remedies in the event of a violation and establishing legal rights to pursue justice via judicial mechanisms. R R Kuehn characterizes environmental justice as the combination of the social justice movement and environmentalism.⁴⁴ Environmental justice is often seen as being closely linked to larger concerns surrounding racial, social, and economic justice, when viewed through the lens of social justice. This highlights the need to acknowledge the environmental challenges faced by Indigenous peoples due to marginalization, as well as the potential contributions they could make if given proper support and opportunities.

Thus, it becomes evident that a thorough examination of the 3Rs of Indigenous peoples is of utmost importance. This is because the achievement of environmental justice, which is built upon its four pillars, cannot be fully realized without adequately addressing these specific concerns. Along with the existing judicial mechanism to ensure access to environmental justice, this study analyzes the major environmental laws and policies enacted between 1971 and 2023 in Bangladesh. So far, Bangladesh has enacted numerous laws that fall within the scope of its environmental legal framework. However, I intend to look into only the key legislation that regulate significant environmental challenges such as pollution, biodiversity, wildlife, forest, and water.

1.3. Research Questions

The thesis addresses the following research questions:

1. What are the key legislations and regulations in Bangladesh most relevant to the recognition of environmental challenges faced by Indigenous peoples and how effective are those legislations in addressing the environmental issues that Indigenous communities face?

⁴³ Natarajan, *supra* note 18 at 55.

⁴⁴ Kuehn, *supra* note 38 at 10699.

2. To what extent does environmental legislation in Bangladesh address Indigenous peoples rights and interests? How well are their representations secured at various phases of environmental policy and decision-making processes?

1.4. Research Methodology

In order to address the aforementioned research questions, the present thesis aims to utilize a combination of legal and policy analysis, as well as a critical analytical approach.⁴⁵ The objective is to identify and elucidate any existing legal deficiencies pertaining to environmental justice for Indigenous peoples in Bangladesh within the framework of environmental legislation and judicial mechanisms. The major part of the research involves reviews of primary and secondary materials. On primary materials –national environmental legislations, policies, and international environmental agreements have been reviewed and analyzed. In addition to primary sources, secondary materials such as scholarly books, journal articles, and government and newspaper reports have also been utilized.

In order to delve into the first research question, this thesis employs a combination of primary and secondary sources. A comprehensive examination of the relevant literature, coupled with the utilization of interdisciplinary methodologies that incorporate legal, historical, and political sources, have been undertaken in order to gain a profound understanding of the current degree of recognition and the environmental obstacles faced by Indigenous communities.

A combination of black letter analysis and law-in-context has been utilized to address the second research question of this thesis. This thesis narrows down its attention to examine the key environmental legal instruments in Bangladesh, including laws that govern the general environmental protection, biodiversity, forests, wildlife, and water management, out of the many laws and policies that make up the country's environmental legal framework. The analysis covers the environmental legislations enacted between 1971 and 2023 as well as Bangladesh's domestic

⁴⁵ Martha Minow, "Archetypal Legal Scholarship: A Field Guide" (2013) 63:1 J Legal Educ 65.

implementation of international environmental treaty obligations, taking into account its dualist approach to international law. Furthermore, scholarly works by authors concentrating on Bangladeshi Indigenous issues as well as publications by different organizations, such as the Kapaeeng Foundation⁴⁶, that promote the rights of Indigenous peoples in Bangladesh have been evaluated.

1.5. Review of Literature

This thesis responds to Environmental Justice (EJ) concerns of Indigenous peoples of Bangladesh with respect to their recognition, rights and representation under the country's environmental laws. A significant amount of scholarly discussion has taken place regarding environmental justice for Indigenous peoples in the global south.⁴⁷ It is important to note that these discourses provide a critical overview of the theoretical and global aspects; however country specific analyses are limited. Nevertheless, it can be argued that such scholarly writings play a significant role in shaping our understanding of the definition and scope of Environmental Justice. For instance, according to Scott, the application of an environmental justice lens entails, at its most fundamental level, taking into consideration the distribution of costs and benefits that are associated with decisions regarding environmental policy and natural resources development,

⁴⁶ Kapaeeng Foundation is a human rights organization, which was established on 1 April 2004 with the view to working for promotion and protection of the rights of indigenous peoples of the country. See also <https://kapaeengnet.org/about-us/>

⁴⁷ Scott, *supra* note 2; Sidra Sabzwari & Dayna Nadine Scott, "The quest for environmental justice on a Canadian aboriginal reserve" in Yves Le Bouthillier, Miriam Alfie Cohen, Jose Juan Gonzalez Marquez, Albert Mumma, and Susan Smith, *Poverty alleviation and environmental law* (Cheltenham, UK: Edward Elgar Publishing, 2012) 85 ; Dayna Nadine Scott, "Environmental Justice and the Hesitant Embrace of Human Rights" in James R. May & Erin Daly, ed, *Human Rights and the Environment Legality, Indivisibility, Dignity and Geography* (Cheltenham, UK: Edward Elgar Publishing, 2019) [Scott, "Hesitant Embrace of Human Rights"]; Deborah McGregor, Steven Whitaker & Mahisha Sritharan, "Indigenous environmental justice and sustainability" (2020) 43 *Current Opinion in Environmental Sustainability* 35 ; Kyle Powys Whyte, "An environmental justice framework for indigenous tourism" (2010) 7:2 *Environmental Philosophy* 75 [Whyte, "indigenous tourism"]; Kyle Powys Whyte, "The recognition dimensions of environmental justice in Indian country" (2011) 4:4 *Environmental Justice* 199 [Whyte, "Recognition Dimensions"]; Gonzalez & Atapattu, *supra* note 19; Deborah McGregor, "Indigenous Knowledge Systems in Environmental Governance in Canada" (2021) 5:1 *KULA: Knowledge Creation, Dissemination, and Preservation Studies* [McGregor, "Indigenous Knowledge Systems"]; Natarajan, *supra* note 18; Deborah McGregor, "Indigenous environmental justice: Towards an ethical and sustainable future" in Brendan Hokowhitu, Aileen Moreton-Robinson, Linda Tuhiwai-Smith, Chris Andersen, Steve Larkin, ed, *Routledge Handbook of Critical Indigenous Studies* (UK: Routledge, 2020) 405 [McGregor, "ethical and sustainable future"] ; Kyle Whyte, "Indigenous Environmental Movements and the Function of Governance Institutions" in Teena Gabrielson, Cheryl Hall, John M. Meyer, David Schlosberg, ed, *The Oxford Handbook of Environmental Political Theory* (Oxford UK: Oxford University Press, 2016) 563 [Whyte, "Indigenous Environmental Movements"].

as well as the degree to which such decision-making process has successfully included the participation of affected communities.⁴⁸ When referring to EJ, Sidra and Scott put an emphasis on the equal treatment and meaningful participation in the process of developing, executing, and enforcing environmental laws and policies.⁴⁹ On the hand, Whyte introduces a new norm that he calls "Direct Participation."⁵⁰

Gonzalez & Atapattu has highlighted the four key features of environmental justice, namely distributive, procedural, corrective and social justice.⁵¹ Although McGregor acknowledges the significance and relevance of these features, she argues that they do not completely capture Indigenous experiences and are not rooted in Indigenous ways of knowing.⁵² Natarajan has pointed out that environmental justice involves recognizing and embracing a range of perspectives and differences, rather than dismissing them and solely focusing on commonalities.⁵³ This approach acknowledges the importance of recognizing and addressing the specific challenges faced by different groups across the globe, which may be distinct to their particular circumstances and may not have direct comparisons in other locations or historical periods.⁵⁴ Additionally, it recognizes that these challenges are subject to change and require ongoing attention.⁵⁵

Therefore, it is of utmost importance for Bangladesh, in its pursuit of achieving environmental justice, to duly acknowledge the distinctive hurdles encountered by various groups, including Indigenous peoples. Presently, Bangladesh finds itself grappling with a legal framework that aspires to universal applicability, yet regrettably falls short of this lofty goal. Furthermore, the legal framework has not kept pace with the passage of time. The environmental framework faced significant criticism for its inability to address ongoing problems. Furthermore,

⁴⁸ Scott, *supra* note 2 at 299.

⁴⁹ Sabzwari & Scott, *supra* note 47 at 86.

⁵⁰ Whyte, "indigenous tourism", *supra* note 47.

⁵¹ Gonzalez & Atapattu, *supra* note 19.

⁵² McGregor, *supra* note 2 at 286.

⁵³ Natarajan, *supra* note 18 at 43.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

over time, it has become increasingly difficult to effectively address the legal aspects of persistent issues, as well as the subsequent issues that arise, such as water shortage resulting from illegal stone extraction and the subsequent forced relocation of Indigenous communities due to water scarcity.⁵⁶ Another emerging challenge is ensuring intergenerational equity, which involves ensuring that cultural heritage and natural resources are passed down to future generations.⁵⁷ Every generation has the responsibility to preserve the diversity of natural and cultural resources. This ensures that future generations will have a wide range of options to meet their own values and needs without unnecessary limitations.⁵⁸ Given their intimate ties to the land, ecology, and natural resources, this is crucial for the Indigenous peoples.

Coming to the point of legal attention, Parmar's findings from her study on Indigeneity and Legal Pluralism in India in 2015 reveal that there exists a notable disparity between the experiences of Indigenous communities and the legal system in addressing environmental challenges.⁵⁹ Many of their concerns and specific rights are not addressed or recognized within the legal frameworks which preclude the consideration of the intricate issues that are evoked by the term tribal rights. Thus the preference lies in excluding issues and questions that the legal system cannot recognize.⁶⁰ In Bangladesh, the status of Indigenous peoples is a contentious issue as the government formally rejects the existence of Indigenous peoples inside its borders.⁶¹ Under Article 23A, the constitution refers to them as "tribes, minor races, ethnic sects, and communities".⁶² The existing body of literature has predominantly focused on the various social, cultural, and economic challenges faced by the Indigenous population in Bangladesh, which arise from a lack of constitutional recognition.⁶³ Notably, Datta contends that the absence of

⁵⁶ Chakma, *supra* note 11.

⁵⁷ Dinah Shelton, "Describing the elephant: International Justice and Environmental Law" in Jonas Ebbesson and Phoebe Okowa, ed, *Environmental Law and Justice in Context*, (Cambridge, UK: Cambridge University press, 2009), 55 at 63.

⁵⁸ *Ibid.*

⁵⁹ Pooja Parmar, *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings*, (Cambridge, Cambridge University Press, 2015).

⁶⁰ *Ibid* at 127.

⁶¹ Ahmed, *supra* note 30.

⁶² *The Constitution*, *supra* note 31.

⁶³ Mohammad Abdul Hannan, "Human Rights of the Aborigines in the Context of Bangladesh" (2015) 8:2 OIDA International Journal of Sustainable Development 45; Roy, "*Country Technical Notes*" *supra* note 8; Prashanta Tripura, "Indigenous Peoples under the Legal and Policy Frameworks of Bangladesh" in Prof. Mong Shanoo

recognition often leads to the exclusion of Indigenous peoples from legislation intended to provide protection and safeguard against violations.⁶⁴ Therefore, laws in general and laws addressing specific issues, such as environmental protection, fall short of what is necessary to protect and acknowledge Indigenous people's rights, contributions, and agency in Bangladesh.⁶⁵

Although constitutional environmental rights can spur legislation, according to Ferreira and Mancilla, such legislations provide no assurances of full implementation in light of the wide range of difficulties experienced by different communities across the country.⁶⁶ The effectiveness of the often-weak legislative and judicial mechanism is crucial. Indigenous people's rights, agency and recognition of their contribution under environmental conservation legislations were notably disregarded until recently in Bangladesh. As Hasanat pointed out, the specialized environment courts in Bangladesh are a prime example of how the mere existence of these courts does not guarantee that they will be able to effectively advance environmental justice.⁶⁷ Due to the inherent shortcomings in the legal framework upon which they were established, the environmental courts are unable to serve as effective tools for promoting environmental justice.⁶⁸ However, there have been cases where the courts have served as a mechanism for advancing environmental justice. For instance, in Indian context, Jolly's findings shed light on how the *Vedanta Case* presents promising opportunities for promoting Indigenous rights and environmental protection by prioritizing the involvement of the "Gram Sabha".⁶⁹ McGregor's astute analysis and cutting-edge proposition of distinct Indigenous environmental

Chowdhury, ed, *Survival under Threat: Human Rights Situation of Indigenous Peoples in Bangladesh* (Thailand: Asia Indigenous Peoples Pact and Kapaeng Foundation, 2014).

⁶⁴ Ranjan Datta, "Implementation of Indigenous environmental heritage rights: an experience with Laitu Khyeng Indigenous community, Chittagong Hill Tracts, Bangladesh" (2019) 15:4 *AlterNative: An International Journal of Indigenous Peoples* 309.

⁶⁵ Tripura, *supra* note 63.

⁶⁶ Patricia Galvao-Ferreira and Mario Mancilla, "Indigenous Environmental Rights and Sustainable Development, Lessons from Totonicapan in Guatemala" in Sumudu A. Atapattu, Carmen G. Gonzalez & Sara L. Seck, ed, *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge, UK: Cambridge University Press, 2021) 164.

⁶⁷ Abul Hasanat, "Environmental Courts in Enforcement: The Role of Law in Environmental Justice in Bangladesh" (2021) 21:2 *Australian Journal of Asian Law* 85.

⁶⁸ *Ibid.*

⁶⁹ Stellina Jolly, "The Vedanta (Niyamgiri) Case: Promoting Environmental Justice and Sustainable Development" in Sumudu A. Atapattu, Carmen G. Gonzalez and Sara L. Seck, ed, *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge UK: Cambridge University Press, 2021), 289.

According to Article 243(b) of the Constitution of India, "Gram Sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level."

justice (IEJ) paradigm is firmly rooted in the conviction that the efficacious resolution of environmental injustice necessitates the proactive engagement and inclusion of Indigenous communities.⁷⁰ However, this is a long way off in the context of Bangladesh because the Indigenous peoples are not recognized as such.

This thesis aligns with the continuous and scholarly discourse surrounding environmental justice and Indigenous peoples. It employs a critical environmental justice lens, as a theoretical framework to highlight the shortcomings of the domestic legal framework in Bangladesh, in relation to the 3Rs (Recognition, Rights, and Representation) of Indigenous peoples. Moreover, building upon the existing body of literature, this research intends to advance the comprehension of the prevailing gaps pertaining to the rights, recognition, and representation of Indigenous peoples within the environmental regulatory framework of Bangladesh.

1.6. Theoretical Lens

During my research on the prior literature related to Indigenous people and environmental challenges, I encountered a few theoretical perspectives. Three prominent theoretical lenses are identified: Environmental Justice (EJ)⁷¹, Indigenous Environmental Justice (IEJ)⁷², and Multispecies Justice (MSJ)⁷³. From what I gather, the Environmental Justice movement, centering mostly on the concept of “disproportionate burdens”⁷⁴, emerged in the

⁷⁰ McGregor, “ethical and sustainable future”, *supra* note 47; Deborah McGregor, “Indigenous Environmental Justice and Sustainability” Sumudu A. Atapattu, Carmen G. Gonzalez and Sara L. Seck, ed, *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge UK: Cambridge University Press, 2021), 58 [McGregor, “Indigenous Environmental Justice and Sustainability”].

⁷¹ Elizabeth Ann Kronk Warner, “Environmental Justice: A Necessary Lens to Effectively View Environmental Threats to Indigenous Survival” (2017) 26:2 *Transnat'l L & Contemp Probs* 343; Whyte, “Recognition Dimensions”, *supra* note 47; Whyte, “indigenous tourism”, *supra* note 47; Scott, *supra* note 2 ; Sabzwari & Scott, *supra* note 47; Whyte, “Indigenous Environmental Movements” *supra* note 47.

⁷² McGregor, *supra* note 2 at 279; McGregor, “ethical and sustainable future”, *supra* note 47; McGregor, “Indigenous Environmental Justice and Sustainability”, *supra* note 70.

⁷³ Christine J Winter, “Introduction: What’s the Value of Multispecies Justice?” (2022) 31:2 *Environmental Politics* 251.

⁷⁴ Sabzwari & Scott, *supra* note 47 at 86.

1970s and 80s in the USA⁷⁵, and it has been gradually developing over an extended period of time⁷⁶ and expanded to encompass a broader and more profound array of issues.⁷⁷ This was a direct response to a grassroots civil rights initiative that sought to put an end to the dumping of PCBs into Warren County, which happened to have the highest concentration of African American citizens in the state.⁷⁸ Further research and advocacy efforts have brought to light the disproportionate impact of ecological crises on marginalized communities, particularly people of colour and those living in poverty.⁷⁹ At first, the environmental justice (EJ) movement mostly targeted those who belonged to marginalized communities, such as people of colour and those living in poverty. However, Indigenous peoples quickly found a platform inside the movement to address their specific issues and worries.⁸⁰ Thereafter, the concerns of Indigenous peoples have been substantially discussed and addressed by considering the Environmental Justice lens, since the scope of Environmental Justice framework has expanded to include "claims of disadvantaged communities."⁸¹ McGregor notes that the environmental justice movement played a crucial role in shaping broader public policy initiatives, including the formulation of policies related to environmental justice.⁸²

As Scott points out that scholarly works on Environmental Justice originated from grassroots movements that aimed to empower poor and racialized people in matters related to land-use and environmental decision-making processes.⁸³ Environmental justice, according to Scott and Tessaro, is a social movement and theoretical lens that focuses on ensuring fair distribution of environmental advantages and disadvantages, along with the mechanisms that

⁷⁵ Warner, *supra* note 71; Catherine J Iorns Magallanes, "Access to Environmental Justice for Maori" (2017) 15 Yearbook of New Zealand Jurisprudence 142.

⁷⁶ Scott, *supra* note 2 at 300.

⁷⁷ Anna Grear, "Literature Review Article: Environmental Justice" in Anna Grear, *ed*, *Environmental Justice* (Cheltenham, UK: Edward Elgar Publishing Limited, 2020).

⁷⁸ McGregor, *supra* note 2 at 283.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Warner, *supra* note 71.

⁸² McGregor, *supra* note 2 at 284.

⁸³ Scott, "Hesitant Embrace of Human Rights", *supra* note 47.

produce these distributions.⁸⁴ Therefore, environmental justice focuses on ensuring equitable treatment and meaningful participation of racialized, Indigenous, and low-income communities in matters related to environmental policy and the utilization of natural resources⁸⁵ as well as fair access to environmental goods⁸⁶ and fair share of environmental harms.⁸⁷ This is particularly important because historically, these communities have disproportionately suffered from environmental damages.⁸⁸ Regarding Environmental Justice for Indigenous peoples, Magallanes notes that it extends beyond the existing scope of benefits and duties⁸⁹, encompassing the recognition of metaphysical connections⁹⁰ and obligations towards their ancestral natural environment.⁹¹ On the other hand, McGregor argues that the issue of Environmental Justice, particularly when it relates to Indigenous peoples, requires taking into account their unique perspectives on sovereignty, law, justice, and governance.⁹²

I also encountered a distinct Indigenous environmental justice (IEJ)⁹³ paradigm as proposed by Deborah McGregor. She explains that the reason for exploring a unique Indigenous EJ paradigm is rooted in the belief that addressing environmental injustice in a meaningful manner should be led by Indigenous peoples themselves.⁹⁴ She argues that in order for a specific IEJ formulation to accurately represent Indigenous views of what constitutes justice, its foundations must be rooted in Indigenous philosophies, ontologies, and epistemologies.⁹⁵ Nevertheless, this approach raises questions about the legality and relevance of existing political and legal systems at both global and national levels, given their consistent failure to support

⁸⁴ Dayna Nadine Scott & Lara Tessaro, “The regulation of toxics and environmental justice: the uneven distribution of pollution” in Adam D.K. Abelkop, Lucas Bergkamp, Lynn L. Bergeson & Bethami Auerbach, ed, *Elgar Encyclopedia of Environmental Law* (Cheltenham, UK: Edward Elgar Publishing, 2023), 89 at 91.

⁸⁵ *Ibid.*

⁸⁶ Kristie Dotson & Kyle Whyte, “Environmental justice, unknowability and unqualified affectability” (2013) 18:2 *Ethics & the Environment* 55.

⁸⁷ Scott, *supra* note 2 at 299.

⁸⁸ Scott & Tessaro, *supra* note 84; Dotson & Whyte, *supra* note 86.

⁸⁹ Astrid Ulloa, “Perspectives of environmental justice from Indigenous peoples of Latin America: A relational Indigenous environmental justice” (2017) 10:6 *Environmental Justice* 175.

⁹⁰ Scott, *supra* note 2 at 300.

⁹¹ Magallanes, *supra* note 75 at 145.

⁹² McGregor, *supra* note 2 at 285.

⁹³ McGregor, “ethical and sustainable future”, *supra* note 47

⁹⁴ McGregor, *supra* note 2 at 279.

⁹⁵ McGregor, Whitaker & Sritharan, *supra* note 47.

Indigenous communities worldwide.⁹⁶ IEJ establishes a framework of justice that is more Indigenous-informed.⁹⁷ There is currently no consensus regarding the precise definition of IEJ.⁹⁸ McGregor outlines the perspective that supports the idea of promoting connections rooted in environmental justice, which extends beyond human interactions to include all beings in existence.⁹⁹ According to McGregor et al., the IEJ framework offers a collection of principles that go beyond the narrow perspective of Western liberal theory, which focuses solely on human actions, and instead recognizes and incorporates non-human actors and the Earth itself, while Multispecies Justice, as discussed by Winter, is a recently developed theoretical framework that prioritizes the well-being and welfare of all living organisms.¹⁰⁰

In light of the objective, scope, research questions of this thesis, as well as considering the context of Bangladesh in relation to Indigenous peoples, I choose not to employ the MSJ theoretical framework among the three theoretical lenses discussed above. Nonetheless, I struggled with the choice between EJ and IEJ, particularly since Indigenous scholars contend that IEJ is crucial, claiming that current EJ frameworks insufficiently address the distinct needs and specific environmental injustices encountered by Indigenous peoples. McGregor, for example, made a valid argument that the various analytical frameworks of Environmental Justice, including distributive and procedural justice, corrective justice, and recognition justice, fail to fully encompass Indigenous experiences or stem from Indigenous epistemologies.¹⁰¹

In this thesis, I have decided to adopt EJ theoretical lens. By making that choice, I do not intend to imply that I have provided definitive answers by selecting the EJ lens or that it is the only appropriate lens to explore the research areas that I have concentrated on in this thesis. I

⁹⁶ *Ibid.*

⁹⁷ Meg Parsons, Karen Fisher & Roa Petra Crease, *Decolonising Blue Spaces in the Anthropocene Freshwater management in Aotearoa New Zealand* (London, United Kingdom: Palgrave Macmillan, 2021) 39.

⁹⁸ *Ibid.*

⁹⁹ Deborah McGregor, "Honouring Our Relations: An Anishnaabe Perspective on Environmental Justice" in Julian Agyeman, Peter Cole, Randolph Haluza-DeLay, & Pat O'Riley, ed, *Speaking for Ourselves: Environmental Justice in Canada* (Vancouver: UBC Press 2010), 27; Parsons, Fisher & Crease, *supra* note 97.

¹⁰⁰ McGregor, Whitaker & Sritharan, *supra* note 47; Winter, *supra* note 75.

¹⁰¹ McGregor, *supra* note 2 at 286.

solely aspire to contribute to and broaden the ongoing conversation about EJ in relation to the Indigenous peoples of Bangladesh. However, a few of the following factors influenced my choice to utilize EJ theoretical lens. The factors become more comprehensible as the discussion progresses in the subsequent chapters of the thesis.

- a. Bangladesh lacks comprehensive and accommodating legal frameworks that effectively support and encourage the implementation of IEJ or even MSJ. The CHT Peace Treaty may, in part, make IEJ implementation easier for Indigenous peoples who live in the CHT region; however the treaty's non-implementation status casts doubt on this possibility.
- b. In the absence of a well-crafted environmental legal landscape and judicial mechanism, it is not possible to ascertain how the current environmental regulations may be used to assist achieving IEJ or MSJ.
- c. For the time being, EJ lens might help the CHT and the plainland Indigenous peoples of Bangladesh in terms of fair access to environmental goods and equitable sharing of harm, pending their full recognition as "Indigenous Peoples."

1.7. Positionality

I am a non-indigenous person who has had no prior contact or opportunity, whether in a professional or personal capacity, to engage with Indigenous communities in Bangladesh. My interest in Indigenous environmental concerns, on the other hand, originated from a strictly academic study interest and the need to address a knowledge vacuum that I encountered as a law teacher teaching "Environmental Laws of Bangladesh" to undergraduate students at Jagannath University, Dhaka, Bangladesh. Consequently, I find it exceedingly challenging to work on and write about their issues. I acknowledge that the perspective and viewpoint expressed in the thesis does not in any way reflect the actual views of both the CHT and plainland Indigenous peoples and communities of Bangladesh. The building block of my understanding and knowledge rests in the scholarly material I had the privilege to study and access throughout my LLM studies at Osgoode Hall Law School, York University, up to the completion of my thesis. As a result, the Indigenous peoples of Bangladesh may have a different understanding of issues discussed in the thesis, including the terminology I've used in my thesis. For example, I recall Deborah McGregor

citing Dr. Henry Lickers, who originally brought up the point that the term "Traditional Ecological Knowledge" (TEK) was coined by academics rather than Indigenous peoples despite the fact that this is not how they describe their own knowledge.¹⁰² Likewise, I lack knowledge on the viewpoint of the Indigenous communities of Bangladesh on any term or argument related to their concerns that I have included in the thesis. In order to adopt the terms and argument, I sought assistance from the existing literature published at both national and international levels. However, this thesis draws upon knowledge from two Indigenous-run sources in Bangladesh: the Parbatya Chattagram Jana Samhati Samiti (PCJSS) and the Kapaeeng Foundation. Their resources, particularly the Kapaeeng Foundation On-Site Inquiry Report and the PCJSS Annual Report, have been instrumental in my understanding and facilitated my discussion on a variety of issues, such as the current environmental challenges that Indigenous communities are facing in Bangladesh, the progress made in the implementation of the CHT Treaty and the provisions within it that pertain to environmental protection, the rights of Indigenous peoples as well as the dispute settlement mechanism under the CHT Treaty.

¹⁰² Kate J Mussett et al, "Wise practices: Indigenous-settler relations in Laurentian Great Lakes fishery governance and water protection" (2022) *Journal of Great Lakes Research*.

Chapter 2: Recognition of Indigenous Peoples in Bangladesh's Environmental Regulatory Framework

Recognition has been claimed in both contemporary¹⁰³ and previous literature¹⁰⁴ to be an essential component of justice and indispensable prerequisite for engaging in environmental decisions. Parsons et al. pointed out that, both the cultural and material well-being of people and communities may be negatively impacted when there is a failure to recognize the implications of environmental degradation and the hazards that are faced by certain populations.¹⁰⁵ Hasan cited the work of Schlosberg¹⁰⁶, who contended that the absence of recognition results in damage and injustice to the same extent as the inadequate allocation of diverse resources.¹⁰⁷ Parsons et al. insist that it is crucial for governments, interest groups, leaders, and the general public to recognize the vulnerability of marginalized populations, including Indigenous peoples, to environmental hazards like water pollution, tropical storms, and climate change.¹⁰⁸ Without this recognition, it is unlikely that resources will be allocated to support these at-risk groups, both within their own countries and on a global scale.¹⁰⁹

Environmental injustices are exacerbated, according to Parsons et al, by the settler state's misrecognition of Indigenous communities, which includes marginalizing their knowledge, beliefs, and way of life and removing them from decision-making processes.¹¹⁰ The authors note that instances of misrecognition include more than just the misrecognition of culture.¹¹¹

¹⁰³ Parsons, Fisher & Crease, *supra* note 97; Mohammad Mahmud Hasan, "Development for Whom?: An Indigenous Environmental Justice Movement in Bangladesh" (2022) 27:7 *Local Environment* 863.

¹⁰⁴ Adrian Martin et al, "Justice and Conservation: The Need to Incorporate Recognition" (2016) 197 *Biological Conservation* 254; S. Kathleen Barnhill-Dilling, Louie Rivers & Jason A. Delborne, "Rooted in Recognition: Indigenous Environmental Justice and the Genetically Engineered American Chestnut Tree" (2020) 33:1 *Society & Natural Resources* 83.

¹⁰⁵ Parsons, Fisher & Crease, *supra* note 97 at 45.

¹⁰⁶ David Schlosberg, "The Justice of Environmental Justice: Reconciling Equity, Recognition, and Participation in a Political Movement" in Andrew Light, and Avner de Shalit, ed, *Moral and Political Reasoning in Environmental Practice* (Cambridge: MIT Press, 2009), 77.

¹⁰⁷ Hasan, *supra* note 103 at 865.

¹⁰⁸ Parsons, Fisher & Crease, *supra* note 97 at 46.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

They also involve the misrecognition of land, water, and the interactions Indigenous peoples have with their land, waterways, and biota.¹¹² They also entail devaluing Indigenous lands by designating them as "wastelands," "unusable" or "undesirable" until they are no longer under the control of Indigenous communities.¹¹³ This facilitates the justification for settler states, settlers, and businesses to establish environmental hazards or inflict harm in these undesirable areas.¹¹⁴ Additionally, when there are disputes between Indigenous peoples and development proponents, Hasan's study highlights how often Indigenous land and other territorial rights in Bangladesh are misrecognized, as well as their traditional ideas surrounding resource management and land administration.¹¹⁵ Non- or misrecognition as significant actors is the reason they are disregarded in each decision-making process.¹¹⁶ Consequently, Hasan makes the observation that the Indigenous people's demands for recognition as "actors" or "parties" in the decision-making process, together with recognition of their right, are robust and rational in their pursuit of environmental justice for themselves.¹¹⁷

Parsons et al. mention two components of the process of conceptualizing environmental justice (EJ) as recognition. Misrecognition is one, while recognitional justice is the other.¹¹⁸ In support of their claim that recognitional justice is an integral component of EJ, the authors cite works by scholars such as Jackson¹¹⁹, Lowitt et al.¹²⁰ and Whyte¹²¹, who argue that recognitional justice is crucial for Indigenous peoples and is the capacity to freely articulate their own standards for what constitutes environmental (in)justice.¹²² Recognitional justice pertains to Indigenous communities that possess existing treaties and laws safeguarding and recognizing

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ Hasan, *supra* note 103.

¹¹⁶ *Ibid* at 874.

¹¹⁷ *Ibid.*

¹¹⁸ Parsons, Fisher & Crease, *supra* note 97 at 47.

¹¹⁹ Sue Jackson, "Indigenous Peoples and Water Justice in a Globalizing World" in Ken Conca and Erika Weintal, ed, *The Oxford Handbook of Water Politics and Policy* (. New York: Oxford University Press, 2018), 120.

¹²⁰ Kristen Lowitt et al, "Indigenous Self-Determination and Food Sovereignty Through Fisheries Governance in the Great Lakes Region" in Peter Andr ee, Jill K. Clark, Charles Z. Levkoe & Kristen Lowitt, ed, *Civil Society and Social Movements in Food System Governance* (London: Routledge, 2019), 145.

¹²¹ Whyte, "Recognition Dimensions", *supra* note 47.

¹²² Parsons, Fisher & Crease, *supra* note 97 at 47.

their entitlement to self-determination and tribal authority, or those seeking to acquire such.¹²³ According to Coulthard¹²⁴ Justice conceptualizations based on recognition, which are inspired by Western liberal pluralism, seek to strike a balance between various Indigenous sovereignty claims, ranging from complete nation-state sovereignty to restricted self-determination, and the sovereignty of the nation-state. He also claimed that the present form of the "politics of recognition" only continues to uphold the same structures of colonial authority that Indigenous peoples have traditionally tried to overcome via their demands for recognition.¹²⁵ The research conducted by Indigenous scholars such as Winter¹²⁶, McGregor¹²⁷ and Whyte¹²⁸ demonstrates the connection between environmental injustices faced by Indigenous communities and the ongoing dominance of Western worldviews. In this regard, Christine Winter, a Māori philosopher, contends that environmental justice narratives must transcend Western liberal ideology in order to incorporate Indigenous ontologies and epistemologies in a meaningful manner.¹²⁹ According to her, one approach to achieve this would be to broaden the scope of recognitional justice to include both ontological and epistemological plurality.¹³⁰

When it comes to legislative arrangement and recognition, Whyte's argument is highly pertinent. He argues that the incorporation of distributive, procedural, and corrective standards of justice into laws, programs, policies, and institutions is contingent upon the respect for the values and the recognition of the unique circumstances that each Indigenous community encounters in order to achieve justice.¹³¹ In order to achieve distributive, procedural, and corrective justice, it is important to incorporate tribal values and situational specificity into the standards used for

¹²³ *Ibid.*

¹²⁴ Glen S. Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada" (2007) 6:4 Contemporary Political Theory 437.

¹²⁵ Parsons, Fisher & Crease, *supra* note 97 at 48.

¹²⁶ Christine J. Winter, "Does Time Colonise Intergenerational Environmental Justice Theory?" (2019a) 29 (2) Environmental Politics 278 [Winter, "Does Time Colonise"]; Christine J. Winter, "Decolonising Dignity for Inclusive Democracy" (2019b) 28:1 Environmental Values 9 [Winter, "Decolonising Dignity"].

¹²⁷ McGregor, *supra* note 2.

¹²⁸ Kyle Powys Whyte, "Settler Colonialism, Ecology, and Environmental Injustice" (2018) 9:1 Environment and Society 125.

¹²⁹ Christine Jill Winter, *The Paralysis of Intergenerational Justice: Decolonising Entangled Futures* (PhD Thesis, The University of Sydney, 2018); Winter, "Does Time Colonise" *supra* note 126; Winter, "Decolonising Dignity", *supra* note 126.

¹³⁰ Parsons, Fisher & Crease, *supra* note 97 at 52.

¹³¹ Whyte, "Recognition Dimensions", *supra* note 47 at 200.

designing, implementing, and evaluating both policies and political institutions.¹³² According to him, recognition justice requires policies and programs to fairly consider and reflect the cultures, beliefs, and situations of all impacted parties.¹³³ By way of illustration, he contends that a policy may fail to achieve recognition justice to some degree or in its entirety if it is formulated without taking into consideration the values of the tribes that will be impacted by it, or if it is only accessible to implement by certain entities, such as states, while excluding tribes.¹³⁴

Considering the concepts of misrecognition and recognitional justice, as previously discussed, along with Whyte's perspective on partial and non-recognition, this chapter examines the existing environmental legislative framework in Bangladesh. The aim is to determine the extent to which these laws ensure recognition justice for Indigenous peoples. This chapter analyzes the laws and policies by categorizing them as "recognition from above" and "recognition from below," as mentioned by Parsons et al.¹³⁵ According to the authors, "recognition from above" refers to a situation where the state acts as the authority in determining which claims for recognition from subordinate groups are just and unjust.¹³⁶ In addition to determining the available forms of recognition, the state also specifies the provisions of recognition.¹³⁷ Conversely, "recognition from below" occurs when Indigenous communities become agents of recognition, taking charge of the redistribution of resources meant to alleviate the economic and social marginalization of Indigenous peoples.¹³⁸ The authors cited William,¹³⁹ who posited that "recognition from below" happens when people in dominated social positions reject established power structures and create their own social orders autonomously, without the approval or permission of anyone other than themselves.¹⁴⁰

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ Parsons, Fisher & Crease, *supra* note 97.

¹³⁶ *Ibid* at 49.

¹³⁷ *Ibid.*

¹³⁸ *Ibid* at 50.

¹³⁹ Melissa S. Williams, "Introduction: On the Use and Abuse of Recognition in Politics" in Avigail Eisenberg, Jeremy Webber, Glen Coulthard & Andrée Boisselle, ed, *Recognition Versus Self-Determination: Dilemmas of Emancipatory Politics* (Vancouver: UBC Press, 2014), 3.

¹⁴⁰ Parsons, Fisher & Crease, *supra* note 97 at 50.

2.1. Recognition from Above

2.1.1 Recognition as Stipulated in the Constitution

When examining the issue of recognition from above in Bangladesh, it is important to begin by discussing the provisions of the Constitution, which is the highest law in the country. Regarding Indigenous peoples and the environment, there are two specific constitutional provisions that are directly relevant to this discussion. These provisions are Article 18A, which focuses on the protection and enhancement of the environment and biodiversity, and Article 23A, which addresses the preservation of the culture of tribes, minor races, ethnic sects, and communities. The articles read as follows:

18A---The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens

23A---The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.

Neither of the articles provide sufficient legal framework for recognizing Indigenous communities and their unique circumstances regarding the environmental harm and injustices they face. The reason is attributed to the inherent characteristics of the articles, specifications, their scope of application, and the entities entrusted with their execution. With Article 23A of the Constitution, the government spells out how and the extent to recognize Indigenous peoples of Bangladesh. The Article clearly restricts the recognition of Indigenous peoples to being categorized as "tribes, minor races, ethnic sects, and communities." It further specifies that only their unique "local culture and tradition" are to be protected under this provision. Unfortunately, Indigenous peoples are unable to utilize Article 18A and 23A to seek any relief for the adverse environmental impact they are experiencing. The reason is that both of these provisions fall under Part II of the Constitution and are regarded as the Fundamental Principle of State Policy (FPSP). The Constitution itself refers to them as "Principles," rather than "Laws."¹⁴¹ According to Haque, asserting that "principles" have equal legal standing as

¹⁴¹ Muhammad Ekramul Haque, "Legal and Constitutional Status of the Fundamental Principles of State Policy as embodied in the Constitution of Bangladesh" (2005) XVI:1 The Dhaka University Studies 45.

"laws" is in violation of the Constitution.¹⁴² Part II serves as a guide for the state, outlining the basic obligations of the state and the prerequisites for guaranteeing economic human rights. There are two categories of the FPSP included in Part II of the Constitution: basic and derivative. As mentioned by Haque, five additional categories may be applied to the derivative principles outlined in Articles 9 to 25: a) administrative directives, b) general principles of human rights and c) Economic, Social and Cultural (ESC) rights, d) obligations of citizens, government employees and e) foreign policy.¹⁴³ Accordingly, both Article 18A and Article 23A are administrative directives. The fulfillment of these directives by the State is crucial for safeguarding the well-being of the people.¹⁴⁴ However, any law enacted by the legislature that contradicts any of these principles or fails to adhere to them in whole or in part will not be deemed null or void, since Article 8.2 of the Constitution explicitly states that the Fundamental Principles of State Policy are not legally enforceable in court.¹⁴⁵

From the preceding discussion, I have arrived at several noteworthy findings.

Firstly, the recognition as outlined in Article 23A is limited in a variety of ways, including the terminology used, the article's legal standing, and the protections it offers.

Secondly, it can be argued that the recognition provided by Article 23A is meant to serve as a guideline alone for the state. Within the framework of Constitutional provision, the present status of recognition does not put the state under any kind of pressure for legislative reforms within a certain timeframe.¹⁴⁶

Thirdly, Article 23A being considered as "Principle" not "Law",¹⁴⁷ the purpose of this recognition is not to create a legally binding "recognition" status for the Indigenous peoples and to define, establish or expand their rights and responsibilities. Indigenous peoples are unable to use this provision as a means to lawfully hold the state accountable via judicial authority. In this regard, Parsons et al rightly contend that while the state may legally recognize Indigenous rights and identities, these rights and identities are often oversimplified in a way that serves the state's

¹⁴² *Ibid.*

¹⁴³ Muhammad Ekramul Haque, "Does Part II of the Constitution of Bangladesh Contain Only Economic and Social Rights?" (2012) 23:1 The Dhaka University Studies 45.

¹⁴⁴ Haque, *supra* note 141.

¹⁴⁵ *Ibid.*

¹⁴⁶ Parsons, Fisher & Crease, *supra* note 97 at 50.

¹⁴⁷ Haque, *supra* note 141.

economic interests in the era of neoliberalism.¹⁴⁸ It is the state's interest alone that Article 23A and the recognition it guarantees serve.

Fourthly, the state has sole authority over the implementation of these two articles, and there is no legal requirement to involve Indigenous peoples and communities. Reiterating Whyte's point, this is one of the reasons for the failure to achieve justice in terms of recognition, whether partially or entirely; it's possible that the laws and regulations enacted in response to Article 23A may not adequately consider or respect the values of the Indigenous peoples who would ultimately be affected by such legal arrangement.¹⁴⁹ It is entirely up to the unfettered will of the state to decide whether or not to take into account the values and knowledge of Indigenous peoples. Chakma et al. rightly argue that this clause of the Constitution is not an obligatory requirement for the government to adhere to. It is only a manifestation of dedication, and its execution depends on the political determination of the ruling administration.¹⁵⁰ This can only be achieved if the state actively adheres to this principle¹⁵¹ and formulates targeted measures that address the environmental injustices faced by Indigenous peoples in both current and future environmental laws.

Therefore, Article 23A and 18A do not ensure that future laws or actions will automatically recognize the environmental harm and injustices faced by Indigenous peoples, nor do they require the necessary provisions to address their concerns. The state retain the exclusive authority and discretion to recognize the specifications and degree of safeguarding against injustices or environmental harms experienced by Indigenous peoples in every subsequent environmental legislation adopted in compliance with those Constitutional clauses. Hence, the next analysis focuses on the country's major environmental legislations in order to ascertain the specifications and extent of recognition guaranteed by the state to Indigenous peoples.

¹⁴⁸ Parsons, Fisher & Crease, *supra* note 97 at 50.

¹⁴⁹ Whyte, "Recognition Dimensions", *supra* note 47.

¹⁵⁰ Ashok Kumar Chakma, C.R Bijoy, and Tunga Bhadra Rai, *Nationally Determined Contributions in Asia: Are governments recognizing the rights, roles and contributions of Indigenous Peoples?* (Thailand: Asia Indigenous Peoples Pact AIPP, 2022).

¹⁵¹ *The Constitution*, *supra* note 31.

2.1.2 Recognition as Ensured in Environmental Legislations

When it comes to addressing different kinds of environmental changes at the national level, Bangladesh has put in place multiple laws and policies in accordance with the constitutional clause¹⁵² discussed above to protect the environment for both the present and future generations. A review of the current environmental regulatory framework is necessary to fully understand the recognition that the nation's environmental legislation guarantee for Indigenous peoples. In Bangladesh, there are more than 200 laws and policies¹⁵³; however, this chapter concentrates on assessing selected laws and regulations. Table 1 below summarizes the selected legislation and rules governing the key environmental concerns in Bangladesh. These laws and associated rules have been selected because they are regarded as the key legislations in Bangladesh that addresses environmental concerns.

Table 1

Key Environmental Legislations in Bangladesh

Note. The table enumerates Bangladesh's most important environmental legislations and highlights their salient characteristics in addition to the relevant rules.

<i>Year</i>	<i>Legislations</i>	<i>Relevant Rules and Policies</i>	<i>Summary of Laws</i>
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¹⁵² *Ibid*, art 18A.

¹⁵³ Mohammad Golam Sarwar, “When law enables environmental damage” *The Daily Star* (5 June 2024), online: <<https://www.thedailystar.net/>>[<https://www.thedailystar.net/opinion/views/news/when-law-enables-environmental-damage-3626731>].

1995	The Bangladesh Environment Conservation Act	<p><i>Environment Conservation Rules 2023</i></p> <p><i>Ecologically Critical Areas Management Rules, 2016</i></p>	<ol style="list-style-type: none"> a. In Bangladesh, the main pieces of general environmental legislation are the Bangladesh Environment Conservation Act (BECA) 1995, Environment Conservation Rules 2023 and the Environment Court Act 2010. b. The Environment Conservation Act of 1995 aims to ensure the preservation of the environment, to enhance environmental quality, and regulate and minimize environmental pollution. c. The provisions of the BECA 1995 serve as the foundation for the establishment of the Department of Environment, the appointment of the Director General (DG), the execution of the Environment Impact Assessment, and the regulation of ecologically critical areas. d. The Environment Conservation Rules 2023 have been formulated in accordance with the authority granted by section 20 of the Bangladesh Environment Conservation Act, 1995. e. The purpose of these rules is to prevent environmental degradation and promote sustainable development in Bangladesh by stipulating procedures for activities that could potentially harm the environment or human health.
2010	The Environment Court Act		<ol style="list-style-type: none"> a. The Environment Court Act 2010 has been enacted with the objective of expediting the resolution of cases pertaining to environmental harm.
2012	The Wildlife (Conservation and Security) Act	<i>Protected Area Management Rules, 2017</i>	<ol style="list-style-type: none"> a. One of the most noteworthy aspects of the Wildlife (Conservation and Security) Act 2012 is that it acknowledges national heritage, memorial trees, or sacred trees while also honouring the cultural norms and values that are customary to the communities. b. In conjunction with the Protected Area Management Rules 2017, the Act also establishes the kind of activities that are permitted in protected areas, such as national parks, community conservation zones, and sanctuaries.
2013	The Bangladesh Water Act		<ol style="list-style-type: none"> a. The Bangladesh Water Act 2013 serves as a comprehensive legislation aimed at effectively integrating and coordinating the management of water resources in the country. b. The Water Act aims to implement a comprehensive strategy for safeguarding and enhancing the ecological health and long-term viability of a nation's water bodies, including rivers, lakes, estuaries, coastal waters, and groundwater sources.
2013	The Brick Manufacturing and Brick Kilns Establishment (Control) Act		<ol style="list-style-type: none"> a. In 2013, the Brick Manufacturing and Brick Kilns Establishment (Control) Act was passed to regulate the brick manufacturing process. b. The Act imposes various limitations on the locations where brick kilns can be set up. c. The usage of raw materials from sources like agricultural land, hills, or hillocks as well as the burning of wood for fuel are prohibited by the Act.

2017	The Bangladesh Biodiversity Act	<ul style="list-style-type: none"> a. In compliance with the international Convention on Biodiversity and Article 18A of the Constitution, the Bangladesh Biodiversity Act was enacted in 2017. b. The Act governs the individuals or entities that are authorized to possess biological resources and traditional knowledge, as well as the lawful means by which these may be transferred. c. The responsibility for authorizing such access is entrusted to the National Biodiversity Committee, which is also tasked with determining the fair distribution of benefits derived from traditional knowledge, biological resources, and biodiversity.
1927	The Forest Act <i>Social Forestry Rule 2004</i> <i>National Forest Policy 1994¹⁵⁴</i>	<ul style="list-style-type: none"> a. The Forest Act was enacted in 1927 to regulate the transportation of forest products and the imposition of duties on timber and other forest products. b. To preserve the forest resources, it does, however, include protective measures. c. It establishes prohibitions on activities within reserved forests and imposes penalties for non-compliance with the regulations. d. Additionally, the Act proposes the establishment of village forests, social forestry program that is governed by the Social Forestry Rule 2004, as a viable measure to safeguard community rights and encourage people participation.

(Table created by author).

To determine if the above mentioned environmental laws recognized the environmental injustices experienced by Indigenous communities, the next discussion focuses on textual setting of such laws. More specifically, it examines if the laws directly or indirectly recognize Indigenous peoples using the Constitutional term¹⁵⁵, as well as whether such recognition is partial or fails to recognize the entirety. The rationale for searching by these terms in the language of the laws is that their presence primarily indicates that the laws have considered the unique situations of Indigenous peoples, either in specific provisions or throughout the whole legislation. It is important to note that, no national statute could refer to "Indigenous peoples" or "Indigenous communities"; if it did, it would be a clear violation of the Constitution. This is because they are not recognized as such under the constitution. However, the presence of Article 23A ensures that there are no legal restrictions on the use of the terms "tribes, minor races, ethnic sects, and communities" in domestic legislation, including environmental legislations.

¹⁵⁴ A new draft of the National Forest policy was undertaken in 2016, but it has not yet been approved. See [https://bforest.portal.gov.bd/sites/default/files/files/bforest.portal.gov.bd/page/238fc41d_700a_489d_9758_e80b7efdb2ef/Forest%20Policy%20English%20version%20%28%20update%29.PDF].

¹⁵⁵ "tribes, minor races, ethnic sects and communities"

After closely analyzing and scrutinizing the aforementioned legislations (Table 1), taking into consideration the specific terms used in the Constitutional provision¹⁵⁶ to recognize Indigenous peoples in Bangladesh, the findings were quite disappointing. The findings are shown in Table 2 below. When it comes to environmental conservation, environmental impact assessments and pollution, the country's primary legislation is the Bangladesh Environment Conservation Act 1995. The majority of the polluting activities that Indigenous peoples face are associated with industrialization, the establishment of urban areas, extractive operations, commodities frontier expansion, tourism, and industrial development. However the 1995 legislation totally abstains from recognizing and dedicating any direct provision to deal with the environmental injustices facing by the Indigenous peoples.

In addition to the point mentioned, there are several provisions of the Act that, if properly implemented and managed, could have been advantageous for the Indigenous peoples, even if these provisions do not explicitly recognize or focus on them. For instance, one of the aspects of the 1995 Act that has garnered a lot of acclaim is section 5, which designates Ecologically Critical Area (ECA). According to the provision, the government may designate an area as an ECA if it is convinced that the region is in an environmentally critical condition or faces the possibility of becoming so. It can also specify the activities or processes that are not allowed in an ecologically critical area. As per the rule 3 of the Environment Conservation Rules 1997¹⁵⁷, the government considers the following factors when making the declaration: a) habitat for humans; b) ancient monuments; c) archaeological sites; d) forest sanctuaries; e) national parks; f) game reserves; g) habitat for wild animals; h) wetland; i) mangroves; j) forest area; k) biodiversity of the relevant area; and l) other pertinent factors. Since 1999, Bangladesh has officially designated 13 Ecologically Critical Areas (ECAs). The ECAs have a zero-tolerance policy when it comes to development projects that endanger ecosystems and biodiversity. However, the government has so far been unsuccessful in preserving the ECAs.¹⁵⁸ On several

¹⁵⁶ *The Constitution, supra* note 31.

¹⁵⁷ The Environment Conservation Rules 1997 has recently been replaced by the Environment Conservation Rules 2023.

¹⁵⁸ Abu Siddique “In Bangladesh, Ecologically Critical Areas exist only on paper” (16 December 2022) online: <<https://news.mongabay.com/>> [<https://news.mongabay.com/2022/12/in-bangladesh-ecologically-critical-areas->

occasions, the government has allowed the establishment of industry in ECAs. For instance, in the case of the Sundarbans (one of the ECAs), the government disregarded its own regulations by permitting the development of industries that pose a harm to the area's environment.¹⁵⁹ However, although the Act does not recognize Indigenous peoples, this provision remains useful in recognizing the environmental injustices experienced by Indigenous peoples and offering a way forward. Indigenous areas may satisfy a number of factors to be classified as ECAs, such as human habitats, forest sanctuaries, habitats for wild animals, forest areas, and areas of biodiversity.

As Arsenault et al. correctly note, the long-term consequences of industrial activities and extraction of resources initiatives on Indigenous lands are a significant concern for Indigenous communities.¹⁶⁰ Environmental impact assessment is a valuable tool that can help address some of these concerns.¹⁶¹ The authors also highlight the importance of Indigenous traditional knowledge in promoting a more comprehensive approach to environmental regulation, which has the potential to enhance the Environmental Impact Assessments (EIAs) process.¹⁶² It requires a unique set of monitoring tools that are tailored to specific locations and communities, which can lead to promising developments in governance.¹⁶³ The Environmental Impact Assessment guidelines for Industries adopted under the Bangladesh Environment Conservation Act of 1995 identify five key stakeholders, including the Department of Environment in Bangladesh, the project approving authority, Government agencies that are connected, public and local population impacted and other interest and expert groups, such as NGOs and the private sector. The document completely neglects to recognize Indigenous peoples as relevant stakeholders.¹⁶⁴

[exist-only-on-paper/](#)]; Arif Ahmed, "Conservation of ECAs" *The Daily Star* (6 June 2017), online:

<<https://www.thedailystar.net/>>[<https://www.thedailystar.net/law-our-rights/conservation-ecas-1415971>].

¹⁵⁹ Pinaki Roy, "Bangladesh allows nearly 200 polluting factories near Sundarbans" (30 April 2018) online:

<<https://www.downtoearth.org.in/>>[<https://www.downtoearth.org.in/news/forests/bangladesh-allows-nearly-200-polluting-factories-near-sundarbans-60358>].

¹⁶⁰ Arsenault Rachel et al, "Including indigenous knowledge systems in environmental assessments: restructuring the process" (2019) 19:3 *Global Environmental Politics* 120.

¹⁶¹ *Ibid.*

¹⁶² *Ibid* at 122.

¹⁶³ *Ibid.*

¹⁶⁴ *EIA Guidelines for Industries*, (2021). See [<https://file.portal.gov.bd/uploads/8ef2a505-c131-4a8f-b6d0-2ac4760cc936/635/f6b/1e6/635f6b1e69cb8822258025.pdf>].

If it did, EIAs could serve as valuable tools to prevent projects from causing negative consequences and to address the concerns of Indigenous communities.

Due to its heavy reliance on the legal requirements outlined in the 1995 Act, the Court Act 2010 does not have the capacity to stand on its own to address and provide comprehensive solutions to issues concerning Indigenous peoples. Rahman's research findings highlight the challenges faced by ordinary people seeking justice for environmental damage, which he shows, can be attributed to gaps in the legal and policy framework.¹⁶⁵ The author notes, numerous issues plague the environmental courts, including the fuzziness in the jurisdiction, workloads and shortage of legal advisors.¹⁶⁶ Moreover, the environmental courts do not have the authority to independently consider an offense.¹⁶⁷ Consequently, the non-recognition of Indigenous peoples in the BECA continues to be a contributing factor to the inability to pursue justice in the environmental courts.

On the other hand, the Forest Act of 1927, a statute from the colonial period, is still in existence in Bangladesh. It considers forests as a means of generating revenue. Nevertheless, the legislation included two sections that mentioned "Communities," which might potentially benefit Indigenous peoples. The Constitution employs four terms, namely "tribes," "minor races," "ethnic sects," and "communities," for identifying Indigenous peoples. There is a lack of explicit definitions or standards in any legislation so far to distinguish among them. As per the Small Ethnic Minority Cultural Institute Act of 2010, the government of Bangladesh officially recognizes the presence of just 27 ethnic minorities.¹⁶⁸ Thus, it cannot be said that the term "Communities" used in the Forest Act 1927 represents to recognize all the other categories specified in the Constitution. The use of the term "communities" in two sections of the Forest Act (Table 2 below) indicates a misrecognition as the sections leaves out to recognize the other three terms. Consequently, not all Indigenous communities are able to fully use the benefits

¹⁶⁵ Md Mizanur Rahman, "Can ordinary people seek environmental justice in Bangladesh?: Analyzing through the lens of legal, policy, and institutional framework" (2021) 29:2 Bangladesh Journal of Public Administration 15.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ M S Siddiqui, "Identity Crisis Of Ethnic Minority In Bangladesh" (13 March, 2024) online: <<https://worldmediation.org/>> [<https://worldmediation.org/identity-crisis-of-ethnic-minority-in-bangladesh/>].

provided by those sections. Prior research recommends that the Forest Act 1927 including the Social Forestry Rules be reviewed and harmonized in collaboration with Indigenous Peoples and in compliance with applicable international laws and standards.¹⁶⁹

At this point, one might argue that the non-recognition, mis-recognition of Indigenous peoples in couple of provisions and the omission of a specific reference to Indigenous peoples in previously enacted environmental legislations are justified on the grounds that Article 23A was not incorporated into the Constitution until 2011. Nevertheless, the implementation of Article 23A has not yielded the expected level of recognition by the state towards Indigenous peoples in the subsequent environmental laws. In this case, the expected degree of recognition implies that such Constitutional recognition would pave the way for the later environmental laws to address environmental injustices against Indigenous peoples and provide them with access to remedies.

Out of the remaining four legislations, the Wildlife (Conservation and Security) Act 2012 contains multiple provisions that explicitly reference and recognize Indigenous peoples (see Table 2 below). Nevertheless, the terminology used in this statute is not uniform throughout the Act, as it employs a mixture of the phrases "ethnic communities," "communities," or "minor ethnic communities." That same legislation mis-recognizes Indigenous peoples in some provisions as well. For example, under section 13 of the Act, when a wetland is designated as a sanctuary, steps must be taken to safeguard the occupational, traditional, or livelihood rights of the local community, including fishermen and boatmen. On the other hand, the complete disregard for the occupational, traditional, and livelihood rights of the Indigenous peoples have been observed. The Indigenous peoples, who depend on wetlands such as lakes and swamp forests, are not being adequately recognized or safeguarded in terms of their occupational, traditional, and livelihood rights under section 13 of the Act. Although the Indigenous peoples heavily depend on wetlands for water and subsistence, they do not get the same degree of legal attention as other stakeholders, which is the local community in this instance.¹⁷⁰

¹⁶⁹ Chakma, Bijoy & Rai, *supra* note 150.

¹⁷⁰ *The Wildlife (Conservation and Security) Act, 2012*, s 13 (3) [*The Wildlife Act*].

Table 2

Environmental Laws and Status of Recognition of Indigenous Peoples

Note. This table is carefully put together after thoroughly examining the listed legislations and their provisions. While conducting the research, Constitutional terms serve as the guidelines for determining the manner in which Indigenous peoples are recognized by these legislations.

<i>List of Legislations</i>	<i>Directly refers the terms</i>	✓ <i>Provisions directly recognizes Indigenous Peoples and their concerns/</i> • <i>Not directly targeting them but addressing Indigenous Peoples concerns</i>
<i>The Environment Conservation Act</i>	No	<ul style="list-style-type: none"> Section 5: Declaration of Ecologically Critical Area, the following factors must be taken into account by the government before designating any place as an ecologically critical area:(a) human habitat, (b) ancient monument; (c) archeological site; (d) forest sanctuary; (e) national park; (f) game reserve; (g) wild animals habitat; (h) wetland; (i) mangrove; (j) forest area; (k) bio-diversity of the relevant area; and (l) other relevant factors.
The Environment Court Act, 2010	No	
The Wildlife (Conservation and Security) Act 2012	Yes small ethnic-community/ Community/ minor ethnic-community/	<ul style="list-style-type: none"> ✓ Section 2(45): Defines “small ethnic-community” which includes 27 ethnic community as per the Small Ethnic Minority Cultural Institute Act of 2010. ✓ Section 18: Any individual or community that owns land or wetlands that are not included in a landscape zone may apply to the government to have their property designated as a community conservation area in order to preserve any traditional or cultural values associated with it, as well as to develop it sustainably and manage wildlife. ✓ Section 21: The government may establish a co-management system for the sanctuary's natural resources, involving the forest department, minor ethnic communities, and local communities. This is to ensure active participation from all parties involved. ✓ Section 23: The government may designate any tree or kunjaban in a government forest, organization, khas land, or community-owned land that serves cultural, traditional, religious, or memorial purposes and is a wildlife habitat as national heritage, memorial tree, sacred tree, or kunjaban. Cultural and traditional values and standards belong to the community or the person must be preserved. ✓ Section 32: Wildlife trophies and monuments utilized for custom, history, or everyday life of small ethnic communities are exempt from seizure under the statute. ✓ Section 49: Prohibiting the import, sale, use, or carrying of airguns in the interest of wildlife conservation shall not apply to shooting clubs or communities residing in close proximity to forests, for the purpose of safety, daily necessities, and social customs.
The Bangladesh Water Act 2013	No	<ul style="list-style-type: none"> ✓ Section 37: For national and local reasons, the government may exclude any individual or community from calculating the cost of water for household or agricultural use at a certain time or place
The Brick Manufacturing	No	<ul style="list-style-type: none"> • Section 5: It is prohibited to utilize soil that has been removed or collected from agricultural land, hills, or hillocks as a raw material

and Brick Kilns Establishment (Control) Act 2013		<ul style="list-style-type: none"> for brick manufacturing. Section 8: For any hill or hillock, if a brick kiln is built on its summit, slope, or surrounding ground surface, it must be at least ½ (half) kilometer from the hill's base. <p>If a brick kiln is established in a Hill District, it is not permitted to do so anywhere other than at the location chosen by the Hill Districts Environment Development Committee.</p>
The Bangladesh Biodiversity Act 2017	No	
The Forest Act 1927	Yes/ Community, Communities	<ul style="list-style-type: none"> ✓ Section 28: The government may delegate the authority to manage village forests to any village community. ✓ Section 29: The government will declare land as a protected forest, ensuring that it does not infringe upon or impact any pre-existing rights of individuals or communities.

(Table created by author).

The Brick Manufacturing and Brick Kilns Establishment (Control) Act 2013 is another piece of environmental legislation that includes two stipulations recognizing Indigenous peoples concern. Though not making specific reference, section 5 and 8 of the Act (see Table 2 above) clearly recognize some of the issues associated with the establishment of brick kilns, which may be of advantageous to the Indigenous peoples who live in the Hill districts. However, Bangladesh does have Indigenous peoples living in the plainland, who would not get any benefits from these two provisions. There are no legal restrictions against the construction of a brick kiln in close proximity to them or the use of soil from the area they reside. The Hill Districts Environment Development Committee must provide clearance and designate location before a brick kiln may be built in a hill district under section 8 of the Act. No such dedicated official body is in charge of verifying and allocating sites for brick kilns recognizing the concerns of the Indigenous peoples living in the plainland. Even though the Act does not make the specific reference of Indigenous peoples, it clearly mis-recognizes plainland Indigenous peoples. Section 8 of the Act provides assistance to Indigenous peoples in Hill districts, but it does not extend the same support to plainland Indigenous peoples.

In 2013, the Bangladesh Water Act was passed, which establishes that the state has ownership of several types of water within its territory. These include surface water, ground

water, sea water, rain water, and water in the atmosphere. The state holds these rights on behalf of the people. The Indigenous peoples residing in remote areas of the Chittagong Hill Tracts (CHT) have a heightened susceptibility to a lack of clean and adequate water.¹⁷¹ This is mostly attributed to the deterioration of natural resources, such as streams, and the unsustainable use of forest resources. This provision of the Act makes only reference to the term "Community" in section 37, which states that for the purpose of both local and national interest, the government may, after consulting with the relevant authorities temporarily or permanently exempt any person or community from paying water rates for residential or agricultural use. While the Act delineates the meaning of "person," which encompasses not only natural persons but also institutions, companies, associations, partnerships, statutory institutions, and other comparable organizations, it fails to provide a definition for "community." Whether this term also encompasses "tribes, minor races, ethnic sects, and communities" is not explicitly stated. Consequently, it is challenging to avail the advantages provided by the provision for the remaining Indigenous peoples who are categorized as "tribes, minor races, ethnic sects" as they aren't recognized or stated in the Act.

As Scott and Tessaro correctly point out that, preambular language or purpose clauses, while they provide information for other legally binding elements in the act, do not impose any specific procedures or results for vulnerable groups and disadvantaged communities.¹⁷² Preambular language might convey lawmakers' intention to take vulnerable populations' (or other disadvantaged groups') interests into account and advance their protection.¹⁷³ The authors contend that depending on such assertions to argue that the law adequately safeguards vulnerable people may really have the opposite effect and hinder progress.¹⁷⁴ Due to these factors, the use of preambular language alone is an inadequate measure of how a law allocates responsibilities and advantages.¹⁷⁵ An example is the Bangladesh Biodiversity Act in 2017 which, in describing the laws's purpose, directs that the legislation was enacted to fulfillment the state's commitment to

¹⁷¹ Md Lutfor Rahman "Ensuring water security for ethnic minority communities in CHT" *The Business Standard* (7 November 2022), online: <<https://www.tbsnews.net/>>[<https://www.tbsnews.net/thoughts/ensuring-water-security-ethnic-minority-communities-cht-527358>].

¹⁷² Scott & Tessaro, *supra* note 84 at 95.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid* at 96.

¹⁷⁵ *Ibid.*

the Convention on Biological Diversity. Since Bangladesh is a dualist nation, it has implemented its CBD commitment through this national legislation. Consequently, the legislation should reflect all the CBD commitment including the provisions related to traditional knowledge and practices of Indigenous peoples. More significantly, Article 37 of the CBD declares that no reservations may be made to this Convention¹⁷⁶; as a result, Bangladesh cannot use the reservation argument to exclude Indigenous peoples in the Biodiversity Act of 2017. Thus, it is reasonable to infer from the preambular wording of the Act that the provisions of the Act ought to contain more specific provisions protecting traditional knowledge and practices of Indigenous peoples. While the Act does make reference to the CBD commitment in the preamble, traditional knowledge, Prior Informed Consent (PIC), and Mutually Agreed terms (MAT) in the subsequent sections, it does nowhere include any Constitutional terms that would recognize Indigenous peoples in any of its sections. This includes the sections that address the documentation and protection of traditional knowledge related to biodiversity, as well as the access and sharing of benefits from biological resources.

The above legislation does, however, make reference to local communities' roles, significance and responsibilities with regard to traditional knowledge. Extensive scholarly research has previously demonstrated that local communities and Indigenous communities are distinct entities with different interests and rights.¹⁷⁷ While examining the distinction between Indigenous communities and local communities, Morgera et al. recognize that it is particularly important for CBD Parties that maintain that they do not have Indigenous peoples residing within their borders to address this matter.¹⁷⁸ The authors point out that, a lot of the salient features of local communities such as self-identification, a lifestyle entwined with customs connected to natural cycles, possession of a delimited region, and customary and/or collective rights are also often ascribed to Indigenous peoples.¹⁷⁹ They remark that presently, the CBD does not provide

¹⁷⁶ *United Nations Convention on Biological Diversity*, 5 June 1992, art 37, online: [\[https://www.cbd.int/convention/text\]](https://www.cbd.int/convention/text).

¹⁷⁷ Ann. M. Mc Cartney, "Indigenous peoples and local communities as partners in the sequencing of global eukaryotic biodiversity" (2023) 2:8 npj biodiversity.

¹⁷⁸ Elisa Morgera, Elsa Tsioumani, and Matthias Buck, *Unraveling the nagoya protocol: a commentary on the nagoya protocol on access and benefit-sharing to the convention on biological diversity* (Leiden, Netherlands, Brill, 2014).

¹⁷⁹ *Ibid.*

any guidance regarding the question of whether the status and rights of local communities should be interpreted as comparable or even identical to those of Indigenous peoples under international law.¹⁸⁰

Not only does this piece of legislation not recognize Indigenous peoples, but it also does not provide them with any legal means for the purpose of achieving recognition. The following are several instances and clarifications that I have identified.

Firstly, the Constitutional provisions Article 18A and Article 23A, which are pertinent to the recognition of Indigenous peoples, are the source of this law and cannot be enforced by a court. Therefore, Indigenous peoples are unable to pursue legal recourse for their recognition under the Biodiversity Act, as well as to hold the state responsible for not recognizing them.

Secondly, for an international treaty to be enforceable in Bangladesh, national legislation is a key prerogative.¹⁸¹ The status of international law and its application in Bangladesh is contingent upon the political benevolence of the government.¹⁸² The process of integrating and enforcing CBD provisions is ultimately controlled by the legislative branch of the government.

Thirdly, Indigenous peoples are unable to bring up this issue to environmental courts. Currently, the Environment Courts have jurisdiction over offenses and claims for compensation exclusively in relation to the Bangladesh Environment Conservation Act, 1995 and the Brick Manufacturing and Brick Kilns Establishment (Control) Act, 2013.

2.2. Recognition from Below

2.2.1 The Chittagong Hill Tracts Peace Accord 1997

In this section, I continue the discussion of recognitional justice by Parsons et al., which is another component of environmental justice as recognition.¹⁸³ The writers point out that it is feasible for Indigenous peoples who have treaties and laws that recognize and uphold their right

¹⁸⁰ *Ibid.*

¹⁸¹ Mazharul Islam et al, “The Application of International Laws in Bangladesh: A Critical Evaluation” (2022) 8:1 Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang 207.

¹⁸² *Ibid.*

¹⁸³ Parsons, Fisher & Crease, *supra* note 97.

to self-determination and tribal sovereignty, or to aspire to have them.¹⁸⁴ The Chittagong Hill Tracts Peace Accord 1997 (CHT Treaty), signed between the Government and the Parbtya Chattagram Jana Samhati Samiti (PCJSS, Indigenous Peoples political party) aims to empower Indigenous communities to take control of resource redistribution. The treaty aims to enhance the rights and promote the development of all citizens in CHT, encompassing political, social, cultural, educational, and financial aspects.¹⁸⁵ Under the CHT treaty, only the Indigenous peoples residing in Chittagong Hill Districts have the ability to establish their own social orders independently, without requiring the approval or permission from anyone else. The CHT treaty designates the Hill District Council with the exclusive functions and responsibilities of various environmental aspects, including environment preservation and development, proper utilization of water resources of rivulets, canals, ponds except Kaptai Lake and irrigation, jhum cultivation, local tourism, tribal law and social justice.¹⁸⁶ Proper implementation of this treaty may have given Indigenous peoples a legal avenue to adopt ontological and epistemological diversity. Additionally, to reconsider, rebuild, and repurpose their knowledge, principles, and lifestyles in any environmental choices that have an impact on them within the CHT. Scholars underscore the significance of giving Indigenous communities more ability and resources to more effectively advocate for themselves in environmental decision-making procedures.¹⁸⁷

Arsenault et al. argue that in order to avoid forcing Indigenous knowledge systems to fit into predetermined, state-driven bureaucratic procedures, this effort involves empowering Indigenous communities to create, evaluate, and publish their own environmental plans and evaluations.¹⁸⁸ Through the CHT treaty implementation, the Indigenous peoples of the CHT might be guaranteed recognitional justice. However, the treaty's full implementation remains uncertain.¹⁸⁹ The following statement was made by Francisco Cali Tzay, the Special Rapporteur on the rights of Indigenous Peoples¹⁹⁰:

¹⁸⁴ *Ibid.*

¹⁸⁵ *CHT Treaty, supra* note 35.

¹⁸⁶ *Ibid* art 34.

¹⁸⁷ Rachel, *supra* note 160.

¹⁸⁸ *Ibid.*

¹⁸⁹ Adity Rahman Shah, "The Un-peopling of Peoples: A Critical Study on the Justifiability of the Non-recognition of the Indigenous Peoples of the Chittagong Hill Tracts" in Javaid Rehman, Ayesha Shahid & Steve Foster, ed, *The Asian Yearbook of Human Rights and Humanitarian Law* (Leiden; Boston : Brill Nijhoff, 2023) 372 ; Fardaus Ara

“The non-implementation of the accord signed between the Government and the Parbtya Chattagram Jana Samhati Samiti (PCJSS - Indigenous Peoples political party) has left the Indigenous Peoples vulnerable, marginalised, and deprived of determining their own development, as they are entitled to in the accord.”

According to the ILO Observation (CEACR) - approved 2022, published in the 111st ILC session (2023), the Government of Bangladesh states in its report that 48 of the 72 provisions of the Peace Accord have been fully implemented, while 15 have been partly implemented and nine are currently being implemented.¹⁹¹ On the other hand, the PCJSS Annual Report of 2023 highlights the current status of human rights in CHT, revealing that a mere 25 out of the 72 articles of the Accord have been put into action. Out of the remaining 47, some have been completely unimplemented or only partially implemented, leaving them in a state of uncertainty.¹⁹²

This chapter examined the Constitutional clauses, specific environmental legislations, and the CHT treaty to figure out the degree of recognition provided to the Indigenous peoples of the nation. It has been found that there is only one legal instrument that has the potential to guarantee recognition from below, which is the CHT treaty. The remaining environmental legislations are those where the state still has the authority to provide recognition. The constitutional recognition that is secured is narrowly incorporated. As a result, I draw the conclusion that the constitutional provision relating to recognition is limited and superficial as this kind of recognition clause does not inherently generate or enhance the rights, protection, and consideration associated with it. Rather, it serves as a directive for the state to choose the extent

& Md Mostafizur Rahman Khan, “The Chittagong Hill Tracts Peace Accord: Promises and Performances” in Amit Ranjan & Diotima Chattoraj, ed, *Migration, Regional Autonomy, and Conflicts in Eastern South Asia Searching for a Home(land)* (London UK: Palgrave Macmillan, 2023), 293.

¹⁹⁰ UNHR, “Bangladesh: UN expert concerned about non-implementation of Chittagong Hill Tracts Accord” (2 December 2022) online: <https://www.ohchr.org/en/ohchr_homepage>[[https://www.ohchr.org/en/press-releases/2022/12/bangladesh-un-expert-concerned-about-non-implementation-chittagong-hill#:~:text=GENEVA%20\(2%20December%202022\)%20%E2%80%93,a%20UN%20expert%20said%20today](https://www.ohchr.org/en/press-releases/2022/12/bangladesh-un-expert-concerned-about-non-implementation-chittagong-hill#:~:text=GENEVA%20(2%20December%202022)%20%E2%80%93,a%20UN%20expert%20said%20today)].

¹⁹¹ *Observation (CEACR)*, ILO, 111st ILC session (2023), Indigenous and Tribal Populations Convention, 1957 (No. 107) – Bangladesh, online: https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:P13100_COUNTRY_ID:4309767,103500:NO].

¹⁹² Desk, “PCJSS Annual Report of 2023 on Human Rights Situation of CHT” (3 January, 2024) online: <<https://www.pcjss.org/>>[<https://www.pcjss.org/pcjss-annual-report-of-2023-on-human-rights-situation-of-cht/>].

of recognition to be granted whenever an environmental legislation is enacted. Therefore, the current dynamics of recognition also result in systemic biases in the processes of recognizing Indigenous peoples among the categories outlined in the constitution. This is why; it is more prevalent to see instances of non-recognition or misrecognition of “tribes, minor races, ethnic sects and communities” in the provisions of some environmental legislations. In contrast, complete recognition of the “tribes, minor races, ethnic sects and communities” is very rare in environmental legislations.

The above conclusion aligns with the arguments made by Ashok Kumar Chakma et al as well as Scott and Tessaro. Ashok Kumar Chakma et al note that Indigenous peoples' traditional means of subsistence, as well as their rights to land and natural resources, are always under jeopardy as a result of the national legal framework's failure to recognize the collective rights of Indigenous peoples.¹⁹³ On the other hand, Scott and Tessaro contend that laws and regulations that only require regulators to superficially consider vulnerable populations and marginalized communities, without mandating a strong adherence to these considerations in the legislation, can perpetuate a misleading belief that the law is effectively safeguarding vulnerable populations.¹⁹⁴ That is what the environmental laws now in effect in Bangladesh and the Constitutional clause that stipulated recognition of Indigenous peoples do. Another conclusion I reach is that environmental laws have a tendency to be either neutral toward Indigenous peoples in their provisions or to take a "one-size-fits-all" approach to the assessment and management of environmental concerns. Consequently, I concur with Scott and Tessaro that this approach has led to the failure to recognize and consider the distinctive environmental challenges faced by Indigenous peoples, resulting in unfair or unequal outcomes.¹⁹⁵

The following chapter conducts an analysis of the contents of environmental legislations to ascertain the extent to which the rights of Indigenous peoples in relation to diverse environmental concerns have been incorporated into the provisions of these laws.

¹⁹³ Chakma, Bijoy & Rai, *supra* note 150.

¹⁹⁴ Scott & Tessaro, *supra* note 84 at 90.

¹⁹⁵ *Ibid.*

Chapter 3: Rights of Indigenous Peoples in Bangladesh's Environmental Regulatory Framework

In this chapter, I apply an environmental justice perspective to argue that the current environmental laws of Bangladesh unevenly allocate the burdens, benefits, and risks of environmental (in)justice for Indigenous peoples.¹⁹⁶ Various provisions under these environmental legislations have significant ramifications for Indigenous peoples and communities, as does the extent of the rights guaranteed by those provisions, making them concerns of environmental justice. When considering the relationship between environmental regulations and Indigenous rights in Bangladesh, the two constitutional provisions cited in the previous chapter do not establish any dominant influence over each other. It is also worth noting that there is no clause in the Constitution requiring consultation or accommodation when environmental choices made by the state may have an effect on Indigenous rights. Consequently, the state is not required by law to justify environmental legislation that infringes against Indigenous rights, show that the interference serves a valid legislative purpose, or behave in a way that is compatible with its obligation as welfare state.¹⁹⁷ Keeping the above in mind, this chapter examines the inclusion of Indigenous people's rights into environmental legislation in Bangladesh. In doing so, the provisions of selected environmental laws have been explored to determine the extent to which they reflect and contain Indigenous rights.

Indigenous peoples, despite being integrated into a broader society, maintain their unique identity as a separate group with their own distinct culture, language, and traditions. These elements serve to safeguard both the well-being of the people and the environment.¹⁹⁸ It is widely recognized in academic literature that the culture and tradition of Indigenous peoples are closely intertwined with the environment and the specific geographic regions in which they

¹⁹⁶ *Ibid.*

¹⁹⁷ Wahiduddin Mahmud & Simeen Mahmud, "Development, welfare and governance Explaining Bangladesh's 'development surprise'" in Gabriele Koehler & Deepta Chopra, ed, *Development and Welfare Policy in South Asia* (London: Routledge, 2014), 65.

¹⁹⁸ Kuoyung-Silan Song, Ben A LePage & Wei-ta Fang, "The conflict between environmental justice and culture" (2023) 19:1 *AlterNative: An International Journal of Indigenous Peoples* 197.

reside.¹⁹⁹ Environmental protection and the protection of Indigenous rights are inextricably linked and it is expected that the environmental legal regime would prioritize addressing their issues as well. The international environmental regimes also place emphasis on Indigenous peoples, their rights, and their involvement in environmental matters. Currently, numerous legal instruments uphold the significance of Indigenous participation in environmental governance. References to Indigenous peoples are commonly found in international environmental declarations, resolutions, and policies such as Rio Declaration²⁰⁰, Agenda 21²⁰¹, UNDRIP and the Desertification Convention²⁰². Conventions on Biological Diversity (CBD) and the International Labour Organization Convention (No. 169) Concerning Indigenous and Tribal Peoples, both of which are legally binding, currently acknowledge the unique rights of Indigenous peoples with regard to their territories and the environment. In light of the fact that Bangladesh has ratified a number of international environmental agreements, this chapter also considers how the country fulfills the obligations it has made in those agreements with regard to Indigenous peoples through domestic implementation.

3.1. Connection between Environmental Rights and Indigenous Peoples

A brief exploration of the connection between environmental rights and Indigenous peoples is necessary prior to digging into the details of the environmental regulations. Various scholars have attempted to comprehend and substantiate this connection from different perspectives. Cherie Metcalf discussed two approaches when examining the connection between the rights of Indigenous peoples and environmental laws.²⁰³ The author outlines the first approach, known as the cultural integrity model, which advocates for extending environmental rights to Indigenous peoples as a necessary consequence of safeguarding and maintaining their unique culture.²⁰⁴ An ecologically balanced interaction with lands and resources is how the

¹⁹⁹ Cherie Metcalf, “Indigenous Rights and the Environment: Evolving International Law” (2003) 35:1 Ottawa Law Review 101.

²⁰⁰ *Rio Declaration on Environment and Development*, 14 June 1992, Principle 22.

²⁰¹ *Agenda 21*, 14 June 1992, Chapter 26.

²⁰² United Nations Convention to Combat Desertification also incorporates the cultural integrity norm in its protection of indigenous environmental rights under art 18(2).

²⁰³ Metcalf, *supra* note 199 at 104.

²⁰⁴ *Ibid* at 105.

cultural integrity model describes Indigenous culture.²⁰⁵ The self-determination model offers an alternative approach to the recognition and protection of Indigenous environmental rights.²⁰⁶ This model acknowledges Indigenous rights in relation to the environment due to the recognition of Indigenous peoples' entitlement to self-determination.²⁰⁷ Their presence as distinct communities enables them to possess a certain degree of self-governance and authority over their own progress.²⁰⁸ In the majority of situations, the cultural integrity model remains prevalent. Concerns appear to exist among nations regarding the potential compromise of territorial integrity and erosion of state sovereignty that could result from granting Indigenous peoples the right to self-determination.²⁰⁹ The inclination towards adopting the cultural integrity approach could also be attributed to an intention to reduce ambiguity through the protection of Indigenous peoples' environmental rights in a consistent fashion with the established framework and principles of international environmental law.²¹⁰ The idea that Indigenous peoples' fundamental environmental rights are best articulated by the cultural integrity model may also be at the root of this.²¹¹

Taking the above into consideration together with the absence of a clear definition of culture in any legislative instrument, it can be said that, the Constitutional clause²¹² upholds the cultural integrity model in Bangladesh, which supports that protecting and preserving the distinctive culture of Indigenous peoples necessitates granting them environmental rights. On the other hand, the current unfeasibility of asserting environmental rights through the self-determination model can be attributed to the character of Constitutional recognition, abstinence from international commitment and the ongoing tensions between the government and Indigenous communities. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a significant achievement for the member-states of the United Nations since it acknowledges and upholds the rights of Indigenous peoples worldwide. The Declaration asserts

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid* at 106.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² *The Constitution, supra* note 31.

that Indigenous peoples possess the right to self-determination as distinct "peoples."²¹³ It also outlines a set of criteria that nation-states can use to protect the human rights of Indigenous peoples. These criteria primarily focus on their unique cultural and political status, as well as their longstanding connection to their ancestral lands. Currently, the Declaration serves as a set of guiding principles for nation-states to consider when formulating their domestic laws and policies for Indigenous peoples. However, it does not have any legally binding authority.

Tsosie asserts that the declaration has immense significance in establishing a set of contemporary standards for developing fair relationships between Indigenous peoples and the nation-states that now govern them.²¹⁴ Bangladesh remains steadfast in its stance as one of the eleven nations that abstained from voting during the 2007 UNDRIP adoption process.²¹⁵ The term "self-determination" was officially incorporated into ILO Convention 169, which continues to be the sole legally binding instrument specifically addressing the rights of Indigenous communities. Bangladesh ratified Convention 107 of the International Labor Organization on Indigenous and Tribal Populations in 1972. However, Bangladesh has yet to ratify its more progressive successor, Convention 169.²¹⁶ Previous research has shed light on the marginalization experienced by tribal communities in Bangladesh and this perception is perpetuated by the country's failure to sign Convention 169.²¹⁷ It is worth noting that the National 8th Five-Year Development (July 2020- June 2025) Plan outlines some future areas of action, one of which is that the Government would consider adopting the UN Declaration on the Rights of Indigenous Peoples in 2007 and ratifying the ILO Convention 169.²¹⁸

²¹³ Rebecca Tsosie, "Conceptualizing Tribal Rights: Can Self-Determination Be Actualized within the U.S. Constitutional Structure" (2011) 15:4 Lewis & Clark L Rev 923 [Tsosie, "Conceptualizing Tribal Rights"] at 924.

²¹⁴ *Ibid* at 948.

²¹⁵ UN Department of Economic and Social Affairs, "United Nations Declaration On The Rights Of Indigenous Peoples" online: [<https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples#:~:text=The%20United%20Nations%20Declaration%20on,%2C%20Bangladesh%2C%20Bhutan%2C%20Burundi%2C>].

²¹⁶ Errico, *supra* note 3.

²¹⁷ Shah, *supra* note 189; Raja Devarsish Roy, "Challenges for juridical pluralism and customary laws of indigenous peoples: The case of the Chittagong Hill Tracts, Bangladesh" (2004) 21 Ariz. J. Int'l & Comp 113 [Roy, "Challenges for juridical pluralism"]; Nafis H, "Bangladesh Has No Indigenous People" (8 July, 202) online: [<https://www.jamhooor.org/>] [<https://www.jamhooor.org/read/bangladesh-has-no-indigenous-people>].

²¹⁸ General Economics Division (GED), Bangladesh Planning Commission, Government of the People's Republic of Bangladesh, 8th Five Year Plan (July 2020- June 2025), 2020, online:

The International Labour Organisation (ILO) was the first to acknowledge the notion that Indigenous peoples are entitled to a unique set of human rights protected by international law.²¹⁹ The ILO Convention 107 ensures the safeguarding of minority rights via "progressive integration". According to Article 2 of the Convention, it is the fundamental duty of governments to implement organized and systematic measures to safeguard the Indigenous and tribal or semi-tribal populations and ensure their gradual integration into the societies. Such action would encompass strategies that ensure the aforementioned populations have an equal opportunity to benefit from the rights and opportunities granted to other segments of the population by national laws or regulations; initiatives that raise the standard of living and foster social, economic, and cultural progress for these populations; and initiatives that facilitate national integration, excluding those that tend to artificially assimilate these populations. Hence, taking into account Bangladesh's ratification status, one could cogently assert that the government is obligated to safeguard the environmental rights of Indigenous peoples in accordance with the "progressive integration" provision of the convention 107. Therefore, environmental legislation and regulatory frameworks should appropriately reflect measures taken to meet this international commitment at the national level.

3.2. Points of Interaction: Environmental Laws and Indigenous Peoples

Sajeve Giulia²²⁰ outlined the following four overarching themes of biocultural rights (see Table 3 below) within the environmental legal framework.²²¹ This is consistent with the rights protected by the UNDRIP as well. However, the author asserts that the rights, which vary based on the distinct characteristics of each society, are susceptible to continuous modification.²²² Using the following as a general guidance to discuss the condition in Bangladesh, the next exploration analyzes the extent to which and how environmental laws of Bangladesh, and particularly their provisions, uphold Indigenous rights and state obligations under international

[https://plancomm.gov.bd/sites/default/files/files/plancomm.portal.gov.bd/files/68e32f08_13b8_4192_ab9b_abd5a0a62a33/2021-02-03-17-04-ec95e78e452a813808a483b3b22e14a1.pdf].

²¹⁹ Tsosie, "Conceptualizing Tribal Rights" *supra* note 213 at 926.

²²⁰ Sajeve Giulia "The Legal Framework behind Biocultural Rights" in Fabien Girard, Ingrid Hall & Christine Frison ed, *Biocultural Rights, Indigenous Peoples and Local Communities* (London: Routledge, 2022), 165.

²²¹ *Ibid* at 173.

²²² *Ibid*.

law. Throughout the analysis, the discussion makes reference to the previously listed environmental legislations, as well as related regulations and policies.

Table 3
Themes of Biocultural Rights

Rights	Scope
Rights to land, waters, and natural resources	<ul style="list-style-type: none"> a. Protection from external threats to the environment b. The right to access and use of traditional lands and waters c. Special access to sacred natural sites d. Access to and use of biotic and abiotic resources present in the land
Rights to self-government	<ul style="list-style-type: none"> a. The right to internal self-determination and to regulate its internal matters through the use of its legal institutions and rules
Rights to cultural identity	<ul style="list-style-type: none"> a. The rights necessary to safeguard the integrity of values, worldviews, practices, and knowledge
Associated procedural rights	<ul style="list-style-type: none"> a. The right to free, prior, and informed consent, and b. The right to the application of a precautionary approach c. The right to access to justice

Note. Adapted from Sajeve Giulia "The Legal Framework behind Biocultural Rights" in Fabien Girard, Ingrid Hall & Christine Frison ed, *Biocultural Rights, Indigenous Peoples and Local Communities* (London: Routledge, 2022), 173.

3.2.1. Protection from External Threats to the Environment

Metcalf suggests that cultural protection for Indigenous communities involves implementing environmental protections that allow them to maintain their interdependent relationship with the land, which is essential for the continuation of their culture.²²³ Hence, it is crucial to establish legal safeguards against external threats that may endanger the environment in which they inhabit. The previous literature discussed many actions that might be regarded as external dangers to the ecosystem, resulting in harm to Indigenous peoples. These include the development and extraction of oil and gas, the extraction of minerals, the disposal of toxic waste, industrial development, contaminations from agrochemicals, and contaminations from

²²³ Metcalf, *supra* note 199 at 107.

radioactivity, polluting activities, as well as the growth of the tourist industry.²²⁴ As Pasternak et al point out, and this is also true in the case of Bangladesh, Indigenous peoples do not have the authority to "veto" or right to consent to projected development on their territory.²²⁵ Apart from these, the other elements that contribute to external threats in the contexts of Bangladesh include land grabbing and settlers occupying and encroaching on Indigenous Pahari²²⁶ land.²²⁷

Managing external threats requires a three-pronged approach: prevention, mitigation, and response. The inclusion of Environmental Impact Assessment (EIA) standards in environmental legislation is aimed at preventing negative environmental consequences. The Environment Conservation Act of 1995 and the Environment Conservation Rules of 2023 provide the legal basis for Bangladesh's EIA system. According to Section 12 of the Environment Conservation Act 1995, it is required that no industrial unit or project may be constructed or initiated without receiving an Environmental Clearance Certificate from the Director General. The certificate must be obtained in the manner specified by the regulations. The previous rule, referred to as the Environment Conservation Rules of 1997, received severe criticism for its numerous deficiencies. These include the primary focus of legislation on pollution control²²⁸, the failure to assess the relevant environmental impacts of significant actions, evaluate alternatives, allow for public review, public participation²²⁹, and require proponents to address raised concerns, monitor the commitments made by proponents, establish a competent private local consulting sector and dispute settlement.²³⁰

²²⁴ Álvaro Fernández-Llamazares et al, "A State-of-the-Art Review of Indigenous Peoples and Environmental Pollution" (2020) 16:3 *Integr Environ Assess Manag* 324.

²²⁵ Shiri Pasternak et al, "Infrastructure, jurisdiction, extractivism: keywords for decolonizing geographies" (2023) 101 *Political Geography*.

²²⁶ Hilly land.

²²⁷ Amnesty International, "Bangladesh: Indigenous Peoples engulfed in Chittagong Hill Tracts land conflict" (12 June, 2013), online: <<https://www.amnesty.org/en/>> [<https://www.amnesty.org/en/latest/press-release/2013/06/bangladesh-indigenous-peoples-engulfed-chittagong-hill-tracts-land-conflict/>].

²²⁸ Rafique Ahammed & Nick Harvey, "Evaluation of Environmental Impact Assessment Procedures and Practice in Bangladesh" (2004) 22:1 *Impact Assessment and Project Appraisal* 63 at 72.

²²⁹ *Ibid* at 64.

²³⁰ *Ibid* at 73.

The recently adopted Environment Conservation Rules (ECRs) 2023 have categorized industrial projects and units according to their activities, pollution levels, and possible impact on the environment and public health. The categories are Green, Yellow, Orange, and Red.²³¹ Green categories are projects or units with minimal effects on the environment and public health. There is a modest effect on the environment and human health from industrial units or projects classified as yellow. Projects or organizations classified as orange categories significantly affect both the environment and human health. The red category is characterized by a high risk to both human and environmental health. As such, measures such as pollution control and environmental protection are necessary to mitigate their adverse impact on the environment. In order to meet the requirements of environmental impact assessment, two types of certificates are necessary: a location certificate and an environment clearance certificate.²³² No location certificate is required for green category. A location certificate is required for industrial projects falling under the yellow, orange, and red categories.²³³ The absence of a Location Clearance Certificate precludes the development of land or infrastructure for yellow, orange, or red industrial units. Moreover, such projects are unable to obtain gas, electricity, water, or other essential services, and are also prohibited from commencing trial production or undertaking projects.

Schedule 9 of the ECRs 2023 contains criteria for determining which areas are barred from constructing industrial units and which areas should be considered for building industrial units. The places listed below are off limits.

- a. Areas that are legally protected, heritage site²³⁴, designated as cultural sites, ecologically critical areas, sanctuaries, or places protected under international conventions
- b. Areas of environmental and biological importance include habitats of endangered and local species, wetlands, mountains, natural forests, man-made forest (paraban) and coral island
- c. Government-declared forest areas.

²³¹ *Environment Conservation Rules*, r 5, (2023) [ECR].

²³² *Ibid*, r 6.

²³³ *Ibid*.

²³⁴ Three spots of Bangladesh have been declared world heritage sites. These are: Paharpur Buddhist Monastery of Noagaon, Bagerhat Mosque City and the Sundarbans.

- d. Valuable agricultural land.
- e. Historical sites, memorial sites, parks, playgrounds, schools, hospitals, residential areas, medical facilities, archeological sites, and places the government has identified as sensitive.

Notably, the interests of Indigenous peoples are connected to a number of areas on the list above. It may be argued that this provision partly ensures the "prevention" component against outside dangers to the territory inhabited by Indigenous peoples.

If the Government determines that an area is in a state of environmental crisis or is at risk of becoming one, it has the power to officially designate the area as an ecologically critical area under the Bangladesh Environment Conservation Act (BECA) 1995. When determining whether an area has become environmentally critical or is in the process of becoming so, the National Committee created under the Ecological Critical Area Management Rules 2006 adopted under the BECA 1995, will consider the means of subsistence, religious and social cultures of Indigenous peoples.²³⁵ In addition, the same regulation mandate that, when deciding what kinds of activities are prohibited in ecologically critical areas, authorities must take into account the ways of life, livelihoods, religious beliefs, and social cultures of Indigenous peoples. Therefore, the regulation not only enforces preventive measures but also ensures the preservation of the cultural and social attributes of Indigenous peoples, which should not be constrained by the forbidden activities in the designated ecologically critical areas.

However, since Indigenous peoples are not explicitly mentioned in the list, the aforementioned advantages of certain areas may only be obtained if other specific legal conditions are satisfied. For instance, in order to meet the requirements of being "designated as cultural sites or heritage site, valuable agricultural land, man-made forest (paraban) or sensitive" Indigenous people's area needs to be identified as such. At present, cultural and historical site protection is limited to a small number of places, none of which include areas inhabited by Indigenous peoples.

²³⁵ *Ecologically Critical Area Management Rules*, r 4, (2006) [ECAMR].

3.2.2. The Right to Access and Use of Traditional Lands and Waters

Indigenous peoples residing in Bangladesh, similar to those in other parts of the world, are entangled in disputes over land rights. This is due to the fact that land and resources are critical to their sustenance, identity, dignity, and social and cultural integrity. Currently, the land rights in the CHT are structured on a dualistic framework, consisting of customary and national land rights.²³⁶ The table below (Table 4) contains specifics on the land rights in CHT. Conversely, beyond the jurisdiction of the CHT, the sale of "aboriginal castes and tribes" lands to non-Bangladeshi aboriginal castes and tribes are prohibited under section 97 of the State Acquisition and Tenancy Act (1950).²³⁷

Table 4
Land Rights in CHT

Category of Land	Customary Land Rights	National Land Rights
Common Land	<ul style="list-style-type: none"> • Common land includes jum fields, orchards, grazing, forests and sungrass. • Indigenous communities have shared rights of access use and extraction. • Traditional economic activities including fishing, hunting, and gathering occur in these places due to common ownership. • No taxes were traditionally imposed for the use of these lands. 	<ul style="list-style-type: none"> • Government does not recognize indigenous people's collective rights to common lands. • Such lands are considered state-owned, often referred to as Khas lands, or state lands and the forest department classifies them as Un-classed State Forests (USFs). • The CHT Regulation acknowledges occupation and extraction rights, although taxes apply. • Indigenous peoples have qualified rights to homestead lands, sungrass extraction (Rule 45A), herding (Rule 45B), and Jum (Rules 34, 41, 42, 45 and 50).
Forest	<ul style="list-style-type: none"> • Forest product usage and extraction are traditionally unrestricted, limited only by customary law. 	<ul style="list-style-type: none"> • Limited indigenous rights to forests by adopting categorizations: (1) Reserved Forests, (2) Unclassified State Forests, and (3) Protected Forests.
Paddy Lands	<ul style="list-style-type: none"> • In the valleys and low-lying regions of the CHT, it was formerly the predominant 	<ul style="list-style-type: none"> • Formally not recognized.

²³⁶ Parbatya Chattagram Jana Samhati Samiti (PCJSS), "Land & National Resources of CHT" online : <https://www.pcjss.org/> [<https://www.pcjss.org/land-national-resources-of-cht/>].

²³⁷ Section 97 only applies to the following Indigenous groups "Sonthals, Banais, Bhuiyas, Bhumijes, Dalus, Garos, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kochs (Dhaka Division), Koras, Maghs (Bakerganj District), Mal and Sauria Paharias, Maches, Mundas, Mundais, Oraons and Turis". See *State Acquisition and Tenancy Act 1950*, s 97(1).

	<ul style="list-style-type: none"> method of cultivation. Indigenous traditional authority kept detailed records of all plow fields, including owner, borders, and other pertinent information. In 1960, the Kaptai dam drowned abundant plow fields in the CHT, displacing approximately 100,000 people. 	
Grove Lands	<ul style="list-style-type: none"> Due to the construction of Kaptai dam, 40% of the farmland was submerged, the original Jumma people had to find other ways to generate income to support themselves. Consequently, the government actively promoted fruit planting in the CHT over rice cultivation. 	<ul style="list-style-type: none"> Leases for large gardens are documented with the Headman and Upazila Land Records. Smaller gardens lack registration records, hindering indigenous Jumma farmers' access to loans, market facilities, and land rights documentation.

Note. Adopted from Parbatya Chattagram Jana Samhati Samiti (PCJSS), “Land & National Resources of CHT” online: <<https://www.pcjss.org/>> [<https://www.pcjss.org/land-national-resources-of-cht/>].

Indigenous peoples in the CHT have customary resource rights that extend beyond swidden (jum) cultivation.²³⁸ These rights also include grazing grounds, water bodies, and forests. Certain rights, such as those pertaining to water sources and hunting, are not explicitly recognized in statute.²³⁹ Other rights, such as those pertaining to grazing commons and grasslands, are implicitly recognized.²⁴⁰ On the other hand, certain customary resource rights are explicitly recognized by law. For example, Rule 50 of the CHT Regulation says that Indigenous peoples can "occupy" homestead land in rural areas. Rule 41A of the CHT Regulation of 1900, the Forest Act of 1927 and the CHT Forest Transit Rules of 1973 permit that Indigenous peoples can use timber, bamboo, and other "minor" forest products for household uses.²⁴¹ The following figure (Figure 1) presents a compilation of various rights, the corresponding right holders,

²³⁸ Adopted from Parbatya Chattagram Jana Samhati Samiti (PCJSS), “Land & National Resources of CHT” online: <<https://www.pcjss.org/>> [<https://www.pcjss.org/land-national-resources-of-cht/>].

²³⁹ Roy, “Challenges for juridical pluralism”, *supra* note 217.

²⁴⁰ *Ibid.*

²⁴¹ *The Chittagong Hill Tracts Regulation 1900*. See

[https://mochta.portal.gov.bd/sites/default/files/files/mochta.portal.gov.bd/page/c5700903_fd1e_4de2_985e_065ba9e2971c/CHT_Regulation_1900-Eng.pdf].

governing laws or customs, if applicable, and the authority responsible for regulating the exercise of such rights.²⁴²

Figure 1
Customary Resource Rights of CHT Residents

Important Customary Resource Rights of CHT Residents

Natural resource	Right-Holder	Regulatory Law/Custom	Regulating Authority
Homestead Lands	Indigenous Family	Rule 50, CHT Regulation	Headman
Swidden Lands	Indigenous Family	Rule 41, CHT Regulation	Headman, DC
Used Swidden Lands	Indigenous Family	Traditional Customs	Headman
Forest Produce	Mauza Residents	Rule 41A, CHT Regulation	Headman & Karbari
Grazing Lands	Mauza Residents	Rule 45B, CHT Regulation	Headman, DC
Grasslands	Mauza Residents	Rule 45, CHT Regulation	Headman, DC
Wild Game	Indigenous Residents	Traditional Customs/ Various Acts	Headman, Circle Chiefs/ Forest Department
Marine Resources	Mauza Residents	Undefined	Headman
Large Water Bodies	Mauza Residents/State	Undefined	DC
Smaller Aquifers	Mauza Residents	Undefined	Headman

Note. From Roy, Raja Devarsish. "Challenges for juridical pluralism and customary laws of indigenous peoples: The case of the Chittagong Hill Tracts, Bangladesh." *Ariz. J. Int'l & Comp. L.* 21 (2004): 113.

Roy highlights the de-recognition, disregard, or violation of some customary rights in favour of the state's interests. He points out that the state also considered many of the Indigenous people's swidden commons outside of these reserved areas to be "forest" lands, and that the

²⁴² Roy, "Challenges for juridical pluralism", *supra* note 217.

rights of the peoples living there were sometimes treated as "usufructs" rather than as ownership rights.²⁴³ The Pakistani government (1947-1971) and the Government of Bangladesh from independence in 1971 till now have maintained the practice of transforming customarily held lands into "reserved forests," which the author argues, may be seen as the state's "forest fiefdoms."²⁴⁴ However, when it comes to customary resource rights over forest, swidden, and grazing commons, there would still be several areas of disagreement.²⁴⁵ Government officials often see them as simple "privileges," which may be removed at the discretion of the state.²⁴⁶ This particularly applies the reserved forests (which include 24% of the CHT) that are under the administration of the Ministry of Environment and Forests. In actuality, while the Forest Act permitted for local forest utilization, the government often provided limited legal protection.²⁴⁷

Apart from the above, as part of the CHT Peace Accord implementation, the district councils have jurisdiction over several subjects according to the 1989 legislations²⁴⁸. However, the legislations only address seventeen subjects so far, which include primary education, agricultural extension, health, cottage industries, co-operatives, fisheries and livestock, social services, sports, and cultural institutions. One of the subjects not delegated to the council's jurisdiction was the land. However, the transfer of land is limited by common Section 64 of the three Acts.²⁴⁹ Without the prior consent of the Council, no land within the limits of Rangamati, Khagrachari, Bandarban Hill District may be provided for settlement, irrespective of any existing legislation. Moreover, the transfer of such land to a non-resident person in the mentioned district is prohibited without obtaining prior clearance. Nevertheless, this clause is not applicable to regions located within the Protected and Reserve woods, the Kaptai Hydroelectricity Project, the Betunia Earth Satellite Station, land that has been transferred or settled for Government and Public interest, or land or forest required for the purposes of the state.

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

²⁴⁸ *Rangamati Hill District Council Act 1989, Bandarban Hill District Council Act 1989 and Khagrachari Hill District Council Act 1989.*

²⁴⁹ *Ibid.*

According to Babuna, the term "water governance" refers to the process of articulating organizational and administrative procedures in order to enhance the inputs and choices that a nation makes about the management of water resources.²⁵⁰ O'Donnell correctly remarks that Indigenous Peoples around the world are still mostly left out of the water governance²⁵¹, and this is also the case in Bangladesh. The author observes that Indigenous peoples are disproportionately affected by poor drinking water quality, and are also marginalized in terms of their access to water rights for economic advancement.²⁵² The continuous water dispossession has multifaceted impacts on physical, emotional, economic, cultural, and spiritual aspects.²⁵³ Access to drinkable and usable water has become a major issue for CHT people, who depend on sources of water including waterfalls, streams, and springs.²⁵⁴ The research conducted by Chakma indicates that the residents of the CHT area have limited access to clean drinking water and often depend on neighbouring springs and lakes.²⁵⁵ This situation worsens during the dry season²⁵⁶, impacting the supply of both surface and ground water for thousands of people.²⁵⁷ The removal of rocks and boulders from natural waterfalls has resulted in the depletion of water sources in the highlands, rendering them incapable of retaining water throughout the dry season.²⁵⁸ Moreover, the increasing deforestation is another contributing factor for the depletion of water sources.²⁵⁹

O'Donnell notes that water laws prioritize maximum extraction via the "use it or lose it" principle, rather than concentrating on the redistribution of water rights and authority in water

²⁵⁰ Pius Babuna et al, "Modeling water inequality and water security: The role of water governance" (2023) 326 *Journal of Environmental Management*.

²⁵¹ Erin O'Donnell "Water sovereignty for Indigenous Peoples: Pathways to pluralist, legitimate and sustainable water laws in settler colonial states" (2023) 2:11 *PLOS Water*.

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ Imam Hossain, "Ensuring safe water for CHT people" *The Financial Express* (03 May 2023), online: <<https://thefinancialexpress.com.bd/>>[<https://thefinancialexpress.com.bd/views/opinions/ensuring-safe-water-for-cht-people>].

²⁵⁵ Swarnali Chakma, "Water Crisis in the Rangamati Hill District of Bangladesh: A Case Study on Indigenous Community" (2023) 5:2 *International Journal of Disaster Risk Management* 29.

²⁵⁶ *Ibid.*

²⁵⁷ Hossain, *supra* note 254.

²⁵⁸ *Ibid.*

²⁵⁹ Chakma, *supra* note 255.

governance, which should have been an explicit purpose.²⁶⁰ An example of this is the Bangladesh Water Act of 2013. The Act establishes a hierarchical sequence for water allocation in places experiencing severe water scarcity, with the following priorities: drinking water, household consumption, irrigation, fish farming, biodiversity preservation, wildlife conservation, maintaining minimum water flow in streams, industrial use, controlling salinity, power production, recreational activities, and other purposes. Neither the plain land Indigenous peoples nor the CHT Indigenous peoples have any unique status, rights, privileges, access to remedy recognized under the Bangladesh Water Act. One of the drawbacks of the Water Act is its dependence on the Bangladesh Environmental Conservation Act 1995 for prevention of water contamination. Instead of providing detailed regulations on water pollution and remedial measures, it relies on administrative authority to assess and address water pollution. As specified by the Bangladesh Environmental Conservation Act 1995, the Director General is responsible for implementing programs to monitor the quality of drinking water, preparing reports on the findings, and providing guidance or directives to individuals involved in order to ensure compliance with drinking water standards.²⁶¹

According to Article 26 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Indigenous Peoples are entitled to use, own, and regulate waterways that are part of their traditional territory. O'Donnell argues that governments in settler states have a propensity to present water justice as just the moral thing to do, rather than as a need for their own legal and sustainable water management²⁶² and power-sharing.²⁶³ Treaty law or Constitutional recognition of Indigenous Peoples' rights are the two methods, the author discusses for transforming the basis of the relationship between the state and Indigenous Peoples.²⁶⁴ He reflects the capacity of treaties to establish legal plurality, rather than imposing the assimilation of Indigenous systems into the laws of the dominant state.²⁶⁵ In this context, Wilson also contends that the attainment of water justice necessitates recognition and

²⁶⁰ O'Donnell, *supra* note 251.

²⁶¹ *The Bangladesh Environmental Conservation Act, 1995*, s 4 [BECA].

²⁶² O'Donnell, *supra* note 251.

²⁶³ Elizabeth Macpherson, "Can Western water law become more 'relational'? A survey of comparative laws affecting water across Australasia and the Americas" (2023) 53:3 *Journal of the Royal Society of New Zealand* 395.

²⁶⁴ O'Donnell, *supra* note 251.

²⁶⁵ *Ibid.*

endorsement of Indigenous epistemologies, ontologies, laws, and governance structures.²⁶⁶ Neither the Indigenous peoples of CHT nor Plainland have been granted constitutional recognition of water rights. In reference to the second method, the CHT agreement may be a means by which Indigenous peoples residing in the CHT regions are able to achieve their own kind of water justice. That being said, as the treaty's implementation is still up in the air, this approach is also ineffective for them. The Hill District Councils (HDCs) have not been given authority over law and order, police, land and land management, forest and environment, tourism, and development of communication infrastructure although being mandated under the CHT treaty.²⁶⁷ Indeed, the CHT Accord Implementation and Monitoring Committee has been established in accordance with Section 3 of Part A.²⁶⁸ However, it is worth noting that this committee is currently without its own dedicated office space, staff, and financial resources.²⁶⁹ Moreover, none of the decisions made at the committee meeting were put into effect.²⁷⁰

3.2.3. Special Access to Sacred Natural Sites

One remarkable aspect of the Wildlife (Conservation and Security) Act, 2012 is its recognition of the national heritage, memorial trees, and sacred trees, while also preserving the traditional and cultural values and customs of the communities. As per section 23 of the Act, the government possesses the power to designate any tree or kunjaban²⁷¹ situated on public land, be it in a government forest, under the ownership of an organization, on khas land, or by any community, as a national heritage tree, sacred tree, memorial tree, or wildlife habitat in that region. The landowner, organization, or person need to apply for and get approval in order for such designation to be made. In addition, the provision guarantees the protection of the traditional or cultural norms and custom of a community or person. This clause represents a

²⁶⁶ Nicole J. Wilson, "Querying Water Co-Governance: Yukon First Nations and Water Governance in the Context of Modern Land Claim Agreements" (2020) 13:1 Water Alternatives 93.

²⁶⁷ Mangal Kumar Chakma, "The twisted 'facts' of CHT Accord implementation" *The Daily Star* (28 April 2024), online: <<https://www.thedailystar.net/>>[<https://www.thedailystar.net/opinion/views/news/the-twisted-facts-cht-accord-implementation-3596581>].

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

²⁷¹ Section 2 of the Wildlife (Conservation and Security) Act, 2012 defines "kunjaban" as an specified area enriched with different species of trees, herbs and shrubs, which is rich in biodiversity and bears cultural, social and traditional values to local community

significant advancement in acknowledging and respecting the rights of Indigenous peoples regarding the accessibility and safeguarding of their sacred natural sites. The following table (Table 5) provides a thorough overview of the regulatory elements associated with the management of such designated areas as stipulated in the Wildlife (Conservation and Security) Act, 2012.

Table 5

Regulatory Provisions for "National Heritage, Memorial Tree, Sacred Tree, and Kunjaban"

Note. This table presents the regulatory provisions outlined in the Wildlife (Conservation and Security) Act, 2012 for "National Heritage, Memorial Tree, Sacred Tree, and Kunjaban".

National Heritage, Memorial Tree, Sacred Tree and Kunjaban		
<i>Prohibition</i> ²⁷²	<i>Entry</i> ²⁷³	<i>Management</i> ²⁷⁴

²⁷² *The Wildlife Act, supra* note 170 s 14.

²⁷³ *Ibid* s 15.

²⁷⁴ *Ibid* s 16.

<p>It is strictly prohibited to engage in the following activities:</p> <ol style="list-style-type: none"> land cultivation industrial establishment or operation harvest, destruction, or collection of plants firemaking weaponry entry into a sanctuary without the authorization of the Chief Warden or an officer duly authorized disturbance or menacing of wildlife introduction of any exotic substances or weapons that may devastate wildlife habitat bringing in or allowing domestic animals to wander disposing of any materials that harm wildlife exploring or excavating for mineral extraction cutting down any plants or plant parts, except for necessary silvicultural activities to promote natural plant regrowth diverting, obstructing, or contaminating watercourses introducing any non-native and invasive plant species. <p>No entity may build or run an industrial facility or brick-field within 2 km of the area.</p>	<p>Only specific individuals are allowed to enter or stay in a sanctuary, including:</p> <ol style="list-style-type: none"> an officer on duty as per the Act or its rules a person authorized by the Chief Warden a person nominated by the Forest Department for conservation work a person using the designated highway, road, or waterway within the sanctuary; and a person necessary for the management or conservation of the sanctuary, who is permitted by the Chief Warden or an authorized officer. <p>Subject to payment of entry fees, the Chief Warden or an officer authorized may grant entry to the sanctuary for the following purposes:</p> <ol style="list-style-type: none"> studying or investigating wildlife-related subjects taking photographs conducting research; and engaging in ecotourism, provided that the applicant follows the prescribed procedures 	<p>The Government has the authority to create a management plan for each sanctuary</p> <p>The Chief Warden (CW) is in charge of putting the management plan into action and managing it. To do this, CW can:</p> <ol style="list-style-type: none"> permit the operation of a tourism shop for any commercial purpose or construct buildings, roads, bridges, boundaries, controlled barrier entrances, and other work Ensure the safety of wildlife and its environment by taking the necessary steps. Enhance habitat, maintain breeding grounds, reduce disturbances, and implement limited-scale plantations for animals to provide food security. Take action with the co-management committee to conserve aquatic wildlife including tortoises, crocodiles, dolphins, whales, and porpoises by controlling or prohibiting fishing operations or watercraft movement. Identify and prohibit activities that harm the environment within a 2-kilometer radius from the area.
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(Table created by author).

3.2.4. Access to and Use of Biotic and Abiotic Resources Present in the Land

The Indigenous peoples of the Hill Tracts have historically been entitled to live in and enjoy the forest's products in their area. As a result, Indigenous communities are able to tailor their usage of both biotic (including living things like plants and animals) and abiotic (including non-living components like water, soil, and the environment) elements to their own requirements. In the Chittagong Hill Tracts, there are now three types of forests according to national law: a) Reserve Forests, b) Protected Forests, and c) Unclassified State Forests. After being recognized as a government forest, it falls under the supervision of the Forest Department,

which keeps an eye on local compliance with applicable laws²⁷⁵ and regulations.²⁷⁶ Indigenous peoples' rights to their territories and resources have been significantly curtailed, according to the findings of researchers, as a result of the formation of government forests.²⁷⁷ Concurrently, this development has created an opportunity for the national government to obtain exclusive jurisdiction over the forests and their valuable resources, which it can exploit, mine, and utilize.²⁷⁸ The exercise of traditional rights such as jumming, hunting, and harvesting within the Reserve Forests²⁷⁹ is prohibited by law for the Indigenous peoples.²⁸⁰ On the other hand, inside the Protected Forests, they are granted restricted permission to partake in these activities.²⁸¹

The following table (Table 6) contains all of the relevant sections from the current environmental regulations that apply to Indigenous peoples²⁸² addressing their use and access to biotic and abiotic resources found on the land. Although certain provisions do not explicitly mention them, they act in their favor, nonetheless but only to some extent in most circumstances.

Table 6

Indigenous Peoples Access and Use of Biotic and Abiotic Resources under Environmental Statues

Note. This table showcases the extent to which the rights of Indigenous peoples in relation to the access and use of biotic and abiotic resources are safeguarded by the existing environmental legislative provisions.

<i>Legislations</i>	<i>Rights related to Access to and Use of Biotic and Abiotic Resources</i>	<i>Legislative Provisions</i>	<i>Access to Indigenous Peoples</i>
The Forest Act 1927	Shifting Cultivation	The government has the authority to regulate, limit, or eliminate shifting cultivation. ²⁸³	Partially, subject to

²⁷⁵ The framework for this procedure was established in 1927 with the enactment of the Forest Act. It is still in effect today.

²⁷⁶ Raikumari Chandra Kalindi Roy, *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh* (Copenhagen, IWGIA, 2000).

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ *The Forest Act, 1927*, s 26.

²⁸⁰ Kalindi Roy, *supra* note 276.

²⁸¹ *Ibid.*

²⁸² The Provisions apply to both plainland and CHT Indigenous people.

²⁸³ *The Forest Act, supra* note 279 s 10.

			regulation
	Rights of Pasture or to Forest Produce	The Forest Settlement officer has the power to accept or reject any claim regarding the use of pasture or forest resources. ²⁸⁴	Partially, requires approval
	Ways and Water Courses in Reserved Forests	With the Government's or any officer's prior approval, the Forest-officer can stop any public or private way or water-course in a reserved forest if a reasonably convenient substitute exists or has been provided or constructed by the Forest-officer. ²⁸⁵	Partially
	Formation of Village Forest	The government can transfer and revoke its rights to reserved forest property to any village community. However, government can regulate village-forest management, including how the community to which any such assignment is made may receive timber or other forest-produce or pasture and their duties for protecting and improving the forest. ²⁸⁶	Partially, subject to regulation
	Protected Forests	The forest-land and waste-lands constitute a "protected forest" and Government can declare certain trees or classes of trees as "reserved" in a protected forest. Activities such as quarrying, burning, collection or removal of forest products, and breaking up, clearing or using for cultivation, building or other purposes are prohibited in a protected forest. ²⁸⁷	Partially, licensing and fees are applicable.
The Wildlife (Conservation and Security) Act, 2012.	Prohibition related to Wild Animals and Plants.	Without a license or obtaining permit under this Act, no one can kill wild animals or deliberately select, uproot, damage or harvest plants. ²⁸⁸	Partially, licensing and authorization are required Yes
	Declaration of Community Conservation Area	To protect traditional or cultural value or use of any animal or plant, sustain development, and wildlife management, any person or community owning such land or wetland not included in landscape zone can apply to the government for community conservation area designation. ²⁸⁹ A co-management committee can be formed in such area and the warden must execute its decisions. ²⁹⁰	
	Co-management	The government can establish a participatory	Yes

²⁸⁴ *Ibid* s 12.

²⁸⁵ *Ibid* s 25.

²⁸⁶ *Ibid* s 28.

²⁸⁷ *Ibid* s 29 & 30.

²⁸⁸ *The Wildlife Act, supra* note 170 s 6.

²⁸⁹ *Ibid* s 18.

²⁹⁰ *Ibid* s 18.

	system	co-management system for the sanctuary's natural resources, involving the forest department, minor ethnic-communities living in the forests. ²⁹¹	
	Declaration of Special Biodiversity Conservation Area	The government has the authority to designate certain areas as special biodiversity conservation areas, either on its own or upon request. These areas can include government land, privately owned land or trees, reserved forests, khas land, wetlands, rivers, seas, canals, dighis, or ponds that serve specific purposes. The conservation of traditional or cultural values and norms is a requirement for these designated areas. ²⁹²	Yes

(Table created by author).

3.2.5. Right to Internal Self-determination and to Regulate its Internal Matters through the Use of its Legal Institutions and Rules

Tsosie presents several theoretical justifications for the Indigenous entitlement to environmental self-determination; each of them may have distinct consequences on the extent of this right.²⁹³ In order to articulate an Indigenous right to environmental self-determination, Tsosie views that it is essential to employ all of these arguments (mentioned below) to a certain extent.²⁹⁴

Firstly, she begins by supporting this right on the grounds that Indigenous peoples had territorial sovereignty over their ancestral territories. Having political authority over ancestral lands and having the same rights as nation-states to make choices affecting those territories and to seek justice for injustices committed there would be the most significant parts of this right.²⁹⁵ Although the author indicated the concept of domestic sovereignty claim in this theoretical approach, it is important to note that the CHT peace treaty grants only the Indigenous peoples residing in CHT the chance to exercise internal self-determination. Shah refers to the CHT

²⁹¹ *Ibid* s 21.

²⁹² *Ibid* s 22.

²⁹³ Rebecca Tsosie, "Indigenous People and Environmental Justice: The Impact of Climate Change" (2007) 78:4 U Colo L Rev 1625 [Tsosie, "Indigenous People and Environmental Justice"].

²⁹⁴ *Ibid*.

²⁹⁵ *Ibid* at 1654.

accord as “sovereign-friendly internal self-determination”.²⁹⁶ However, until the full implementation of the Accord is achieved, their ability to exercise internal self-determination remains limited. The author is of the opinion that the rights of the CHT Peoples in Bangladesh would be significantly enhanced by the enforceability and implementation of the 1997 Accord.²⁹⁷

Secondly, Indigenous peoples have a unique cultural relationship with their traditional lands, which gives them a right to environmental self-determination.²⁹⁸ This argument recognizes the value of stewardship and care of the land and resources based on Indigenous epistemologies.²⁹⁹ It also supports the rights of Indigenous peoples to maintain their relationship with the environment and respect their traditional knowledge and ethical systems.³⁰⁰ However, a right based on culture is more restricted than the political right of territorial autonomy, which is comparable to the domestic sovereignty claim. Nevertheless, Tsosie claimed that it has the potential to provide even greater protection for the cultural values that are unique and highly significant to communities who continue to maintain their traditional ways of life.³⁰¹ In Bangladesh, the Constitutional recognition is consistent with this justification. It has the potential, but its success is greatly dependent on governmental will to provide more protection for Indigenous people's distinctive cultural values.

Thirdly, a different approach is to base the right of environmental self-determination on the need of attaining social justice and equal rights. The author characterized it as a historical argument that centers on the human rights crimes committed against Indigenous peoples in the past, with the pretense of safeguarding national interests.³⁰² This argument advocates for the Indigenous community's entitlement to reclaim their ancestral lands and safeguards their right to prevent the destruction or seizure of their surviving land resources.³⁰³ It also supports the

²⁹⁶ Shah, *supra* note 189.

²⁹⁷ *Ibid.*

²⁹⁸ Tsosie, “Indigenous People and Environmental Justice”, *supra* note 293 at 1655.

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

³⁰¹ *Ibid.*

³⁰² *Ibid* at 1656.

³⁰³ *Ibid.*

inclusion of Indigenous peoples in institutional procedures that have traditionally excluded them, akin to the idea of reparation.³⁰⁴

Fourthly, the author contended that the environmental rights of Indigenous communities are derived from the individual rights of tribal members to ensure their cultural survival, including the rights to embrace a unique cultural heritage, preserve and enhance their cultural identity, sustain their languages, religions, and traditions, as well as safeguard and access to sacred sites.³⁰⁵ The foundation of this argument is the idea that Indigenous groups, who saw themselves as culturally unique and entrenched in the land, would vanish if their land bases were destroyed. Individually and collectively, every group member shares this knowledge and such knowledge gives the group an ethical sense of itself and the land, which is passed down through generations of tribe members.³⁰⁶

Previous scholarly works argue that the task of defining self-determination has always been challenging, both in the past and in contemporary times.³⁰⁷ Self-determination may be seen as having two distinct components: internal and external. Internal self-determination refers to the inherent right of a state's population to autonomously rule themselves without any external intervention. External self-determination refers to the entitlement to people to decide their own political standing and to be liberated from foreign control, which encompasses the establishment of their own sovereign country. According to Professor Shin Imai, the concept of Indigenous self-determination refers to “the right of a people to decide how it wants to relate to a majoritarian population”.³⁰⁸ The author presents four models (see the Table 7 below) for this relationship: sovereignty, self-management, co-management, and participatory governance.³⁰⁹

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid.*

³⁰⁶ *Ibid.*

³⁰⁷ Rashwet Shrinkhal, “Indigenous sovereignty” and right to self-determination in international law: a critical appraisal” (2021) 17:1 *AlterNative: An International Journal of Indigenous Peoples* 71 ; Chen L, “Self-determination as human right” in William Michael Reisman, Burns H. Weston, ed, *Toward world order and human dignity* (New York, U.S: Free Press, 1976), 319.

³⁰⁸ Shin Imai, “Indigenous Self-Determination and the State” (2008) 4:5 *Comparative Research in Law & Political Economy* 280; Tsosie, “Conceptualizing Tribal Rights” *supra* note 213.

³⁰⁹ *Ibid.*

Table 7**Indigenous Self Determination and the Four Models**

<i>Sovereignty</i>	<ul style="list-style-type: none"> a. The right of an Indigenous community "to control its own social, economic, and political development" is upheld under the model of Indigenous sovereignty. b. This model recognizes the Indigenous government's intrinsic right to exist as a distinct political entity with the power to enact laws and enforce them within a certain area. c. Indigenous self-governance includes legislative, judicial, and executive actions, which can be organized according to the Indigenous government's preferences.
<i>Self-management</i>	<ul style="list-style-type: none"> a. An Indigenous community must have permission from the national government to run a program that it has created and financed in order for the second "self-management" model to be implemented. b. In this model, the national government establishes the policy goal and funds the Indigenous community's program.
<i>Co-Management</i>	<ul style="list-style-type: none"> a. The third model of "co-management" aims to give Indigenous peoples access and control over lands outside their jurisdiction. b. It is possible for Indigenous peoples to have ancestral ties to areas that are now state or public property. c. This model lets Indigenous peoples be involved in managing public lands, or it lets them be like authorities that can work with government agencies to make sure that managing public lands is in line with tribal interests in protecting culture.
<i>Participatory Governance</i>	<ul style="list-style-type: none"> a. In the model of participatory governance, it is argued that Indigenous peoples should be fully included in the political system of the dominant civilization. b. This system includes state regulatory, adjudicatory, and legislative entities. c. This model integrates Indigenous communities with larger communities. d. Participatory governance is a human right that ensures representation for minority communities, including Indigenous communities, in governmental institutions.

Note. Adapted from Tsosie, "Conceptualizing Tribal Rights" *supra* note 213.

With differing degrees of success, Tsosie claims that all four Indigenous self-determination models are present and functioning in countries.³¹⁰ Likewise, Bangladesh is hardly an exception. These models are present within the current legislative framework of Bangladesh, including the CHT Treaty, and vary in terms of their level of integration and progress in implementation.³¹¹ It can be argued that no matter what models are employed in Bangladesh, the absence of recognition severely restricts the rights of Indigenous peoples to self-determination since they are not able to negotiate the conditions of their government, manage their lands and resources, or defend the rights of their members.³¹² Therefore, non-recognized communities, face an even greater challenge in safeguarding their cultural resources and the right to access

³¹⁰ Tsosie, "Conceptualizing Tribal Rights" *supra* note 213.

³¹¹ *Ibid.*

³¹² *Ibid.*

their ancestral lands.³¹³ Article 23A of the Constitution and the recognition it offers do not offer a robust safeguard for the cultural resources of Indigenous peoples and their right to access their ancestral lands.

A significant portion of the current scholarly discourse on Indigenous self-determination has made reference to the UN Declaration on the Rights of Indigenous Peoples.³¹⁴ The principle of self-determination is the fundamental basis of the Declaration on the Rights of Indigenous Peoples. The concept of self-determination refers to the inherent and collective right of people to independently govern themselves and willingly consent to political arrangements with other governments.³¹⁵ Tsosie claims that while Article 3 of the UNDRIP Declaration states the fundamental right to self-determination, it also includes other sections that define this as a right to domestic self-determination.³¹⁶ The author references articles 4, 5, and 46 of the declaration, highlighting specific phrases such as "right to participate fully" and "dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States."³¹⁷ The author argues that the language used conveys Indigenous self-government as a model for domestic self-governance, rather than a model for independent nationhood.³¹⁸ Furthermore, this phrasing essentially eliminates any indication that secession is a legitimate option for Indigenous governments.³¹⁹

³¹³ *Ibid.*

³¹⁴ Diana Perche, "Aboriginal Self-determination, Land Rights, and Recognition in the Whitlam Era: Laying Groundwork for Power Sharing and Representation" (2024) 70:2 *Australian Journal of Politics & History* 169 ; Aküm Longchari, "Self-determination: at the heart of Indigenous humanization" in Sheryl Lightfoot & Sarah Maddison, ed, *Handbook of Indigenous Public Policy* (Cheltenham, United Kingdom: Edward Elgar Publishing, 2024), 70 ; Rauna Kuokkanen, "Self-determination, sovereignty and policy: how does a focus on Indigenous rights transform policymaking?" in Sheryl Lightfoot & Sarah Maddison, ed, *Handbook of Indigenous Public Policy*, (Cheltenham, United Kingdom: Edward Elgar Publishing, 2024), 53 ; Natalie Jones, *Self-determination as Voice: The Participation of Indigenous Peoples in International Governance* (Cambridge UK, Cambridge University Press, 2024) ; David MacDonald, "Indigenous Peoples and Self-Determination in Settler States" in Ryan D. Griffiths, Aleksandar Pavković, Peter Radan, ed, *The Routledge Handbook of Self-Determination and Secession* (London: Routledge, 2023), 102.

³¹⁵ Tsosie, "Conceptualizing Tribal Rights" *supra* note 213.

³¹⁶ *Ibid.*

³¹⁷ *Ibid.*

³¹⁸ *Ibid.*

³¹⁹ *Ibid.*

As Bangladesh has not ratified the UNDRIP, the Chittagong Peace Treaty is the only instrument that grants internal self-determination over a variety of matters to a restricted number of Indigenous groups residing exclusively in the CHT through authority and institutions that are also established under the treaty. Since its inception as a sovereign country, Bangladesh has been grappling with a protracted ethnic strife in its southeastern region known as the Chittagong Hill Tracts (CHT).³²⁰ This territory is inhabited by 14 distinct ethnic groups, each with their own unique cultural and social structures. The Government of Bangladesh (GoB) refused to acknowledge the distinct identity and specific privileges of these communities in the 1972 constitution, resulting in extensive dissatisfaction and discontent in the region. This ultimately led to an armed war that lasted from 1976 to 1997, concluding with the signing of the CHT Accord.³²¹ With the goal of ending the long-running conflict in a way that benefits everyone, the government of Bangladesh and the Parbatya Chattagram Jana Samhati Samiti (PCJSS) on the behalf of Indigenous peoples signed the CHT Accord in 1997.

The Accord is divided into four distinct components. The table below (Table 8) provides an overview of the peace accord. The key components of the CHT accord include granting regional autonomy to the CHT through the establishment of an elected Regional Council, which will serve as the highest administrative and political authority in the region. Additionally, the Accord calls for the dismantling of non-permanent military camps, the relocation of Bengali settlers from the CHT, the provision of a general amnesty for former combatants, and the repatriation and rehabilitation of refugees.³²² Table 8 below provides more details on the CHT Treaty. The following occurred as a consequence of the CHT Peace Accord: (a) establishment of the Ministry for Chittagong Hill Tracts Affairs (b) establishment of the Chittagong Hill Tracts Regional Council (c) the three district-level councils were strengthened (d) the role of State-recognized traditional Indigenous institutions was reiterated and strengthened; (e) formation of a commission on land to settle land-related disputes; and (f) establishment of civil and criminal courts independently of the regional and district administrations.

³²⁰ Md Rafiqul Islam & Anurug Chakma, “Major Obstacles to the Process of Implementing Peace: Experience from Chittagong Hill Tracts (CHT) in Bangladesh” (2013) 7:2 Peace and Conflict Review 29.

³²¹ *Ibid.*

³²² *Ibid.*

Table 8

Overview of the Chittagong Hill Tracts Treaty, 1997

Note. This table highlights the key provisions of the 1997 Chittagong Hill Tracts Treaty.

Chittagong Hill Tracts Treaty, 1997	Parts	Important features																	
	Part A-GENERAL	<ul style="list-style-type: none"> An Implementation Committee: composed of three members: a member nominated by the Prime Minister, Chairman of the Task Force and President of the PCJSS³²³ 																	
	Part B-HILL DISTRICT LOCAL GOVT. COUNCIL/HILL DISTRICT COUNCILS	<ul style="list-style-type: none"> Defines ‘non-tribal permanent resident’³²⁴ 3 (three) seats for women in every Hill District Council, one third of the said seat for non-tribal women Functions and responsibilities of the Hill District Council: <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> a. Land and land management b. Police (local) c. Tribal law and social justice d. Youth welfare e. Environment preservation and development f. Local tourism g. Improvement trust and other local govt organisations except Pourasabha and Union Councils </td> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> h. Licencing for local trade and business i. Proper utilisation of water resources of rivulets, canals, ponds except Kaptai lake and irrigation j. Preservation of death, birth and other statistics k. Money lending and trade l. Jhum cultivation </td> </tr> </table> 	<ul style="list-style-type: none"> a. Land and land management b. Police (local) c. Tribal law and social justice d. Youth welfare e. Environment preservation and development f. Local tourism g. Improvement trust and other local govt organisations except Pourasabha and Union Councils 	<ul style="list-style-type: none"> h. Licencing for local trade and business i. Proper utilisation of water resources of rivulets, canals, ponds except Kaptai lake and irrigation j. Preservation of death, birth and other statistics k. Money lending and trade l. Jhum cultivation 															
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Part C-CHITTAGONG HILL TRACTS REGIONAL COUNCIL	<ul style="list-style-type: none"> The Regional Council is formed with 22 (twenty two) members including the Chairman. Two third of the members shall be elected from among the tribals. Composition of the Council shall be as follows : <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Chairman 1</td> <td style="width: 50%;"></td> </tr> <tr> <td>Members tribal (men) 12</td> <td>5 from Chakma tribe</td> </tr> <tr> <td></td> <td>3 from Marma tribe</td> </tr> <tr> <td></td> <td>2 from Tripura tribe</td> </tr> <tr> <td></td> <td>1 from Murung and Tanchongya tribe</td> </tr> <tr> <td></td> <td>1 from Lusai Bawm, Pankho, Khumi, Chak and Khiyang tribes.</td> </tr> <tr> <td>Members tribal (women) 2</td> <td></td> </tr> <tr> <td>Members nontribal (men) 6</td> <td></td> </tr> <tr> <td>Members non-tribal (women) 1</td> <td></td> </tr> </table> 3 (three) seats reserved for women in the Council and One-third for non-tribals. 	Chairman 1		Members tribal (men) 12	5 from Chakma tribe		3 from Marma tribe		2 from Tripura tribe		1 from Murung and Tanchongya tribe		1 from Lusai Bawm, Pankho, Khumi, Chak and Khiyang tribes.	Members tribal (women) 2		Members nontribal (men) 6		Members non-tribal (women) 1	
Chairman 1																			
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	3 from Marma tribe																		
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Members tribal (women) 2																			
Members nontribal (men) 6																			
Members non-tribal (women) 1																			

³²³ Parbatya Chattagram Jana Samhati Samiti

³²⁴ According to Part B, Article 3, a person who is not a tribe member and legally possesses property in the Hill District, as well as typically resides at a certain location in the Hill District, will be considered a "non-tribal permanent resident." This is an important clause in this sense that non-tribal peoples who are called ‘Bengali settlers’ living in the CHT have come in the region after 1975, will be rehabilitated from the CHT.

	<p align="center">Part D- REHABILITATION, GENERAL AMNESTY AND OTHER MATTERS</p>	<ul style="list-style-type: none"> • Establishment of land commission and the Land commission consists of : a. Retired justice b. Circle Chief (concerned) c. Chairman of the Regional Council/representative d. Divisional Commissioner/Additional Commissioner e. Hill District Council Chairman (concerned). Land Commission's function includes settling disputes according to the existing rules, customs and usages of Chittagong Hill Tracts • Establishment of a ministry on Chittagong Hill Tracts Affairs by appointing a Minister from among the tribals. • Establishment of an Advisory Council to assist the ministry which consists of 1. Minister on CHT Affairs 2. Chairman/representative, Regional Council 3. Chairman/representative, Rangamati Hill District Council 4. Chairman/representative, Bandarban Hill District Council 5. Chairman/representative, Khagrachari Hill District Council 6. Member of
		<ul style="list-style-type: none"> • Parliament, Rangamati 7. Member of Parliament, Khagrachari 8. Member of Parliament, Bandarban 9. Chakma Raja 10. Bohmong Raja 11. Mong Raja 12. Three members from nontribal permanent residents of Hilly areas nominated by the government from three Hill Districts

(Table created by author).

The Peace Accord has recognized that Rangamati, Bandarban, and Khagrachari, the three districts comprising the CHT, will be designated as a tribal-inhabited region. This status grants them significant autonomy and unprecedented management powers within the new institutional framework.³²⁵ However, the insurgent leaders have sworn allegiance to the preservation of Bangladesh's national integrity in the preamble of the treaty.³²⁶ At the national level, a Ministry of Chittagong Hill Tracts Affairs has been established in accordance with the treaty, headed by a minister of tribal origin. An advisory council led by the minister in charge of the CHT is also established to support that Ministry. Previous research argues that by establishing connections inside the Jatiya Sangshad³²⁷ and the national cabinet, it has the potential to develop into an intergovernmental coordinating organization.³²⁸ In order to make sure that the three District Councils and municipalities of the CHT work together and are supervised, the Regional Council (RC) is in charge of the Hill Tracts Development, makes final decisions about the District Councils' conflicts, jurisdiction, authority, and activities, and oversees their general administration, law and order, disaster management and matters related to their development.

³²⁵ M Rashiduzzaman, "Bangladesh's Chittagong Hill Tracts Peace Accord: Institutional Features and Strategic Concerns" (1998) 38:7 Asian Survey 653.

³²⁶ *Ibid.*

³²⁷ The House of the Nation, the supreme legislative body of Bangladesh.

³²⁸ Rashiduzzaman, *supra* note 325.

Moreover, any newly enacted legislation concerning the CHT at the national level will necessitate consultation with and approval from the RC. Situated inside the CHT, the RC is a uniquely political establishment that grants the tribal leadership a variety of rights. The RC is tied to the three hill District Councils but is not part of Bangladesh's conventional local administration structure or the national government's bureaucratic network.³²⁹ On the other hand, land management, local law enforcement, tribal law and social justice, juvenile welfare, environmental development and protection, local tourism, and oversight of district-level government agencies are within the purview of the CHT District Councils. Only the conserved forests, state-owned facilities like Kaptai Hydroelectricity and the Betbunia Satellite Station region, and other similar establishments, as well as government-owned areas that are not explicitly designated for distribution, are immune from this new authority of the District Councils.

The Land Commission created by the treaty would not include any nontribal members, in contrast to the RC and District Councils. However, it is projected that the majority of the official members, including the chairman, will be Bengalis. The commission is in charge of handling disputes according to the rules, practices, and usages that are already in place in the Chittagong Hill Tracts.³³⁰ Along with resolving land conflicts involving rehabilitated tribal refugees, this commission has the authority to annul title of any lands or hills that have been unlawfully populated or occupied up until now.³³¹ However, there will be no opportunity for appeal on this commission's judgment, which is final.

The Accord was regarded as a pivotal moment from which the Indigenous people's leadership and government could initiate a fresh start. After the Accord, parties could convene, confer, address incompatibilities, take cooperative measures, and change the pact to fit demand and time. In contrast, the PCJSS, one of the signatory parties, has expressed its deepest dissatisfaction and frustration regarding the postponement of the Accord's implementation since

³²⁹ *Ibid.*

³³⁰ *CHT Treaty, supra* note 35 art 6, *Part D.*

³³¹ Islam & Chakma, *supra* note 320.

shortly after its signing.³³² As previous scholarly works have observed, while the Accord effectively concluded the insurgency, it did not adequately reduce the systemic violence, resolve conflicts between settlers and Indigenous peoples, or improve confidence between the government and Indigenous groups.³³³ Furthermore, it neglected to adequately address the issue of conflict transformation via means of community integration, reconciliation, and environmental sustainability, all of which were crucial in laying the groundwork for bottom-up peace.³³⁴

Despite the passage of 26 years, the pact has yet to be effectively put into action. Recent annual publication titled “A Brief Report on Implementation of the CHT Accord Signed in 1997 between the Government of Bangladesh and the PCJSS” by the Parbatya Chattagram Jana Samhati Samiti reveals that several important articles of the treaty have either been partly executed or not implemented at all.³³⁵ In particular, as the PCJSS report noted, Article 34 of Part B is only partly enforced, despite the government's assertion to the contrary. The transfer of 'Land and Land Management', 'Environment Protection and Development', and 'Police (Local)' to the three hill district councils has not yet taken place.³³⁶ If Article 34, Part B of the Peace treaty is effectively and fully enforced, Indigenous peoples would have more autonomy in determining environmental injustices via the Hill District Council.

3.2.6. Rights Necessary to Safeguard the Integrity of Values, Worldviews, Practices, and Knowledge

Treaties like the CBD have played a role in enhancing the recognition of Indigenous peoples and their knowledge³³⁷, responsibilities, and rights in relation to environmental and

³³² *Ibid.*

³³³ *Ibid.*

³³⁴ Obayedul Hoque Patwary, “The Dynamics of Conflict in the Chittagong Hill Tracts of Bangladesh in the Post Peace Accord Period” (2023) 42:1 Social Alternatives 40.

³³⁵ Parbatya Chattagram Jana Samhati Samiti (PCJSS), *A Brief Report On Implementation of the CHT Accord Signed in 1997 between The Government of Bangladesh and the PCJSS* (Rangamati: Information and Publicity Department, PCJSS, 2023), online: [<https://www.pcjss.org/wp-content/uploads/sites/16/2023/12/A-Brief-Report-on-Implementation-of-the-CHT-Accord-English-2-December-2023.pdf>].

³³⁶ *Ibid.*

³³⁷ Over time, the term has been referred to as traditional knowledge, traditional environmental knowledge, traditional ecological knowledge, or Aboriginal traditional knowledge.

resource administration at the domestic level.³³⁸ Tsosie maintains that when it came to environmental decisions affecting biological resources, the CBD was the first international environmental convention to take into account the involvement of Indigenous and local populations, moving beyond the usual focus on nation-states.³³⁹ Although Indigenous communities are not officially recognized as having sovereignty over certain territories, the CBD acknowledges their right to participate in global decision-making processes.³⁴⁰ This recognition is based on their longstanding connections to particular lands and the belief that their land management knowledge and practices align with the most effective methods for conservation and sustainable development.³⁴¹ The figure below (Figure 2) particularly illustrates the CBD articles that are most pertinent to Indigenous peoples.³⁴²

Figure 2

Convention on Biological Diversity: Articles related to Indigenous Peoples

³³⁸ Deborah McGregor, "Traditional knowledge, sustainable forest management, and ethical research involving Aboriginal peoples: An Aboriginal scholar's perspective" in Jerry P. White, Julie Peters, Dan Beavon, Peter Dinsdale, ed, *Aboriginal Policy Research* (Toronto, Canada: Thompson Educational Publishing, 2010), 227 [McGregor, "An Aboriginal scholar's perspective"].

³³⁹ Tsosie, "Indigenous People and Environmental Justice", *supra* note 293.

³⁴⁰ *Ibid.*

³⁴¹ *Ibid.*

³⁴² Secretariat of the Convention on Biological Diversity and Forest peoples Programme, "A Training Manual for Indigenous Peoples and Local Communities on the Convention on Biological Diversity M O D U L E 1" (2020), online: [<https://www.cbd.int/traditional/doc/training/cbd-training-manual-01-en.pdf>].

PREAMBLE	
Preamble	The Contracting Parties, 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;
RELEVANT ARTICLES	
Article 8. In-situ Conservation	Each Contracting Party shall, as far as possible and as appropriate: (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;
Article 10. Sustainable Use of Components of Biological Diversity	Each Contracting Party shall, as far as possible and as appropriate: (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;
Article 17. Exchange of Information	1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries. 2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and Traditional Knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.
Article 18. Technical and Scientific Cooperation	4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

Note. Adapted from Secretariat of the Convention on Biological Diversity and Forest peoples Programme, “A Training Manual for Indigenous Peoples and Local Communities on the Convention on Biological Diversity M O D U L E 1” (2020), online: [<https://www.cbd.int/traditional/doc/training/cbd-training-manual-01-en.pdf>].

As a signatory to the CBD, the Government of Bangladesh is obligated to legally incorporate traditional knowledge (TK) into environmental law and policy frameworks. Bangladesh became a party to the Convention on Biological Diversity in 1994 and ratified the Nagoya Protocol on Access and Benefit-sharing in 2023. Bangladesh, being a dualist country, needs to enact domestic legislation in order to give legal force to the provisions of international treaties. After the treaty was ratified, it took Bangladesh about 23 years to enact the Bangladesh Biological Diversity Act 2017 to fulfill its international obligations under CBD. With the enactment of the Bangladesh Biodiversity Act 2017, the Government of Bangladesh legally recognized the value of traditional knowledge relating to biodiversity. Nevertheless, the Act uses the term of "local communities or people"³⁴³ with reference to TK, omitting Indigenous peoples. Furthermore, not all relevant legislation and policy frameworks pertaining to the environment have included TK in their development and implementation. McGregor argues that the need to

³⁴³ Md Ala Uddin, “A Critical Evaluation of Environmental Dispute Resolution Mechanisms in Bangladesh: Addressing Challenges and Insights” (2023) 4:2 Indonesian Journal of Law and Society 58.

use Traditional Knowledge (TK) in government decision-making is not restricted to formal frameworks alone, but also applies to other policy frameworks, such as those related to forestry and parks management.³⁴⁴

The Bangladesh Biological Diversity Act, 2017 is significant primarily because it introduces an Access and Benefit Sharing mechanism. By mandating the creation of a national biodiversity registry and the recording of Traditional Knowledge (TK), the Act encourages research on biological resources and biodiversity, which in turn might lead to biotechnological innovations and their economic use. In terms of deciding access to their biological resources and traditional knowledge, the Act does not acknowledge any rights of Indigenous peoples under any circumstances. Indigenous peoples are not included in the process of documenting traditional knowledge associated with biodiversity. The Fifth National Report of Bangladesh to the Convention on Biological Diversity, submitted in 2015³⁴⁵, makes reference to culture and Indigenous Knowledge-Based Technologies Practiced in hill farming systems. This report also suggests that a sustainable agricultural solution for the CHT could be an integrated approach that encodes Indigenous knowledge with scientific knowledge. Nevertheless, while being implemented two years after the submission of this report, the Biodiversity Act does not specifically include the term 'Indigenous' or the constitutional phrases "tribes, minor races, ethnic sects, and communities". Instead, it uses the term 'local community or people'. The National Environmental Policy 2018 follows a similar pattern.

Section 31 of the Biodiversity Act stipulates that the government would make efforts to recognize and safeguard the traditional knowledge pertaining to biodiversity specifically held by local communities. The National Committee of Biodiversity³⁴⁶, which is managed by administrators and lacks legal personality, is instead granted exclusive authority over biological

³⁴⁴ McGregor, "An Aboriginal scholar's perspective", *supra* note 338.

³⁴⁵ Department of Environment Ministry of Environment and Forests, *Fifth National Report to the Convention on Biological Diversity (Biodiversity National Assessment 2015)*, 2015, online: [<https://www.cbd.int/doc/world/bd/bd-nr-05-en.pdf>].

³⁴⁶ The National Committee of Biodiversity has been established in accordance with section 8 of the Bangladesh Biodiversity Act of 2017.

resources and TK.³⁴⁷ Sajal asserts that over emphasizing the state's authority has taken away the Indigenous people's control over their own resources.³⁴⁸ One of the targets outlined in the National Biodiversity Strategy and Action Plan of Bangladesh 2016-2021³⁴⁹ is to officially recognize and record the traditional knowledge and innovative practices of ethnic groups by the year 2021.³⁵⁰ However, the goals have not been fulfilled.

The next table (Table 9) shows the current status of implementation of Indigenous rights as outlined in the Biodiversity Act of 2017, in relation to the obligations imposed by the CBD.

Table 9

Domestic Implementation Status of CBD Provisions relating to Indigenous Peoples

Note. This table has been prepared by comparing the requirements of the Convention on Biological Diversity (CBD) with the stipulations outlined in the Bangladesh Biodiversity Act of 2017.

<i>CBD Articles related to Indigenous Peoples</i>	<i>Implementation of obligations via the Biodiversity Act, 2017</i>
<i>Preamble: Recognition</i>	Not implemented
<i>Article 8j: In situ Conservation</i>	
Respect knowledge, innovation and practices of Indigenous peoples	Not implemented
Reserve, maintain knowledge, innovation and practices of Indigenous peoples	Not implemented
Promotion of wider application of the knowledge, innovation and practices of Indigenous peoples	Not implemented
Approval involvement of the holder of such knowledge	Not implemented
Equitable benefit sharing from the utilization of such knowledge, innovation and practices	Not implemented
<i>Article 10: Sustainable Use of Components of Biological Diversity</i>	Not implemented
Encourage customary use of biological resource	
<i>Article 17: Exchange of Information</i>	Not implemented
<i>Article 18: Technical and scientific cooperation</i>	Not implemented
Encourage and develop methods of cooperation	

(Table created by author).

³⁴⁷ Intiaz Ahmed Sajal “How far the Biological Diversity Act 2017 complies with international obligations?” *The Daily Star* (19 November 2019), online: <<https://www.thedailystar.net/>>[<https://www.thedailystar.net/law-our-rights/news/how-far-the-biological-diversity-act-2017-complies-international-obligations-1829140>].

³⁴⁸ *Ibid.*

³⁴⁹ Department of Environment, Ministry of Environment and Forest, *National Biodiversity Strategy and Action Plan of Bangladesh 2016-2021*, online: [https://bangladeshbiosafety.org/wp-content/uploads/2021/03/National-Biodiversity-Strategy-and-Action-Plan-of-Bangladesh_2016-2021.pdf].

³⁵⁰ Target 18 states that “By 2021, traditional knowledge, innovations and practices of local communities or ethnic groups will be recognized and documented.”

McGregor rightly argues that the prevailing approach of "incorporating" Indigenous knowledge into environmental governance involves extracting certain components of this knowledge for the benefit of external interests.³⁵¹ This approach, according to the author, continues to be unsuccessful due to the existence of Indigenous knowledge as a fundamental element of Indigenous Knowledge Systems (IKS).³⁵² Furthermore, the author contends that considering any knowledge without first comprehending the cultural processes and peoples who developed it is often "hollow" and even harmful.³⁵³ This extraction model is clearly echoed by the Biodiversity Act and its provisions pertaining to the documenting of traditional knowledge and the sharing of benefits and access to biological resources, all of which do not recognize the rights of Indigenous peoples.

Lautippe, & McGregor cited Whyte, who discusses about the "governance value" of Indigenous knowledge systems. This is the important part that Indigenous knowledge plays in bringing back the Indigenous governance, including legal systems, land-based practices, diplomatic protocols, and other group skills that help the well-being of lands and peoples.³⁵⁴ As previously discussed, the authority and jurisdiction granted to the Regional and Hill District Councils by the Chittagong Hill Tracts Treaty of 1997, which may prove highly useful when it comes to protecting and utilizing the norms, values, and knowledge of the Indigenous peoples as the councils carry out their responsibilities with regard to particular matters. For example, if the powers were completely delegated, the hill district council would have the authority to make choices about environmental protection and development that really align with and are grounded in the values, worldviews, practices, and knowledge of Indigenous peoples. The Regional Council regulates tribal laws and social justice and is entrusted with the oversight of the Hill District Council's responsibilities. Article 13 of Part C of the treaty stipulates that the government is required to engage in discussions and consult with the Regional Council before enacting any legislation pertaining to the Chittagong Hill Tracts. The aforementioned article also

³⁵¹ McGregor, "Indigenous Knowledge Systems", *supra* note 47.

³⁵² *Ibid.*

³⁵³ *Ibid.*

³⁵⁴ Nicole Latulippe & Deborah McGregor, "Zaatoonaa Nibi (we love the water): Anishinaabe community-led research on water governance and protection" (2022) 13:2 *The International Indigenous Policy Journal*.

guarantees that in the event that there is a need to modify any existing legislation or enact a new law that might potentially hinder the development of the 3 Hill District or the well-being of the Indigenous population, the RC has the authority to submit a petition or make recommendations to the government. Therefore, Article 13 offers the chance to evaluate whether the proposed laws align with or contradict the beliefs, practices, knowledge, and values of the Indigenous peoples.

3.2.7. Right to Free, Prior, and Informed Consent

Warner states that free, prior, and informed consent (FPIC) might mean that Indigenous communities have the right to participate in decision-making, which includes the provision of sufficient information to enable full participation from Indigenous parties and the provision of ample notice of opportunities to participate.³⁵⁵ The absence of coercion, intimidation, or manipulation, according to the author, is crucial in ensuring meaningful involvement.³⁵⁶ The concept of "consent" should be seen as a process that is built upon consultation and participation, which are fundamental aspects of it.³⁵⁷

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) includes several articles that address the right to free, prior, and informed consent. In particular, the FPIC requirement of UNDRIP, as outlined in Article 11, is a critical element of Indigenous rights. This requirement mandates that Indigenous communities be included in any discussion at an early stage that may have an impact on them. Other articles pertain to various issues affecting Indigenous peoples, such as the relocation of Indigenous communities³⁵⁸, the protection of their cultural, intellectual, religious, and spiritual property³⁵⁹, the enactment of laws or policies that may impact them³⁶⁰, the right to seek redress for the loss of their traditionally owned or occupied lands, territories, and resources³⁶¹, and the storage of hazardous materials in Indigenous lands or

³⁵⁵ Warner, *supra* note 71.

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*

³⁵⁸ *The United Nations Declaration on the Rights of Indigenous Peoples*, 13 September, 2007, art 10.

³⁵⁹ *Ibid* art 11(2).

³⁶⁰ *Ibid* art 19.

³⁶¹ *Ibid* art 28 (1).

territories³⁶². According to these provisions, before enacting and putting into effect any laws or administrative policies that might have an impact on the Indigenous peoples involved, states must engage and work in good faith with them through their own representative institutions to secure their free, prior, and informed consent. Right to free, prior, and informed consent is also in line with their right to self-determination. As Bangladesh has not ratified the UNDRIP, it is not obligated to meet this provision at the national level.

With the exception of the provisions under the Chittagong Hill Tracts (CHT) Peace Treaty, the current environmental legal framework in Bangladesh lacks any legally binding measures to guarantee the rights of Indigenous peoples to free, prior, and informed consent. The implementation of the Biodiversity Act 2017 may have been groundbreaking in guaranteeing these rights, given the international obligations under the CBD and Nagoya Protocol. As mandated by the Nagoya Protocol, nations must implement mechanisms to enable Indigenous communities to regulate access to their traditional knowledge through the provision of free, prior informed consent.³⁶³ This implies that Indigenous communities determine the conditions under which the use of their genetic resources or knowledge is permitted. Article 6.2 of the Nagoya Protocol requires countries to implement measures in compliance with domestic legislation that guarantee prior informed consent or approval as well as the participation of Indigenous communities is secured for access to genetic resources, as long as they have the legal power to grant such access. Moreover, nations must create specific criteria and procedures for acquiring such consent or approval and involvement of Indigenous peoples.

Furthermore, according to Article 7, it is required that countries must undertake suitable measures to guarantee that the traditional knowledge of Indigenous communities regarding genetic resources is utilized in a manner that is advantageous to those communities. This should be done with their prior informed consent and participation, and on terms that are mutually agreed upon by all parties involved. Article 12 of the Protocol requires that, with regard to

³⁶² *Ibid* art 29.

³⁶³ *The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, 29 October 2010, art 6.

traditional knowledge connected to genetic resources, nations shall, in compliance with domestic law, take into account the customary laws, community norms, and processes of Indigenous and local populations. Additionally, the article requires that state should strive to support the progress of Indigenous communities in the following ways: (a) Formulating community guidelines on accessing traditional knowledge related to genetic resources and ensuring the fair and equitable distribution of benefits from using such knowledge; (b) Setting minimum requirements for agreed-upon terms to guarantee the fair and just sharing of benefits derived from traditional knowledge associated with genetic resources; and (c) Developing standardized contractual clauses for sharing benefits arising from the use of traditional knowledge linked to genetic resources.

According to the Biodiversity Act 2017, the National Committee of Biodiversity uses a variety of criteria to determine what constitutes a fair and equitable benefit, including awarding ownership or joint ownership of intellectual property rights, transferring technology to benefit claimants, guaranteeing that the subject matter of production, research, or projects enhances the standard of living of benefit recipients, involving Bangladeshi scientists or organizations in research and development, and providing claimants with both monetary compensation and non-monetary benefits.³⁶⁴ The Act delineated the above six approaches for ascertaining fair and equitable benefit distribution and recommended that any or all of them be implemented.³⁶⁵ According to the CBD and the Nagoya Protocol, every national Access and Benefit Sharing (ABS) system must be founded on Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT). Out of the six options, only the first method includes provisions for PIC (Prior Informed Consent) and MAT (Mutually Agreed Terms), which is plainly insufficient compared to the CBD (Convention on Biological Diversity) or Nagoya Protocol.³⁶⁶ Furthermore, no provision exists in the Biodiversity Act regarding the observance of Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT) procedures with regard to Indigenous communities. The Act has failed to uphold Bangladesh's obligations under the CBD regarding the rights to prior informed consent for genetic resources and traditional knowledge of Indigenous peoples. Despite the

³⁶⁴ *The Biodiversity Act, 2017*, s 30.

³⁶⁵ *Ibid.*

³⁶⁶ Sajal, *supra* note 347.

government's adoption of the Nagoya Protocol in 2023, no amendments have been undertaken so far to the Biodiversity Act 2017 or to adopt rules for access and benefit sharing under the Act to correctly align with the requirements of the Protocol regarding Indigenous peoples.

3.2.8. Right to the Application of a Precautionary Approach

Precaution entails the examination of a diverse array of alternatives and the participation in a more extensive public discourse regarding the available evidence regarding the exposures, uncertainties, and costs associated with each alternative risk management strategy.³⁶⁷ Interpretations of the precautionary principle³⁶⁸ aim to include other perspectives in a subject that has historically been exclusive to specialists.³⁶⁹ Scott contends that the implementation of the precautionary principle ought to be transparent, well-informed, and participatory and should aim to include all persons and groups who may be impacted by the choice made. The author underscores the need of doing a comprehensive analysis of all potential courses of action, including the possibility of refraining from taking any action.³⁷⁰ The author cited Joel Tickner, a prominent advocate of precaution, who outlines four key elements of the precautionary principle.³⁷¹ The approach involves: a) proactively taking action to prevent harm, even when the extent and nature of the risk are not completely known; b) requiring those responsible for potentially harmful activities to thoroughly assess the risks and take preventive measures if risks are likely to occur soon; c) investigating and adopting safer and practical alternatives; and d) involving democratic participation in decisions related to science and technology.³⁷²

³⁶⁷ Dayna Nadine Scott, "When Precaution Points Two Ways: Confronting West Nile Fever" (2005) 20:2 Can JL & Soc 27 [Scott, "Precaution Points Two Ways"].

³⁶⁸ Several phrases have been used to convey the concept of precaution in the realm of international environmental law. These include "precautionary approach," "precautionary principle," "precautionary measures," "principle of precautionary action," and "precautionary policy." According to the literature, despite the distinct definitions of these words in the dictionary, they do not indicate significant disparities in substance. See Abdullah Al Arif, "Legal status of the precautionary principle in international fisheries law and its application in the marine fisheries regime of Bangladesh" (2018) 3:1 Asia-Pacific Journal of Ocean Law and Policy 95.

³⁶⁹ Scott, "Precaution Points Two Ways", *supra* note 367.

³⁷⁰ *Ibid.*

³⁷¹ *Ibid.*

³⁷² *Ibid.*

There are two options to be considered for precautionary action and Indigenous peoples: involving Indigenous peoples in the risk assessment and taking action to prevent damage to Indigenous peoples and their environment.³⁷³ The precautionary approach, as a guiding principle, is beneficial for Indigenous peoples in two distinct ways.

Firstly, the application of the precautionary approach can provide added support for safeguarding the rights of Indigenous peoples, particularly in cases where the actions of States have the potential to impact their lands and territories.

Secondly, the principle also places focus on the value of Indigenous people's traditional knowledge, which is connected to their places and was gathered through careful observation, practice, and experience and can predict what will happen.

When it comes to the first instance, the CHT Peace Accord is the sole instrument that has made it possible exclusively for the Indigenous peoples of CHT to apply precautionary approach while dealing with state legislations. As stated in Article 13 of Part C of the treaty, prior to implementing any legislation concerning the Chittagong Hill Tracts, the government is obligated to engage in consultations as well as in discussions with the Regional Council. However, the later aspects of the precautionary approach relating to Indigenous knowledge have not been recognized by any legislation that have been passed or proposed. Regarding policy formulation, the precautionary principle is regarded as a non-binding principle in Bangladesh.³⁷⁴ Several environmental laws³⁷⁵ have elements that embody the precautionary approach.³⁷⁶

Researchers have previously cautioned against the potential hazards of attempting to "discipline precaution."³⁷⁷ On the contrary, it is argued that precaution should be seen as a "habit

³⁷³ *Ibid.*

³⁷⁴ M. Z. Ashraful, "Application of the Principles of International Environmental Law in the domestic legal System of Bangladesh: A Critical Study on the legal framework and the position of judiciary" (2014) 19:5 IOSR Journal Of Humanities And Social Science 18.

³⁷⁵ *The Wildlife (Conservation and Security) Act, 2012; The Forest Act 1927; The Bangladesh Environmental Conservation Act, 1995.*

³⁷⁶ Ashraful, *supra* note 374.

³⁷⁷ Scott, "Precaution Points Two Ways", *supra* note 367.

of thought."³⁷⁸ There is a lack of textual expressions of precautionary principle as well as practice that ensures the inclusion of Indigenous peoples in risk assessment or the implementation of measures to avoid harm to Indigenous communities. Scott and Tessaro's argument is particularly pertinent here, as they posit that governments often choose to implement voluntary or consumer-focused measures in the absence of legislative mandates for mandatory precautionary action based on assessments of risk and harm.³⁷⁹ The judiciary of Bangladesh is also employing it in a variety of cases that pertain to environmental concerns, particularly those concerning health, consumer rights, and development.³⁸⁰ Even if some laws don't explicitly state it, the government may always use its rule making authority under those laws to put precautionary measures into play.

3.2.9. Right to Access to Justice

The issue of Indigenous people's access to the Environment Courts of Bangladesh is often overlooked while discussing environmental justice, including discussions on access to the environmental court itself.³⁸¹ Warner asserts that in order to achieve environmental justice, courts must take into account the distinct characteristics of communities affected by environmental injustice, in order to provide fair and equitable access to both substantive and procedural justice.³⁸² Furthermore, Indigenous peoples who want to make environmental justice cases must have meaningful access to the courts.³⁸³ This is because meaningful access to the courts gives Indigenous peoples the chance to resolve environmental violations that affect Indigenous communities.³⁸⁴ The author refers to this kind of access as “remedial diversity”, which is crucial due to the legacy of discrimination against Indigenous peoples in the legal system.³⁸⁵ Remedial diversity aims to rectify previous systemic injustices without assigning

³⁷⁸ *Ibid.*

³⁷⁹ Scott & Tessaro, *supra* note 84 at 94.

³⁸⁰ Ashraful, *supra* note 374; Jona Razzaque, “Access to environmental justice: Role of the judiciary in Bangladesh” (2000) 4:1 Bangladesh Journal of Law 01.

³⁸¹ Rahman, *supra* note 165; Hasanat, *supra* note 67; Magallanes, *supra* note 75 at 143.

³⁸² Warner, *supra* note 71.

³⁸³ *Ibid.*

³⁸⁴ *Ibid.*

³⁸⁵ *Ibid.*

blame.³⁸⁶ Furthermore, as stated by the author, offering substantial access to the courts improves the overall trustworthiness of the legal system, diversity, promotes Indigenous viewpoints and credibility to judicial decisions.³⁸⁷ However, Magallanes highlights an important cultural concern about the ability of Indigenous peoples to obtain justice in court processes.³⁸⁸ This pertains to how the court handles and considers evidence related to the communities, values, and interests of these communities.³⁸⁹ This might present itself as both a procedural and substantive issue.³⁹⁰ The court is likely to misjudge how these values, knowledge, and interests should be used in order to settle a specific case if it misunderstands these concepts as well.³⁹¹

Magallanes contends that procedural environmental justice encompasses the availability of both administrative and judicial avenues for seeking justice.³⁹² It also includes evaluations of the extent to which the legal system allows individuals and communities to effectively access it, especially when seeking remedies.³⁹³ In addition to administrative remedies, the current legislative system offers three formal channels for legally addressing environmental concerns pertaining to Indigenous peoples in Bangladesh. These include proceedings before the Land Commission³⁹⁴, the Environment Court, and public interest litigation. Nevertheless, all of these legal systems suffer from inherent intricacy and inefficiency, hence hindering Indigenous people's access to justice. According to the CHT Accord, "disputes shall be resolved by the land Commission in accordance with the law, custom, and practice that is presently applicable in the Chittagong Hill Tracts."³⁹⁵ However, only the term "existing laws and customs in forces in the Chittagong Hill Tracts" found their way into the CHT Land Dispute Resolution Commission Act, which was passed in the year 2001.³⁹⁶ The Land Commission Act has been revised in 2016

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*

³⁸⁸ Magallanes, *supra* note 75 at 159.

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*

³⁹² *Ibid.*

³⁹³ *Ibid.*

³⁹⁴ It is exclusively accessible to Indigenous people residing in the CHT region in accordance with the CHT Peace Treaty.

³⁹⁵ *CHT Treaty*, *supra* note 35 art 4, Part D.

³⁹⁶ Kapaeng Foundation, "Amendment of CHT Land Commission Act: A Bold Effort of the Government to the Implementation Process of CHT Accord" online: [<https://www.kapaeng.org/amendment-of-cht-land-commission-act-a-bold-effort-of-the-government-to-the-implementation-process-of-cht-accord/>].

to include the word "practices." Subsequently, the government has been delaying the formulation of the Land Commission's rules. Land dispute-related hearings and the initiation of judicial proceedings regarding land disputes are rendered impossible by the absence of established rules.³⁹⁷ Despite the formation of the CHT Land Commission, it is currently devoid of the requisite financial resources and personnel.³⁹⁸

In order to assure the prompt resolution of environmental cases, the Environment Court Act was enacted in 2010. In order to achieve this objective, it mandates the creation of Environment Courts in every district, led by a Joint District Judge. Additionally, it stipulates for the establishment of a Special Magistrate's Court within the same district. The statute enables both civil and criminal proceedings, including penalties of up to 10 years imprisonment and a maximum compensation of 10 lacs (one million). In order to achieve environmental justice, environment courts are expected to function as an instrument of environmental governance, overcoming the conventional procedural shortcomings of criminal or civil courts and taking on a novel role. However, the situation in Bangladesh is noticeably different. This is because the environmental courts are inherently ineffective in a number of ways.

To begin with, the jurisdiction and number of the courts: despite the Act's intention to create Environment Court in each of the 64 districts, currently only three environmental courts have been formed to specifically address environmental concerns.³⁹⁹ The Environment Court's jurisdiction is restricted to adjudicating offenses and compensation claims pertaining to environmental law. Environmental law comprises the Bangladesh Environment Conservation Act, 1995, and any other legislation designated by the Government in the official Gazette, as per Section 2(c) of the Act. To date, the incorporation of any new legislation has not been officially

³⁹⁷ Parbatya Chattagram Jana Samhati Samiti (PCJSS), "Expert Mechanism on the Rights of Indigenous Peoples Study on "Treaties, agreements and other constructive arrangements, between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition" online: [<https://www.ohchr.org/sites/default/files/2022-06/pcjss-EMRIP-seminar-treaties-EMRIP-seminar-treaties.docx>].

³⁹⁸ *Ibid.*

³⁹⁹ For the Dhaka zone, there are two environmental courts. One is a primary court, while the other is an appellate court. The location of the third environmental court is in Chattogram.

announced in the gazette by the government.⁴⁰⁰ Therefore, it is not within the purview of the Environment Court to consider cases involving violations of laws pertaining to forests, biodiversity, fisheries, water resources, or any other natural resources.⁴⁰¹ In contrast, the Brick Manufacturing and Brick Kilns Establishment (Control) Act of 2013 stipulates that jurisdiction over any offense punishable under this Act shall be limited to the Environment Court or Special Magistrate's Court.⁴⁰²

There is no prerequisite for the judges of the Environment Courts to possess competence in Indigenous affairs or a sufficient understanding of environmental matters for any cases.⁴⁰³ Environmental courts lack the necessary qualifications to provide a suitable combination of expertise and experience⁴⁰⁴ in handling cases concerning Indigenous peoples in Bangladesh. Moreover, the direct access of the general public to Environment Courts is significantly limited. As mandated by legislation, Environment Courts are not authorized to hear compensation claims pertaining to environmental matters unless accompanied by a written report from an inspector of Department of Environment.⁴⁰⁵ However, if the Environment Court or the Special Magistrate Court determines that a person has submitted a written request to the Inspector regarding a claim for compensation or complaint, but no action has been taken within 60 days of the request, then if the court believes that the claim/complaint should be considered for trial, the court may, after providing the Inspector or the Director General with a fair chance to be heard, directly accept the claim for compensation/complaint without a written report.⁴⁰⁶ Alternatively, the court may instruct the Inspector to investigate the claim/offense if it deems it appropriate. It is evident that the general public does not possess the power to directly initiate legal action or file a lawsuit in the Environment Court.⁴⁰⁷ Abul Hasanat correctly argues that the mere existence of specialist

⁴⁰⁰ Imtiaz Ahmed Sajal, "Common People's Access to the Environment Courts of Bangladesh: An Appraisal" (16 July 2015), online: <<https://bdlawdigest.org/>> [<https://bdlawdigest.org/environment-court-act-2010.html#:~:text=Environment%20Court%20can%20only%20entertain,Government%20in%20the%20official%20Gazette>].

⁴⁰¹ *Ibid.*

⁴⁰² *The Brick Manufacturing and Brick Kilns Establishment (Control) Act*, 2013, s 19(2).

⁴⁰³ Magallanes, *supra* note 75.

⁴⁰⁴ *Ibid.*

⁴⁰⁵ *The Environment Court Act*, 2010, s 7(4).

⁴⁰⁶ *Ibid* s 7(4).

⁴⁰⁷ Md. Akhtaruzzaman & Imtiaz Ahmed Sajal, "Common People's Access to the Environment Courts of Bangladesh: An Appraisal" (2016) 15 *Journal of Judicial Administration Training Institute* 211.

courts does not ensure their efficacy in promoting environmental justice.⁴⁰⁸ This statement is accurate when applied to the specialist environment courts in Bangladesh. The root cause of this problem might be traced to the shortcomings inherent in the current environmental regulations.⁴⁰⁹

Magallanes underscore the importance of access to Alternative Justice in the Environment Court, such as Mediation.⁴¹⁰ This is currently not legally accessible in environmental matters in Bangladesh. Mediation offers a more cost-effective alternative to litigation, as it involves lower costs and eliminates the possibility of an award of costs against a party.⁴¹¹ The author thinks that, in this way, more people will have access to environmental justice if the Environment Court uses mediation to settle disputes.⁴¹² According to her, Mediation is advantageous for Indigenous peoples because it aligns more closely with Indigenous problem-solving methods and prioritizes a partnership based on equitable power sharing and decision-making responsibilities.⁴¹³

Despite the considerable time required for judges to overcome their reluctance to depart from colonial legal principles and their reluctance to adopt a broad interpretation of constitutional textualism, public interest litigation (PIL) in Bangladesh emerged as a phenomenon post-democratic or after 1991.⁴¹⁴ According to the Bangladesh Constitution, if there is no alternative equally effective remedy given by law and the matter is causing damage to the public interest, it is permissible to immediately file it with the High Court Division. In many Public

⁴⁰⁸ Hasanat, *supra* note 67.

⁴⁰⁹ *Ibid.*

⁴¹⁰ Magallanes, *supra* note 75.

⁴¹¹ *Ibid.*

⁴¹² *Ibid.*

⁴¹³ *Ibid.*

⁴¹⁴ Md. Rafiqul Islam Hossaini & Mohammad Shoeb Mahmud, “Public Interest Litigation in Bangladesh: A Long Way to Go” (2019) 9:1 Social Change 61.

Interest Litigations (PILs), the Constitutional "right to life"⁴¹⁵ has been expansively construed to include the right to a healthy environment.⁴¹⁶

Scott raises a valid argument, and I agree that implementing a 'right to a healthy environment' may not immediately address long-standing or ongoing environmental disparities faced by Indigenous communities.⁴¹⁷ The author notes that the right to a healthy environment is a fundamental entitlement that is consistently unfulfilled, seen in the pervasive and undeniable reality that exists in almost every aspect of our surroundings.⁴¹⁸ Litigation, as a method of resolving this conflict, is inadequate. It favors those who are involved in legal disputes often and have significant financial resources.⁴¹⁹ It also creates obstacles for public interest applicants via standing requirements and fees regulations.⁴²⁰ Hossaini and Mahmud contend that the full potential of public interest litigation in Bangladesh has not been realized owing to insufficient refinement of procedures and the expected level of judicial activism.⁴²¹ According to them, PIL is further complicated since the Constitution includes non-enforceable fundamental state policy concerning Indigenous peoples and the environment.⁴²²

⁴¹⁵ *The Constitution, supra* note 31 art 32. The article reads as follows: "No person shall be deprived of life or personal liberty save in accordance with law."

⁴¹⁶ In 1997, the Supreme Court of Bangladesh acknowledged the concept of Public Interest Litigation (PIL) following a case initiated by Bangladesh Environmental Lawyers Association (BELA). This recognition allowed millions of marginalized people to engage with the formal justice system through civil society organizations (CSOs) and public-interested litigants acting as representatives. BELA has filed several Public Interest Litigations (PILs) in court to address a variety of environmental issues and challenges, as stated on the BELA website. The issues encompass vehicular pollution, river pollution, river encroachment, encroachment and pollution of wetlands, unplanned urbanization, industrial pollution, regulation of trans-boundary waste movement (specifically ship breaking), ecological destruction, destructive mining (such as sand and gas extraction), preservation of agricultural lands, prevention of indiscriminate commercialization (such as shrimp cultivation), compensation and damages for pollution, loss of biodiversity, and other related concerns. Read more Bangladesh Environmental Lawyers Association, "BELA's PIL Detail" online: [<https://belabangla.org/legal-cell/pil/belas-pil-detail/>].

⁴¹⁷ Scott, "Hesitant Embrace of Human Rights", *supra* note 47.

⁴¹⁸ *Ibid*

⁴¹⁹ *Ibid.*

⁴²⁰ *Ibid.*

⁴²¹ Hossaini & Mahmud, *supra* note 414.

⁴²² *Ibid.*

Regarding Indigenous peoples and their rights, Shah, on the other hand argues that as Indigenous people's rights are not adequately addressed by the legal system, Public Interest Litigation might potentially provide a path for the recognition of their rights.⁴²³ The rights of Indigenous peoples and the access to justice are not consolidated into a single piece of law, but rather they are dispersed throughout many legislative documents, each with its own limitations and complexities.

The above discussion has led to conclude that the rights of Indigenous peoples, as discussed under the biocultural themes, are not adequately recognized, specifically incorporated, and implemented by the majority of environmental legislations of Bangladesh through their provisions. In certain circumstances, international obligations on the rights of Indigenous peoples are flagrantly ignored, resulting in their exclusion from being addressed in the environmental legislations at the national level. The Biodiversity Act 2017 serves as an obvious example of this. Furthermore, in the absence of explicit provisions in environmental laws and rules that directly address their environmental concerns, Indigenous peoples are unable to seek legal remedy for their distinct issues in environmental courts in Bangladesh.

Another conclusion I have reached is that the absence of adequate legal provisions that specifically address the rights of Indigenous peoples in environmental law, along with the legal barriers in the judicial system, is attributed to legislators exercising their authority without being held accountable and without following proper guidelines that adhere to either international standards like UNDRIP or nationally established ones. Such authority is justified by Article 23A of the Constitution, which allows them unrestricted power to determine the extent and nature of the rights to be included in any environmental law they enact.

Therefore, the rights that have been secured in environmental legislations thus far are established based on the preferences of the legislators themselves rather than a legally enforceable constitutional provision mandating the state to adhere to a certain set of standards

⁴²³ Shah, *supra* note 189.

during the enactment of environmental legislation. As long as this persists, I argue that the environmental laws will consistently mirror three scenarios:

a) The text of the law may not adequately include the rights that should have been granted to Indigenous peoples.

b) Within a specific environmental law, some but not all groups of Indigenous peoples, as mentioned in the Constitution, may be recognized as having some or a portion of their rights, and

c) Such a distribution of rights might not adequately resolve the environmental issues that the Indigenous peoples confront.

In light of this chapter's findings, it is critical to determine whether representational opportunity gives Indigenous peoples enough room to speak out for their rights, which in turn influences how environmental actions are put into effect. Hence, the following chapter analyzes the degree to which Indigenous peoples are included in environmental decision-making processes through various bodies or committees constituted in compliance with environmental legislation to execute the objectives of those laws.

Chapter 4: Representation of Indigenous Peoples in Bangladesh's Environmental Regulatory Framework

Employing an environmental justice lens, according to Scott involves considering the equitable distribution of costs and benefits related to environmental policy and natural resource development decisions.⁴²⁴ It also involves assessing the extent to which participation of the affected communities have been meaningfully included in the decision-making process.⁴²⁵ Environmental justice, as argued by Tsosie, is inextricably linked to the recognition of Indigenous regulatory power and the guaranteeing of Indigenous peoples' participation in the process of environmental decision-making.⁴²⁶ Subsequently, Indigenous scholar Whyte noted that, procedural justice standards are concerned with the fairness of who is allowed to participate, and to what degree, in the procedures of decision-making that are used to distribute risks and benefits.⁴²⁷ When discussing procedural environmental justice, Magallanes contends that equal access to the processes and systems used to make environmental decisions is a key component of procedural access to environmental justice.⁴²⁸ The author argues that it is distinct from the fair distribution of benefits and burdens, and pertains to the requirement of taking into account the points of view and concerns of the Indigenous community in all pertinent decision-making procedures.⁴²⁹ Therefore, I agree with the viewpoints expressed by the aforementioned authors and assert that achieving procedural environmental justice requires active involvement in the decision-making process, including participation in procedures at the level of local authorities or government departments as well as ensuring fairness in the outcomes of environmental choices.⁴³⁰

There are several environmental legislations that govern the allocation of and decision making on different environmental concerns ranging from pollution, biodiversity, water, forest,

⁴²⁴ Scott, *supra* note 2 at 299.

⁴²⁵ *Ibid.*

⁴²⁶ Tsosie, "Indigenous People and Environmental Justice", *supra* note 293.

⁴²⁷ Whyte, "Recognition Dimensions", *supra* note 47 at 200.

⁴²⁸ Magallanes, *supra* note 75 at 145.

⁴²⁹ *Ibid.*

⁴³⁰ *Ibid.*

and environment conservation in Bangladesh. The Bangladesh Environment Conservation Act (BECA) 1995 has the widest scope of applicability. The legislation creates a government department known as the Department of Environment,⁴³¹ which is directed by a Director General.⁴³² The main objective of the department is to fulfill the goals and objectives outlined in the Act.⁴³³ Indigenous participation in the range of the BECA process from the formulation of broad plans to consents is an area that has not been well researched and substantially discussed. Mechanisms that are specifically designed to provide appropriate access and participation to Indigenous peoples under the Act are lacking. Additionally, the BECA lacks substantive provisions that are intended to facilitate decisions made under the Act that safeguard environmental concerns or assets such as culture, tradition, water, lands, sites that are significant to Indigenous peoples. The Act has not granted administrative discretion to take into account Indigenous peoples and communities when conducting an assessment or evaluation of environmental matters, nor does it impose any obligatory responsibilities to evaluate the impacts on these communities. Lastly, the law has not provided guidance on how to evaluate the evidence when there are gaps in information that are crucial for understanding the impact on these communities. Magallanes makes a valid point when she has stated that substantive goals affect procedural access to environmental justice because they force decision-makers to think about how to acknowledge and accommodate environmental concerns of Indigenous peoples.⁴³⁴ There will probably be inconsistencies in the substantive outcomes as well if there are inconsistencies in the procedure of such consideration.⁴³⁵

In addition to the absence of substantive provisions, the BECA lacks a number of procedural provisions that make sure Indigenous people's culture or tradition are taken into account at different stages and allows and/or require Indigenous peoples to be consulted and/or involved in other ways when decisions are being made. The Director General is granted significant authority in terms of administrative measures. According to the Act, he has the

⁴³¹ BECA, *supra* note 261 s 3.

⁴³² *Ibid.*

⁴³³ The Act's preamble states that its objective is to ensure the preservation of the environment, enhance environmental standards, and regulate and reduce environmental pollution.

⁴³⁴ Magallanes, *supra* note 75 at 153.

⁴³⁵ *Ibid.*

discretion to take any actions that he deems necessary and appropriate for the preservation of the environment, enhancement of environmental standards, and management of environmental pollution.⁴³⁶ Additionally, he has the power to issue directives to individuals to ensure their compliance with the responsibilities outlined in this Act.⁴³⁷ The Act states that the Government appoints the Director General and sets the terms and conditions of his employment.⁴³⁸ The Act does not specify any prerequisite education, expertise and understanding that the Director General must possess in order to comprehend Indigenous peoples and their perspectives while making environmental decisions. This also applies to the essential officers and workers who carry out the activities of the Department, without any need for a certain number of officers to be from Indigenous background.

Magallanes correctly noted that the exclusion of Indigenous people's perspectives from the decision-making process has resulted in choices that are detrimental to their interests.⁴³⁹ The author discusses many approaches through which Indigenous communities might engage in decision-making processes led by external parties. These actions include the transfer of authority, the issuance of preservation orders to safeguard places important for Indigenous peoples, and the establishment of collaborative management agreements in relation to any specific environmental resources.⁴⁴⁰ The collaborative management agreements relating to environmental resources might have been advantageous for the plainland Indigenous peoples, since they lack a treaty similar to the CHT peace treaty that would allow them to have authority in making decisions and governing environmental issues in their territories.

According to Sidra and Scott, Environmental justice refers to the equitable treatment and meaningful participation of individuals of all races, colours, national origins, and economic levels in the development, execution, and enforcement of environmental laws, regulations, and

⁴³⁶ *BECA*, *supra* note 261 s 4.

⁴³⁷ *Ibid.*

⁴³⁸ *Ibid* s 3(2).

⁴³⁹ Magallanes, *supra* note 75 at 163.

⁴⁴⁰ *Ibid.*

policies.⁴⁴¹ They emphasize that environmental justice encompasses not only "fair treatment," but also "meaningful involvement."⁴⁴² In order to achieve environmental justice, Gellers and Jeffords posit that vulnerable communities must have the opportunity to partake in decision-making processes in a meaningful way.⁴⁴³ According to them, not only do environmental justice outcome involve fair division of environmental goods and bads, but they also involve efforts to make environmental decision-making processes more open to everyone.⁴⁴⁴

When evaluating environmental justice frameworks for decision-making bodies established under different environmental laws, Whyte introduces a new norm called "direct participation."⁴⁴⁵ This norm requires that all environmental actions must have a platform for meaningful representation and consideration.⁴⁴⁶ The author provides two morally noteworthy arguments in support of direct participation.⁴⁴⁷

Firstly, Indigenous communities may suffer in a number of ways from unfair representations and evaluations of their cultural norms and socioeconomic circumstances.⁴⁴⁸

Secondly, Indigenous peoples must protect the aspects of their relationship with the environment that they want to preserve for their community's future.⁴⁴⁹

Whyte distinguishes between "direct participation" and the chance to provide informed consent.⁴⁵⁰ He describes "direct participation" as the establishment of a platform where Indigenous peoples may actively participate and contribute to shaping how their socioeconomic conditions and cultural values are articulated in relation to environmental decision-making

⁴⁴¹ Sabzwari & Scott, *supra* note 47 at 86.

⁴⁴² *Ibid.*

⁴⁴³ Joshua C. Gellers & Chris Jeffords, "Toward environmental democracy? Procedural environmental rights and environmental justice" (2018) 18:1 Global Environmental Politics 99.

⁴⁴⁴ *Ibid.*

⁴⁴⁵ Whyte, "indigenous tourism", *supra* note 47.

⁴⁴⁶ *Ibid.*

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.*

⁴⁴⁹ *Ibid.*

⁴⁵⁰ *Ibid.*

processes that may affect them.⁴⁵¹ He further explains that a "forum of direct participation" is a certain set of circumstances or settings that do not hinder or reject the ability of Indigenous peoples to include their own social situations and cultural concepts using their own voices.⁴⁵² The author firmly contends that decision-making systems that lack a platform for direct participation are morally questionable.⁴⁵³

4.1. Direct Participation of Indigenous Peoples in Environmental Decision Making Bodies

In light of the above discussion, I contend that numerous environmental legislations lack "direct participation"⁴⁵⁴ due to the fact that the legislation stipulations of existing bodies and committees responsible for environmental decision-making do not make a good faith effort to establish a platform in which the environmental concerns and cultural terms of Indigenous communities can be fairly represented and considered. In order to support this assertion⁴⁵⁵, I examine the composition and functions of a variety of committees and bodies that have been established in compliance with the environmental laws and policies in Bangladesh. The reason for this is because the responsibilities assigned to these committees and groups are in fact significant, pertinent, and relevant to issues pertaining to both Indigenous peoples and the environment. The objective of the analysis is to determine the degree to which direct participation of Indigenous peoples has been guaranteed, allowing Indigenous peoples to engage in decision-making bodies or committees and promote their interests. In addition to this, another objective is to find out under what circumstances they have been ensured participation, whether it be as a member of such bodies/committees or an interested party, a stakeholder, an expert, or any other role. As a result, a thorough examination has been conducted on 21 different bodies and committees constituted under six environmental legislations, specifically focusing on their composition and duties as required by the laws. Details are shown in the table below (Table 10).

⁴⁵¹ *Ibid.*

⁴⁵² *Ibid.*

⁴⁵³ *Ibid.*

⁴⁵⁴ *Ibid.*

⁴⁵⁵ *Ibid.*

Table 10**Status of Indigenous Peoples “Direct Participation” in Environmental Decision Making****Bodies in Bangladesh**

Note. The author meticulously examined the selected laws, as well as the legal provision dealing with the composition and tasks of the committees and bodies outlined in the Act, in order to create this table. The author reviewed whether these provisions require the participation of specific Indigenous communities or a people/entity representing on behalf of Indigenous peoples and communities in Bangladesh to determine whether the committees or bodies in question genuinely reflect the direct participation of Indigenous peoples, either in part or in whole.

<i>Relevant Provisions</i>	<i>Committees</i>	<i>Main Functions</i>	<i>Direct Participation of Indigenous Peoples</i>
<i>Environment Conservation Rules, 2023</i>			
Rule 24 & 25	Environmental Clearance Certificate Committee	<ul style="list-style-type: none"> a. Determine and assess the environmental impacts, liquid waste treatment plant and air pollution control system of an industry or endeavor falling under the Red category, and subsequently provide a report on the findings. b. In consideration of the characteristics and types of projects and industries, establish the criteria for the environmental clearance certificate. c. To provide recommendations about the corporate social responsibility and environmental responsibility of industrial establishments or project developers 	Not Ensured
<i>Ecologically Critical Area Management Rules 2006</i>			
Rule 3 & 4	National Committee	<ul style="list-style-type: none"> a. The National Committee, on its own initiative or upon obtaining any information that any place has become ecologically critical, the committee can recommend to the government to declare the area as Ecologically Critical Area (ECA). 	Not Ensured
Rule 6 & 7	District Committee	<ul style="list-style-type: none"> a. Executing the actions and plans that the Directorate of Environment adopted in order to mitigate the ecological peril of the area. b. To submit recommendations to the National Committee concerning the commencement or perpetuation of any harmful activity in ECA. c. Monitoring the development process and conducting an on-site inspection of the area. d. Finding alternative means of subsistence if the prohibition of activities in the ECA restricts the means of subsistence of people. e. Promoting environmental conservation among the public f. Monitoring and evaluation of the activities of the Upazila, Union Committee and Village Conservation Team g. Taking legal actions against any person who commits or attempt to commit prohibited acts in the ECA 	Not Ensured
Rule 9 & 10	Upazilla	<ul style="list-style-type: none"> a. To submit recommendations to the District 	Not Ensured

	Committee	<p>Committee concerning the commencement or perpetuation of any harmful activity in ECA.</p> <ul style="list-style-type: none"> b. Providing guidance to Village Conservation Teams and Union Committees, as well as submitting recommendations to District Committees c. Supervise, assess, and monitor the activities of the Village Conservation Team and the relevant Union Coordination Committee, and provide the necessary guidance. d. Help with setting up cooperatives and getting village conservation teams registered. e. Monitoring the development process and conducting an on-site inspection of the area. f. Finding alternative means of subsistence if the prohibition of activities in the ECA restricts the means of subsistence of people. g. Promoting environmental conservation among the public 	
Rule 12	Union Coordination Committee	<ul style="list-style-type: none"> a. Supervising and coordinating the operations of Village Conservation Teams while rendering essential guidance b. Assistance in resolving any issues that may arise with the Village Conservation Team's performance 	Not Ensured
Rule 13 & 14	Village Conservation Team ⁴⁵⁶	<ul style="list-style-type: none"> a. Implementation of measures and development of plan to overcome the ecological critical situation b. Creating public awareness regarding the actions to be taken and not to be taken as described in the notification of the declaration. c. Encouraging the public to conserve the ECA d. Notification to competent authority for taking legal actions against any person who commits or attempt to commit prohibited acts in the ECA. e. Preserve funds in such manner as directed by the Directorate of Environment. f. Maintaining proper accounts of money received from the fund. g. Performing other functions as directed by the Government, National, District or Union Committees. 	Not Ensured
The Bangladesh Biodiversity Act 2017			
Section 8 & 10	National Committee on Biodiversity	<ul style="list-style-type: none"> a. Decide on any application received under the Act b. Preparing and maintaining, through the Department of Environment, the National Biodiversity Register, comprising the register prepared and maintained by the District Committee; c. Distribution of a fair share of the benefits derived 	Ensured (An officer of the rank of Joint-Secretary nominated by the Chittagong Hill Tracts Affairs)

⁴⁵⁶ According to Rule 13 of the Ecologically Critical Area Management Rules 2006, Village Conservation Team must register as Co-operative Society under the Co-operative Societies Act of 2001. Primary co-operative society, central co-operative society, and national co-operative society are the three classifications of co-operative society outlined in Section 8 of the Co-operative Societies Act of 2001. The Primary Co-operative Society has at least 20 members, and its goal is to improve its members' social and economic situations in a legal way.

		<p>from biological and genetic resources</p> <ul style="list-style-type: none"> d. To identify areas of biodiversity importance and advise the Government to declare such areas as Biodiversity Rich Heritage Sites e. Advising the Government on management of areas declared as Biodiversity Rich Heritage Sites; f. Advising the Government to formulate rules to ensure fair share distribution of benefits derived from forest or living resources g. Advising the Government on the preparation of guidelines for the management and conservation of biodiversity-rich heritage areas; h. Advising the Government to respect, recognize and preserve biodiversity knowledge of local communities i. Advising the Government in designating or assigning responsibility to appropriate public or private institutions for conservation of various categories of biodiversity j. Advising the Government on the exemption from the purview of this Act of any such living resource which is generally marketed as a commodity k. Monitor and supervise the functioning of other Committees and, where necessary, give directions to them 	
Section 11 & 12	Technical Committee on Biodiversity	<ul style="list-style-type: none"> a. To provide advice and technical assistance in the formulation of strategies and action plans related to conservation of biodiversity under the agenda of the concerned ministry or department b. Providing necessary advice and technical assistance to the National Committee in carrying out its functions; c. if any application is sent by the National Committee, sending recommendations to such Committee after evaluating it d. Performing other duties as directed by the Government or the National Committee 	Not Ensured
Section 13 & 15	City Corporation Biodiversity Management and Monitoring Committee	<ul style="list-style-type: none"> a. Prepare and maintain the register of biodiversity of the City Corporation area b. Assisting the Government to implement National Biodiversity Strategy and Action Plan c. Creating awareness among the local people about the need to conserve the biodiversity of the City Corporation; d. To take action on any other matter related to the National Biodiversity Strategy and Action Plan for the conservation of biodiversity in the City Corporation area, if it appears expedient to send recommendations to the National Committee in this regard e. On-site inspection of Biodiversity areas of the City Corporation area, from time to time and monitoring the implementation and progress of national strategies and action plans f. Monitoring the functioning of the Biodiversity Management Committee, if any, under the City 	Not Ensured

		<p>Corporation, including the Ward Biodiversity Management Committee, and, if necessary, giving directions to them</p> <p>g. To closely monitor the activities of the City Corporation which may cause damage to biodiversity and to take appropriate administrative and legal action to stop any such activities without delay</p> <p>h. To carry out such other functions as may be directed by the Government and the National Committee.</p>	
Section 16 & 18	District Biodiversity Management and Monitoring Committee	<p>a. Preparation and preservation of district biodiversity registers, including the upazila biodiversity registers prepared and preserved by the upazila committee;</p> <p>b. Assisting the Government in implementing the National Biodiversity Strategy and Action Plan</p> <p>c. Creating awareness among local people about the need to conserve the biodiversity of the district</p> <p>d. To take actions on any other matter related to the National Biodiversity Strategy and Action Plan for the preservation of the biodiversity of the district, if it appears expedient to send recommendation to the National Committee in this regard,</p> <p>e. Monitoring the implementation and progress of national strategies and action plans, from time to time, on-site inspection of the biodiversity rich areas of the district</p> <p>f. overseeing the functions of upazila, municipal and union biodiversity management committees and, if necessary, giving directions to them</p> <p>g. To closely monitor any activity that harms the biodiversity of the district and to take appropriate administrative and legal action to stop it immediately if anyone does or undertakes to do so.</p> <p>h. To carry out such other functions as may be directed by the Government and the National Committee.</p>	Not Ensured
Section 19 & 21	Upazila Biodiversity Management and Monitoring Committee	<p>a. Preparation and preservation of Upazila Biodiversity Registers, including the Union and Municipal Biodiversity Registers prepared and preserved by Union Committees and Municipal Committees</p> <p>b. Assisting the Government in implementing the National Biodiversity Strategy and Action Plan</p> <p>c. Creating awareness among the local people about the need to conserve the biodiversity of the upazila</p> <p>d. On-site inspection of the Biodiversity areas of the upazila, from time to time, and monitoring the implementation and progress of national strategies and action plans</p> <p>e. If it appears appropriate to undertake any other activities related to the National Biodiversity Strategy and Action Plan to conserve the biodiversity of the Upazila, send recommendations to the District Committee in this regard</p>	Not Ensured

		<ul style="list-style-type: none"> f. Informing the people of the concerned areas about the benefits of the National Biodiversity Strategy and Action Plan and motivating them to assist in the implementation of the said plan g. To supervise and monitor the activities of Municipal and Union Biodiversity Management Committees and other groups or societies under the Upazila on Biodiversity Management, if any, and, if necessary, give directions to them h. To monitor any work that harms biodiversity in the upazila and take appropriate administrative and legal action to stop it immediately if anyone does or undertakes to do such work i. To carry out other duties as directed by the Government, National Committee and District Committee from time to time 	
Section 22 & 24	Municipal Biodiversity Management and Monitoring Committee	<ul style="list-style-type: none"> a. Preparation and maintenance of registers on biodiversity of municipal areas b. To encourage the local public in the following respects, namely: <ul style="list-style-type: none"> i. Conservation of biodiversity and its sustainable use ii. conservation of ecosystems, cultivars and land races iii. conservation of domesticated breeds of animals, indigenous fish species and micro-organisms iv. documentation of biodiversity related knowledge c. Creating awareness among local residents about the consequences of biodiversity and environmental degradation in municipal areas d. Implementation of National Biodiversity Strategy and Action Plan e. Informing the local people about the benefits of the National Biodiversity Strategy and Action Plan in overcoming the crisis related to biodiversity and encouraging them to support the implementation of the said plan f. If it appears appropriate to undertake any other activities related to the National Biodiversity Strategy and Action Plan to conserve the biodiversity of the concerned area, send recommendations to the Upazila Committee in this regard g. Creating public awareness on general dos and don'ts in municipal areas for biodiversity conservation; h. Monitoring the progress of implementation of National Biodiversity Strategy and Action Plan, from time to time and on-site inspection of Municipal Biodiversity Areas i. Inventing alternative means of livelihood for the residents whose means of livelihood are hampered as a result of banning any activities in municipal areas due to conservation of biodiversity 	Not Ensured

		<ul style="list-style-type: none"> j. Supervise the functioning of the Biodiversity Management Team or Association and give directions where necessary. k. To monitor that no one may do any work harmful to the environment in the municipal area and to take appropriate administrative and legal action to stop any such work immediately if any one does or undertakes to do such work l. Other functions directed by the Government, National Committee, District Committee and Upazila Committee 	
Section 25 & 27	Union Biodiversity Management Committee	<ul style="list-style-type: none"> a. Preparing and maintaining the Register of Biodiversity of the Union b. To encourage the local public in the following respects, namely: <ul style="list-style-type: none"> i. Conservation of biodiversity and its sustainable use ii. conservation of ecosystems, cultivars and land races iii. conservation of domesticated breeds of animals, indigenous fish species and micro-organisms iv. documentation of biodiversity related knowledge c. Creating awareness among the local people about the consequences of degradation of biodiversity and environment of the Union d. Implementation of National Biodiversity Strategy and Action Plan and monitoring its progress; e. Informing the local people about the benefits of the National Biodiversity Strategy and Action Plan in overcoming the crisis related to biodiversity and implementing the said plan f. If it appears appropriate to undertake any other activities related to the National Biodiversity Strategy and Action Plan to conserve the biodiversity of the concerned area, send recommendations to the Upazila Committee in this regard g. Creating public awareness on general do's and don'ts in the Union for biodiversity conservation h. On-the-spot inspection of biodiversity-rich areas under the Union Territory, from time to time i. Development of alternative means of livelihood for the people of the area whose means of livelihood are blocked due to ban on any activity in the Union due to conservation of biodiversity m. To monitor the functioning of the Biodiversity Management Team or Association and give directions where necessary. j. To monitor that no one may do any work harmful to the environment in the union area and to take appropriate administrative and legal action to stop any such work immediately if any one does or undertakes to do such work k. Other functions directed by the Government, 	Not Ensured

		National Committee, District Committee and Upazila Committee	
<i>The Wildlife (Conservation and Security) Act, 2012</i>			
Section 3	Wildlife Advisory Board	<ul style="list-style-type: none"> a. Evaluate and issue directives regarding the conservation, development, and management of wildlife and forests b. To oversee the biodiversity, wildlife, and forest conservation, development, and management efforts across various development projects and to provide relevant directives based on the findings c. To develop an incentive programme to raise public awareness regarding the importance of conserving forests, fauna, and biodiversity and to provide implementation recommendations. d. To approve any plan put forward by the Chief Warden to the Government for the creation of a technical committee, sub-committee, or other committee to carry out the purposes of this Act e. Granting approval to the annual report containing recommendations that the Chief Warden submits to the Government f. To carry out any additional responsibilities that the Government may periodically delegate to it. 	Not Ensured
Section 4 &7	Scientific Committee	<ul style="list-style-type: none"> a. To assist the Chief Warden in determining which species are vulnerable, endangered, or critically endangered by utilizing scientific data and internationally recognized standards or protocols. 	Not Ensured
<i>The Bangladesh Water Act, 2013</i>			
Section 4 & 5	National Water Resources Council	<ul style="list-style-type: none"> a. To set guidelines and formulate policies pertaining to the proper management, secure extraction, equitable distribution, conservation, and safeguarding of water resources b. To provide guidance on the formulation of a national water resources plan to ensure the integrated development of water resources c. To authorize the National Water Resources Plan and oversee its execution d. To carry out any additional duties, as determined by the Council. 	Not Ensured
Section 9 & 10	Executive Committee	<ul style="list-style-type: none"> a. To disseminate, publish, monitor, and assess the directives and recommendations put forth by the Council pertaining to water resources b. To ensure that the National Water Policy and the National Water Resources Plan are disseminated, monitored, and assessed c. To proactively engage in matters pertaining to the planning, administration, and collaboration among sectors concerning water resources d. To provide the Council with regular updates on water resource management matters and offer guidance in this regard e. To facilitate coordination among relevant authorities, develop policies pertaining to inter-sector conflicts, and mediate such disputes while issuing necessary directives; and f. To carry out any additional responsibilities that the 	Not Ensured

		Council may decree.	
<i>The Bangladesh Water Rules 2018</i>			
Rule 14	District Integrated Water Resources Management Committee	<ul style="list-style-type: none"> a. Recommend for issuance of project clearance as per the estimated cost of the project after considering the report of the District Technical Committee. b. To identify and review the opportunities, constraints and potential of water resources utilization and accordingly recommend for approval of the respective District Water Resources Plans, if any, under the existing legal framework c. Monitor the activities of the Union and Upazila Committees and assist the said Committees when necessary d. Coordinate and supervise the activities of public, private and privately owned organizations or agencies operating in the water resources sector within the district e. To enforce and monitor the orders or directions issued by the Water Resources Planning Organization or anybody, agency, person or authority empowered by it f. In view of the violation of the conditions specified in the permit for the use and development of water resources, submitting reports to the Water Resources Planning Organization accordingly recommending its cancellation g. Developing water resource related databases and sharing the same with water resources planning agencies h. Ensure integrated development and sustainable management of water resources in accordance with the guidelines i. Establishing linkages with Upazila Committees and Water Resources Planning Organization for greater coordination j. Recommending the issuance of a compliance order, removal order or, as the case may be, a protection order k. Taking measures to dispose of applications received under section 16 l. To discharge other responsibilities assigned by the Water Resources Planning Organization. 	Not Ensured
Rule 15	Upazila Integrated Water Resources Management Committee	<ul style="list-style-type: none"> a. To recommend the issue of project clearance according to the estimated cost limit of the project after considering the report of the Upazila Technical Committee b. To identify and review the extent or opportunities, constraints and potential of water resources utilization and accordingly recommend for approval of Upazila Water Resources Plans (if any) under the existing legal framework for the purpose of sustainable water resources management c. Monitor the activities of Union Committees and 	Not Ensured

		<p>assist them as and when required</p> <ul style="list-style-type: none"> d. Coordinate and supervise the activities of public, private and privately owned organizations or agencies operating in the water resources sector within the upazila e. To monitor the compliance of orders or directions issued by the Water Resources Planning Organization and to submit reports accordingly to the District Committee f. To recommend cancellation of water resources utilization and development projects in view of violation of the conditions specified in the permit g. Developing water resources related databases and sharing them with water resources planning agencies h. Ensure integrated development and sustainable management of water resources in accordance with the guidelines i. Liaison with District Committees and Water Resources Planning Organizations for greater coordination; j. Recommending the issuance of a compliance order, removal order or, as the case may be, a protection order; k. Taking measures to dispose of applications received under section 16; l. To perform other duties assigned by the Water Resources Planning Organization and the District Committee 	
Rule 16	Union Integrated Water Resources Management Committee	<ul style="list-style-type: none"> a. To recommend for issuance of project clearance as per the estimated cost limit of the project after considering the report of the Union Technical Committee b. To identify and review the extent or opportunities, constraints and potentials of water resource utilization and accordingly approve Union Water Resources Plan (if any) under the existing legal framework for the purpose of sustainable water resource management c. Monitor the functioning of the Ward Integrated Water Resources Management Committee and assist it as and when required d. To coordinate and supervise the activities of public, private and private organizations or agencies working in the water resources sector within the Union e. Monitor compliance with orders or directions issued by the Water Resources Planning Agency and submit reports accordingly to the Upazila Committee f. To recommend the cancellation of the license in case of breach of conditions g. Developing water resource related databases and sharing the same with water resources planning agencies; h. Ensuring integrated development and sustainable 	Not Ensured

		<ul style="list-style-type: none"> i. management of water resources as per guidelines i. Recommending the granting of permits for water resources utilization and development projects in accordance with the guidelines j. Liaison with Upazila Committees, District Committees and Water Resources Planning Organization. k. Recommending the issuance of enforcement orders, removal orders or, as the case may be, protection orders l. Taking measures to dispose of applications received under section 16; m. To fulfill other responsibilities given by Water Resources Planning Organization, District Committee, Upazila Committee 	
Rule 21 & 22	Technical Committees (District, Upazila and Union)	<ul style="list-style-type: none"> a. Verification of water projects according to the following information, namely <ul style="list-style-type: none"> i. Whether the project is related to the development of water resources using surface water ii. whether the project will cut off the connection of the floodplain with any flowing river or canal and whether any steps will be taken to remedy the same iii. whether the project will obstruct the existing flow of any flowing river or canal iv. whether the project will cause waterlogging at any location v. whether the project will completely drain any aquifer vi. whether the project conflicts with any existing water use rights vii. whether the project will disturb the flow of foreshore, coast and any similar reservoir or place viii. whether the project will cause any pollution to the ground water ix. whether the project has been formulated in a participatory and participatory process 	Not Ensured

(Table created by author).

The majority of the top level committees such as “National Committees” are tasked with policy formulation, while the bottom level committees such as “District, Upazila, Union committees” are responsible for executing such policies and actions. The findings reveal that the direct participation of Indigenous peoples to express their concerns and contribute to environmental decision-making has not been guaranteed by the formation of any committee. One

committee, the National Committee on Biodiversity, legally guarantees Indigenous representation by including a Government Ministry that deals with CHT Indigenous concerns. The provision dealing with the formation of the committee mandates the inclusion of an officer of the rank of Joint-Secretary nominated by the Ministry of Chittagong Hill Tracts Affairs as a member of the committee. Nevertheless, the extent of such participation is limited. Although the Ministry of Chittagong Hill Tracts Affairs⁴⁵⁷ may be seen as a representative body for the Indigenous peoples of the hill tracts in the National Committee on Biodiversity, it does not represent the Indigenous peoples living in the plain land. Therefore, such representation does not truly guarantee that all Indigenous peoples residing in various parts of the nation would be represented and their concerns would be considered at the policy level as well as at the grassroots level. This provision is exclusively intended to serve the Indigenous peoples who live in the Chittagong Hill Tracts (CHT) Region.

Thus, it can be said that the prevailing practice, or more accurately, the only step taken thus far in terms of ensuring Indigenous involvement stayed limited to include only the Ministry of the Government and did not expand beyond that. However, the Ministry of Chittagong Hill Tracts Affairs has not been granted inclusion in other committees as well. For instance, section 4 of the Water Act established the National Water Resources Council, which holds the ultimate authority in making decisions, developing plans, and developing policies for the effective management, safe extraction, fair distribution, preservation, and protection of water resources. Members of the Council are drawn from a variety of ministries, such as those responsible for land, environment, finance, agriculture, water resources, foreign affairs, fisheries and livestock, law, justice, and parliamentary affairs, local government, rural development, and cooperation, excluding the Ministry of Chittagong Hill Tracts Affairs.

Another observation can be made that none of the bodies or committees listed in the table above regarded and considered “Indigenous peoples” or “Indigenous communities” as

⁴⁵⁷ This ministry is committed to supporting the growth and well-being of the Indigenous peoples in the CHT, ensuring their participation in a range of developmental initiatives, including environmental management.

stakeholders⁴⁵⁸, interested parties, or experts or as leaders in environmental protection, conservation, and assessment⁴⁵⁹ entitled of inclusion on such committees even though many of their environmental decisions and subsequent actions would directly affect Indigenous peoples. For instance, according to rule 4 of the Ecologically Critical Area Management Rules 2006, the National Committee is required to take into account certain factors related to both the specific area being considered for designation as an Ecologically Critical Area (ECA) and its neighboring areas while making recommendations for such designation. Prior to designating such a status, an important factor to consider is how it impacts on Indigenous livelihoods, including their religious and social culture.⁴⁶⁰ The National Committee does not have any Indigenous peoples serving on it, nor is it required by law to include them in its membership.⁴⁶¹

Another example is that among the numerous committees established under the Bangladesh Biodiversity Act 2017, legal obligation to include Indigenous representation is exclusive to the National Committee on Biodiversity. Therefore, based on the functions of the National Committee on Biodiversity, it can be argued that having a membership in the National Committee on Biodiversity may be advantageous in terms of policy implications for Indigenous peoples of the CHT. However, when it comes to the practical execution of policies at the local level, the National Committee on Biodiversity does not ensure direct participation even for the Indigenous peoples living in the CHT. For instance, the Union Biodiversity Management Committee established in accordance with section 25 of the same Act is composed of approximately 12 members from a variety of backgrounds, including administrative officers from different sectors, and religious representatives (such as Imams and Priest), farmer, fisherman and non-governmental organizations.

⁴⁵⁸ Nicholas J. Reo et al highlight the lack of attention given to Indigenous nations in the collaborative environmental governance literature. When Indigenous actors are mentioned, they are often referred to as stakeholders rather than recognizing their status as self-determining nations with inherent rights and governance frameworks that existed before settler colonial structures. In the context of Bangladesh, it is still relevant to refer to the plainland indigenous peoples as stakeholders, given they lack the right to self-determination. Only the Indigenous peoples residing in the CHT are granted such rights according to the CHT peace treaty. See Nicholas J. Reo et al, “Factors that support Indigenous involvement in multi-actor environmental stewardship” (2017) 13:2 *AlterNative: An International Journal of Indigenous Peoples* 58.

⁴⁵⁹ McGregor, “Indigenous Knowledge Systems”, *supra* note 47.

⁴⁶⁰ *ECAMR*, *supra* note 235 r 4.

⁴⁶¹ *Ibid* r 3.

Reo et al. argued that by bringing together a wide range of governmental and non-governmental partners, the multi-actor environmental collaborations are able to utilize the capabilities of each partner, including the various jurisdictional powers and knowledge systems the partners possess.⁴⁶² However, Indigenous peoples have been excluded from being recognized as leaders in environmental protection, conservation, and assessment⁴⁶³ or even as stakeholders, interested parties as a result they are not included as members either in the Municipal or Union Biodiversity Management Committee. The responsibility of such documentation is delegated to both the Municipal Biodiversity Management and Monitoring Committee and the Union Biodiversity Management Committee where Indigenous representation is not legally required (see Table 11 below). Excluding Indigenous peoples from participating in decision-making processes regarding the documentation of biodiversity-related traditional knowledge has detrimental effects on them. It also represents a missed opportunity to incorporate and utilize their strength, viewpoints, and knowledge system into such decision-making process.⁴⁶⁴

Table 11

Members of the Municipal and Union Biodiversity Management Committee

Compositions of the Committees	
Municipal Committee	<ol style="list-style-type: none"> 1. The Mayor of the Municipality, who shall also be its President 2. Upazila Fisheries Officer 3. Upazila Livestock Officer 4. a representative of the Range Officer (Forest), if any 5. A representative of the officer-in-charge of the municipal police station 6. Upazila Ansar and VDP officials 7. Upazila Secondary Education Officer 8. Upazila Primary Education Officer 9. Upazila Cooperative Officer 10. Municipal councillors 11. An imam and a priest or any other religious leader nominated by the mayor of the municipality 12. A local social worker nominated by the upazila chairman, nominated by the Mayor of the municipality, 13. A representative of non-governmental organizations (NGOs) whose activities are being carried out to improve the environment 14. The chief executive officer or secretary of the municipality, who shall also be its member-secretary.

⁴⁶² Reo et al, *supra* note 458.

⁴⁶³ McGregor, “Indigenous Knowledge Systems”, *supra* note 47.

⁴⁶⁴ Reo et al, *supra* note 458.

Union Committee	<ol style="list-style-type: none"> 1. The Chairman of the Union Parishad, who shall also be its President 2. Deputy Assistant Agricultural Officer 3. Union Land Assistant Officer 4. One union Ansar and VDP party leader nominated by the Upazila Ansar and VDP officials: 5. A representative of the Range Officer (Forest), if any 6. Members of the Union Parishad; 7. A Veterinary Field Assistant, if any, nominated by the Upazila Livestock Officer 8. A teacher from a school, madrasah or university interested in environmental development activities, nominated by the Chairman of the Union Parishad 9. An Imam and a priest or any other religious leader nominated by the Chairman of the Union Council 10. One representative each of the local farming and fishing communities nominated by the Chairman of the Union Parishad 11. A representative of Non-Governmental Organizations (NGOs) engaged in environmental development activities, nominated by the Chairman of the Union Parishad 12. The Secretary of the Union Parishad, who shall also be its Member-Secretary
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(Table created by author).

Note. Adapted from sections 22 & 25 of the Biodiversity Act of 2017.

Indigenous knowledge systems include Indigenous peoples’ knowledge generation practices within their own regulatory frameworks and policies, including social, political, economic and cultural systems.⁴⁶⁵ McGregor has brought attention to a number of ways that external interests, including laws, organizations, and government policies, have dealt with traditional knowledge.⁴⁶⁶ According to her, external interests have consistently overlooked the value of Indigenous knowledge beyond mere data or information, exploiting it solely for their own gain.⁴⁶⁷ They often prioritize Indigenous knowledge over the well-being of Indigenous peoples or the processes that create, sustain, and evolve it.⁴⁶⁸ A classification process is then carried out on the data or information that is retrieved from Indigenous knowledge (for example, water TEK, biodiversity TEK, forest TEK, climate change TEK, and wildlife TEK).⁴⁶⁹

After considering the aforementioned points, I contend that the legal provision for documenting biodiversity-related traditional knowledge under the Bangladesh Biodiversity Act 2017 reflects the following viewpoints.

⁴⁶⁵ McGregor, “Indigenous Knowledge Systems”, *supra* note 47.

⁴⁶⁶ *Ibid.*

⁴⁶⁷ *Ibid.*

⁴⁶⁸ *Ibid.*

⁴⁶⁹ *Ibid.*

First and foremost, the perception that Indigenous knowledge is nothing more than data that has to be recorded. In this case, only biodiversity related traditional knowledge is to be documented.

Secondly, Indigenous peoples are not given priority or any opportunity, as the responsibility of such documentation of traditional knowledge is placed solely on committees that lack representation from Indigenous communities. Whyte, in this context, correctly contends that institutional recognition of TK holders necessitates that they participate on an equal basis with non-indigenous scientists and policymakers.⁴⁷⁰ When Indigenous peoples are not fully included in the process of documenting and using Indigenous knowledge and practices relating to the environment and culture, the results are, at best, ineffective and, always, demeaning.⁴⁷¹

Lastly, the provisions follow an extractive strategy that completely disregards the well-being of Indigenous peoples and the processes that create, support and develop Indigenous knowledge. Deborah McGregor notes that knowledge is devoid of value and potentially harmful unless the societal systems responsible for its creation, preservation, use, and transmission are understood.⁴⁷² The only way, in her view, to really comprehend IKS or IKs is to build genuine connections with Indigenous peoples according to their terms.⁴⁷³ This also involves engaging Indigenous peoples as distinct nations, societies, and governments, with a specific focus on the custodians and practitioners of IKS.⁴⁷⁴ McGregor also cited Professor Veronica Arbon, an Arabana scholar, who emphasises the intricate nature of Indigenous knowledge.⁴⁷⁵ Arbon highlights the need of engaging with and respecting these knowledge systems in order to understand and preserve them.⁴⁷⁶

⁴⁷⁰ Laurel, "Indigenizing Environmental Governance" (6 May, 2020) online: <https://inhabitingtheanthropocene.com/> [<https://inhabitingtheanthropocene.com/2020/05/06/indigenizing-environmental-governance/>].

⁴⁷¹ *Ibid.*

⁴⁷² McGregor, "Indigenous Knowledge Systems", *supra* note 47.

⁴⁷³ *Ibid.*

⁴⁷⁴ *Ibid.*

⁴⁷⁵ *Ibid.*

⁴⁷⁶ *Ibid.*

4.2. Participation of Indigenous Peoples in Other Roles

When it comes to participation in the position of an expert, there aren't many opportunities available for Indigenous peoples and communities. As per section 24 of the Environment Conservation Rules 2023, the Environmental Clearance Certificate Committee has the authority to seek help from relevant industry and project developers, as well as experts who can provide insights on the environmental impacts of the project.⁴⁷⁷ In order to qualify as experts in this field, individuals, institutions, or organizations must be officially registered with the Directorate of Environment.⁴⁷⁸ However, this rule does not apply to globally recognized organizations or institutions, whether they are national or international.⁴⁷⁹ The qualification necessary for this is outlined in Schedule 13 of the Environment Conservation Rules, 2023 (refer to the Table 12 below). The schedule stipulates the inclusion of three types of experts. The three categories of experts are Individual Environmental Consultants, Institutional Environmental Consultants, and Subject Matter Experts. On the other hand, section 3 & 4 of the Wildlife (Conservation and Security) Act, 2012 established Wildlife Advisory Board and Scientific Committee comprised of members who are renowned experts on the subjects of wild animals and plants, biodiversity conservation, forest preservation, and wildlife management. Indigenous peoples are not automatically considered experts based only on the experience and knowledge they hold, hence the aforementioned criteria are ineffective when it comes to ensuring their involvement on such committees.

Table 12

Requirements of Environment Consultant or Expert

Requirement of Environment Consultants or Experts⁴⁸⁰			
<i>Categories</i>	<i>Qualification</i>	<i>Experience</i>	<i>Subject areas of Environmental Impact Assessment</i>
Environmental Consultant (Individual),	Postgraduate Degree in Science and	Minimum 5 years of work experience related to assessment of environmental	Ecology, Biodiversity, Air Quality, Land Use Planning, Water Quality,

⁴⁷⁷ ECR, *supra* note 231 r 24.

⁴⁷⁸ *Ibid* r 37.

⁴⁷⁹ *Ibid*.

⁴⁸⁰ *Ibid* sch 13.

	Engineering-related Subjects	impacts	Waste Management, General Environmental Management, Geology and Soils, Mining, Noise and Vibration, Groundwater and Hydrology, Social Impact Assessment, Risk Management, Environmental Impact Assessment etc.
Subject-specific Experts	Post Graduate Degree in relevant subjects	Minimum 5 years of work experience related to one or more areas of environmental impact assessment	
Environmental Consultant (Institution)	Permanent Address, Registration, Tax Identification Number and Bank Account	At least one paid environmental consultant who is listed with the Directorate of Environment Minimum three contractual subject-specific environmental consultants who are also listed with the Directorate of Environment.	

(Table created by author).

Note. Adapted from Schedule 13 of the Environment Conservation Rules, 2023

Several legislations preserved an open clause where committees are granted the authority to “co-opt” any individual or representative of an organization with experience and interest in the subject. For instance, according to section 8 of the Bangladesh Biodiversity Act, the National Committee on Biodiversity is authorized to co-opt any individual or group with knowledge or expertise in the field of biodiversity. On the other hand, the City Corporation Committee⁴⁸¹, District Committee⁴⁸², Upazilla Committee⁴⁸³, Municipal Committee⁴⁸⁴, Union committee⁴⁸⁵, which are formed under the same Act, can include any individual or representative from an organization who has interest in activities related to conservation of biodiversity. Likewise, the District Integrated Water Resources Management Committee, as per rule 14 (3) of the Bangladesh Water Rules 2018, can include any member who is not listed as a member by default. While not expressly stated, this provision does offer a narrow opportunity for Indigenous peoples to participate as interested or experienced individual or organization on such committees. That being said, the possibility of Indigenous peoples being co-opted depends

⁴⁸¹ *The Biodiversity Act, supra* note 364 s 13(2).

⁴⁸² *Ibid* s 16(2).

⁴⁸³ *Ibid* s 19(2).

⁴⁸⁴ *Ibid* s 22(2).

⁴⁸⁵ *Ibid* s 25(2).

entirely on the decision of the committee. It is not possible to hold any committee accountable for failing to integrate Indigenous representation unless there is a clear legal requirement to do so, which all of the legislations described above does not have.

Scholars assert that modern treaties and agreements offer a means to reconcile historical conflicts stemming from unfulfilled commitments as well as grievances stemming from novel developments, such as those regarding matters related to the environment.⁴⁸⁶ Moreover, they may facilitate the involvement of Indigenous communities in the governance of environmental issues.⁴⁸⁷ This holds true for Bangladesh as well, given that the signing of the CHT Peace Accord did provide an opportunity for Indigenous peoples to directly participate in environmental management and development. However, without a delegation of power for environmental management and the absence of adequate rules, they are unable to take use of this opportunity.

From the discussion above, I conclude that the environmental legal framework of Bangladesh has yet to facilitate Indigenous peoples with a forum or timely and convenient access⁴⁸⁸ to voice their concerns and interests in the existing environmental decision-making spaces and mechanisms either directly or in any other role. The provisions dealing with the composition and structure of the committees mentioned above failed to guarantee the direct participation of Indigenous peoples in environmental decision-making. Despite the fact that environmental laws have taken into account multi-actor governance, Indigenous peoples and communities have been disregarded at every step of the process, from developing policies to putting them into action. This makes it very challenging for them to advocate for their interests, both during the policy-making process and in the implementation phase by utilizing the available limited restrictive mechanism at their disposal.

⁴⁸⁶ Sue Jackson, “Water and Indigenous Rights: Mechanisms and Pathways of Recognition, Representation, and Redistribution” (2018) 5:6 WIREs Water.

⁴⁸⁷ *Ibid.*

⁴⁸⁸ Scott & Tessaro, *supra* note 84 at 107.

In the absence of their participation, these committees' environmental decision-making processes may continue to have differential and disproportionate impacts on them. The inclusion of the Ministry of the Chittagong Hill Tracts Affairs in a single committee⁴⁸⁹ dealing with an environmental issue does not guarantee that the direct participation⁴⁹⁰ or meaningful participation⁴⁹¹ of Indigenous peoples⁴⁹² has been secured in all decision-making process and bodies that may ultimately impact them. A potential solution to this problem, as suggested by McGregor et al., would be to make certain that the United Nations Declaration on the Rights of Indigenous Peoples is implemented.⁴⁹³ However, this is not a feasible solution for the Indigenous peoples of Bangladesh at this time.

⁴⁸⁹ The committee is responsible for policy formulation regarding the conservation of biodiversity.

⁴⁹⁰ Whyte, "indigenous tourism", *supra* note 47.

⁴⁹¹ Sabzwari & Scott, *supra* note 47 at 86.

⁴⁹² This includes both plainland and CHT indigenous people.

⁴⁹³ McGregor, Whitaker & Sritharan, *supra* note 47.

Chapter 5: Concluding Remarks

Achieving environmental justice for Indigenous peoples and communities in Bangladesh will be a complex endeavor. Additionally, it may be impossible to employ foreign concepts without modifying them, as the achievement of environmental justice for them is contingent upon the unique characteristics of their history, culture, tradition, location, time as well as legal arrangements.⁴⁹⁴ This further demands that the problems of environmental justice for Indigenous peoples be identified and comprehended prior to addressing them. Considering these points, I acknowledge that this thesis embraces the environmental justice (EJ) standards put forth by a range of scholars, encompassing perspectives from both EJ and, to some extent, IEJ, each rooted in diverse academic and disciplinary backgrounds. These standards serve as critical tools to critically examine the broader environmental legal framework of Bangladesh. Until effective, context-specific standards are developed at the domestic level, tailored to legally address the specific environmental concerns of Bangladesh's Indigenous peoples, I believe that these external standards will continue to be relevant and provide valuable insights. Building on this foundation, this thesis offers a modest addition in the existing scholarly discourse in identifying and comprehending the EJ status for Indigenous peoples in Bangladesh, with specifically focusing on the recognition, rights, and representation of the Indigenous peoples in environmental laws.

Achieving the four features of environmental justice is inextricably linked to the recognition, rights, and representation of Indigenous peoples. After a thorough analysis of the legal framework concerning environmental matters, the broad findings of this research shed light on three issues.

Firstly, the findings of this research demonstrate that EJ for Indigenous Peoples in Bangladesh has not been realized under the environmental legal framework. The CHT Treaty offers an additional avenue and legal framework for Indigenous peoples living in the CHT region for ensuring environmental justice; however, this isn't occurring either since the treaty isn't being

⁴⁹⁴ Magallanes, *supra* note 75 at 179.

implemented properly. However, for Indigenous peoples living in the plainland, the existing environmental regulations are the only available choice. The existing environmental laws still have significant loopholes that make it difficult for Indigenous peoples to be recognized and have their rights and representation upheld. The reason could be attributed to several factors. The shortcomings appear to stem from a combination of factors including the design, scope, limitations and implementation of environmental laws and Constitutional provisions by both the state and the courts.

Secondly, the absence of substantial rights, which are not adequately reflected in the present environmental legislations, is impeding Indigenous peoples from obtaining justice in the environmental courts within the existing legal structure.

Thirdly, and most importantly, the manner in which the constitutional clauses that deal with Indigenous peoples and environmental protection are constructed will persistently serve as a mechanism to uphold, extend, and establish legal loopholes in both present and forthcoming environmental laws, thereby disregarding the needs of Indigenous peoples and communities.

Starting with the recognition, the constitutional provision of recognition, as a principle, does not impose any binding obligation on the state to consider the concerns of Indigenous peoples. The construction of this provision allows the state to adopt either a passive or neutral stance in its efforts to safeguard Indigenous rights, which is not desirable. This provision also fails to provide clarity about the manner and extent to which the state is or will be considering the rights of Indigenous Peoples. Such narrow recognition has a direct impact on the "recognition from below" and as it has been found that, the concerns of Indigenous communities have not been fully featured into any subsequent environmental laws. Rather than formulating adaptive and context-specific strategies, most of the environmental laws are kind of one-size-fits-all. The provisions of those environmental laws are inadequate in terms of their formal wording ensuring recognition, rights of the Indigenous peoples and their representation in the decision-making processes, and the accessibility of legal avenues for addressing the environmental challenges faced by Indigenous communities.

McGregor contends that depending on government and non-Indigenous legal frameworks to address environmental injustices would not adequately benefit Indigenous peoples and might instead harm them.⁴⁹⁵ The plainland Indigenous peoples of Bangladesh are unable to regulate their lands and resources in the same manner as Indigenous peoples living in the CHT regions are able to do so or could do so, under the CHT Peace Treaty provided that the treaty is properly implemented. Additionally, they are unable to receive statutory delegations of authority, which would enable them to exercise meaningful control over the resources. As a result, I argue that it is still important that the environmental legal framework guarantees environmental justice for Indigenous peoples. This includes ensuring that they are treated fairly, their rights are ensured in the environmental laws and that they have access to meaningful participation in the environmental decision making processes. The findings of this research are not the end of the story; rather, they provide a glimpse into the array of legal arrangements that need to be rethought, reformed, and reconstructed in order to guarantee environmental justice for Indigenous peoples in Bangladesh.

The journey and the findings of this research do not represent an endpoint for me either; rather, they are the continuation of an evolving intellectual quest. While my engagement with this research area is relatively recent, it arises from a fundamental knowledge deficiency that I have only recently identified, despite its enduring existence throughout my academic and legal education. Over the course of my legal studies and academic career, I have been affiliated with three higher educational institutions in Bangladesh, completing both my LLB and LLM at one and later teaching at two others. Upon reflection, I observed a notable absence of discussions on Indigenous peoples and their rights within the context of environmental laws, both in classroom discourse and academic curricula. A considerable gap in my understanding of this area was brought to light a few years ago when I had the chance to work on a research endeavor that briefly explored the environmental challenges faced by Indigenous communities in Bangladesh. Recognizing the knowledge gap not only fueled my curiosity but also led to a strong

⁴⁹⁵ McGregor, *supra* note 2 at 288.

commitment to engage more deeply with the topic, ultimately shaping the direction and focus of this thesis.

Having completed this research, I admit that there are several areas in my discussion where I have inadvertently left some threads unresolved, perhaps due to my knowledge gap, that need further exploration or analysis. The open threads for further exploration highlight the intricate nature and extensive scope of the issues involved. This thesis not only highlights the limitations of the current environmental legal framework in addressing and ensuring environmental justice for Indigenous peoples in Bangladesh but also lays the groundwork for future research in this field. For me, this work paves the way for deeper inquiry into the underexplored areas, and for others, I believe, it may serve as a valuable starting point for students and researchers who are interested in further exploring these topics. I also hope that this thesis serves as an invitation for scholars to continue investigating Indigenous peoples and environmental justice in the context of Bangladesh.

In closing, my thesis should not be approached as a final product but as the beginning of a larger conversation and continued research in this field.

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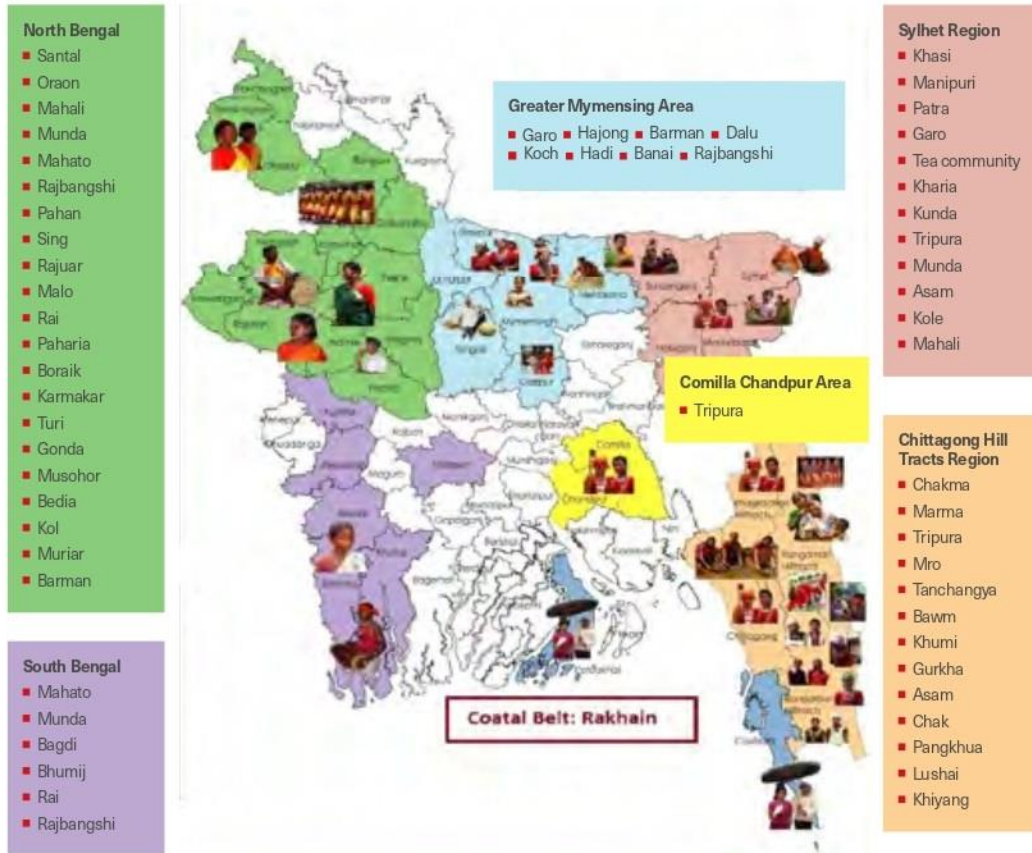
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Appendix

Names and Locations of Bangladesh's Indigenous Peoples



Note. From Ashok Kumar Chakma, C.R Bijoy, and Tunga Bhadra Rai, *Nationally Determined Contributions in Asia: Are governments recognizing the rights, roles and contributions of Indigenous Peoples?* (Thailand: Asia Indigenous Peoples Pact AIPP, 2022) at 15.