

POLITICS OF RECOGNITION AND INDIGENOUS PEOPLES IN BANGLADESH

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ABSTRACT

This paper is an excerpt from one of the chapters of my doctoral dissertation, which inquires about the recognition of Indigenous peoples in Bangladesh. Based on qualitative research, this paper accentuates the current status of Indigenous peoples who claim themselves as Indigenous peoples. In this paper, I analyze how self-identified Indigenous peoples (locally called “Adibasi”) articulate and present their claims by raising their voices and other means, but the Government of Bangladesh (GoB) has been rejecting their status as Indigenous peoples. Taking Benedict Kingsbury's ‘constructivist approach,’ I attempt to define ‘Indigenous peoples’ which Asian scholars endorse. Kingsbury's constructivist approach means meanings and understandings grow out of social encounters such as interactions, practices, ideas, and beliefs. My interviews with ‘Adibasis’ give me a solid route to define their status as ‘Indigenous peoples,’ notwithstanding the state's rejection of recognition as part of the government's politics. The GoB takes only ‘historical continuity’ to define Indigenous peoples and argues that as ‘Bangalees’ started living in the land first, they are Indigenous peoples. The insertions of my research participants help me to argue that besides the self-identification of a community, historical continuity, marginalization, recognition by others, distinctive identity, kinship networks, etc. form ‘indigeneity.’

INTRODUCTION

The United Nations Economic and Social Council (ESCOR) estimates that there are around 400 million Indigenous peoples situated in 90 countries around the world, (eighty percent of them live in Asia, seven percent in South America, six percent in North America, four percent in Africa, three percent in Australia/Oceania and one-tenth percent in Europe)¹ that makes up five to seven percent of the world population.² Roughly, 5,000 Indigenous groups speak over 5,000 languages and are regarded amongst the poorest sections of the world population though they mostly live in rich biodiversity and resource surrounding areas.³ They maintain their social, cultural, economic, and political aspects themselves, and become distinct from other dominant groups of the societies by practicing their unique traditions. Mostly, Indigenous peoples are considered the descendants of the earliest and original peoples who settled in a country or a geographical region, with new arrivals later becoming dominant through conquest, occupation, oppression, settlement, or other means.⁴

Indigenous peoples are being persecuted systematically around the world by nation-states and multinational and transnational corporations (MNCs and TNCs) in the name of development in their own territories. They are also widely deprived of political and social participation and engagement in various decision-making processes. However, different international legal instruments such as the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169), the United Nations Declaration on Rights of Indigenous Peoples (UNDRIP), 2007, International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social, and Cultural Rights (ICESCR) have established rights of self-determination so that Indigenous peoples can take a decision over their territories and determine their own identity.⁵ Indigenous peoples are defined by the United Nations (UN) as the descendants of the earliest and original peoples who settled in a region and with new arrivals later became dominated and marginalized through conquest, occupation, oppression, settlement, or other means.⁶ As a result of 500 years of European

¹ Indigenous People, AMNESTY INT'L <https://www.amnesty.org/en/what-we-do/indigenous-peoples/#:~:text=There%20are%20476%20million%20Indigenous%20people%20around%20the,of%20them%20%E2%80%93%2070%25%20%E2%80%93%20live%20in%20Asia>.

² *Free Prior and Informed Consent An Indigenous Peoples' Right and a Good Practice for Local Communities, Manual for Project Practitioners*, at 4, Food and Agriculture Organization of the U.N. (2015) [hereinafter FAO].

³ Ulia Popova-Gosart, *Indigenous Peoples: Attempts to Define in BIOMAPPING INDIGENOUS PEOPLES TOWARDS AN UNDERSTANDING OF THE ISSUES* 87, 89 (Gordon Collier & Benedicte Ledent & Geoffrey Davis & Hena Maes-Jelinek eds., 2012).

⁴ PAUL CLOSE & DAVID ASKEW, *ASIA PACIFIC AND HUMAN RIGHTS: A GLOBAL POLITICAL ECONOMY PERSPECTIVE* 167 (Routledge, Ashgate Publishing 2004) (2016).

⁵ See Intern'l Lab. Org., *Convention Concerning Indigenous and Tribal Peoples in Indep. Countries* (No. 169), June 27, 1989, 28 I.L.M. 1382 (1989); U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc A/RES/61/295 (Sept. 13, 2007); Intern'l Covenant on Civil and Pol. Rights, Dec. 16, 1966, 999 U.N.T.S. 171; Intern'l Covenant on Econ., Soc. and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

⁶ Close & Askew, *supra* note 4, at 167.

imperialism, more than 100 million people, mostly Indigenous peoples, moved away from their homelands and have been increasingly marginalized.⁷ Colonizers tried to eradicate the cultural identity of Indigenous peoples through the erasure of their sacred histories, traditional knowledge, customs, and geographies that provide the foundation for Indigenous cultural identities and a sense of self-identification.⁸ Despite all these challenges, Indigenous peoples retain social, cultural, economic, and political aspects of governing themselves and have remained distinctive from other dominant groups by practicing their unique traditions, customs, cultures, beliefs, histories, and languages.⁹ Before they settled in particular places, they traveled through one hamlet to another hamlet, from one valley to another valley, and encountered the power of assimilationist nation-states, making strong claims for self-determination and legal personality, or for various forms of sovereignty.¹⁰

One issue that remains a topic of debate when discussing Indigenous peoples is determining the correct terminology in local and national discussions. Bob Joseph, founder of Indigenous Corporate Training Inc., and member of the Gwawaenuk Nation, contends that people should, “[g]o with what [Indigenous peoples] are calling themselves”¹¹ and as such they can be called different names in their state boundaries according to the group’s intentions: for example, Indigenous peoples of Bangladesh and India recognize themselves and are also known as ‘Adibasi;’ in Canada ‘First Nations,’ ‘Inuit,’ and ‘Metis;’ in the USA ‘Native Americans’ or ‘American Indians;’ in Australia ‘Aboriginal;’ in Latin America ‘Indians’ and ‘Amerindians,’ etc. But whenever the communities are discussed in the international forum, they must be called a single term “Indigenous peoples.” Thousands of distinct communities have their community names. For example, in Bangladesh, at least forty-five ethnic communities identify themselves as Indigenous peoples or Adibasi.¹² The Indigenous communities from Bangladesh’s plain lands use the term “Adibasi” and eleven Indigenous communities from the Chittagong Hill Tracts (CHT) use both “Adibasi” and “Jumma,” which I found confusing for their proper recognition.¹³ These Adibasi groups in Bangladesh have various names such as Santal, Chakma, Marma, Tripura, Khasia, and Garo. They can be called by their community names, as mentioned above, during local and national discussions.

⁷ BRIAN GOEHRING, *INDIGENOUS PEOPLES OF THE WORLD AN INTRODUCTION TO THEIR PART, PRESENT, AND FUTURE* 14 (Jane McHughen ed., 1993).

⁸ Taiaiake Alfred & Jeff Corntassel, *Being Indigenous: Resurgences Against Contemporary Colonialism*, 40 *GOV’T AND OPPOSITION* 597, 598 (2005).

⁹ FAO, *supra* note 2, at 4.

¹⁰ James Clifford, *Indigenous Articulations*, 13 *CONTEMP. PAC.* 468, 469-72 (2001).

¹¹ Bob Joseph, *Indigenous or Aboriginal: Which is Correct?*, CBC, (Sept. 21, 2016, 5:00 PM) <https://www.cbc.ca/news/indigenous/indigenous-aboriginal-which-is-correct-1.3771433>.

¹² PHILIP GAIN, *SURVIVAL ON THE FRINGE: ADIBASIS OF BANGLADESH*, 1 (Phillip Gain ed., 2011).

¹³ MESBAH KAMAL, *ADIBASI COMMUNITIES*, (Mesbah Kamal, et. al. eds., Bangladesh Asiatic Society 2007).

This paper is an excerpt from my doctoral dissertation.¹⁴ I take Adibasi communities or Indigenous peoples of the Phulbari Coal Mine project region, located in northwest Bangladesh, as the “subject” of my research and examine whether they have experienced a lack of recognition, limited or insignificant consultation, and participation in the decision-making process of the project proposal. The study explores and documents how Adibasi communities mobilize arguments based on human rights, compensation, recognition, distributive justice, and procedural justice during their resistance against multinational corporation, GCM Resources Plc (formerly known as Asia Energy). My doctoral research aims to explore the rationale of meaningful integration of the rights of Adibasi communities into development decisions: how affected peoples understand and how they react to a development process conducted by a multinational company. Since Adibasi communities in Bangladesh’s mining region are not recognized by the Bangladesh state as “Indigenous peoples,” and the government restricts the use of “Indigenous peoples” and “Adibasi” to describe them, national and transnational developmental agencies tend not to include them in their description of activities, as it goes against the government’s interest. In this current case, GCM Resources Plc identified only three Adibasi communities as “Indigenous peoples” in their official documents, which they prepared before the government’s current recognition politics.¹⁵ However, the corporation disregarded some other communities who claim themselves as Indigenous peoples.

Additionally, this paper evaluates whether Indigenous peoples need to be identified or recognized as “Indigenous peoples” to participate in the decision-making process, and for this, the research examines various approaches developed by scholars to define or identify them. The analysis focuses on some ethnic communities in Bangladesh, who identify themselves as “Adibasi” in the local language and should be identified as Indigenous peoples under international law. Since various ethnic groups around an open-pit mining project area and all through Bangladesh are not perceived as “Adibasi” or “Indigenous peoples” by the government, I observe and report how they frame their issues with a specific end goal to be heard. I examine whether the surrounding ethnic communities could establish their rights and interests according to international legal instruments. Based on my qualitative data, my attempt in this paper is to identify whether Adibasi communities of the open-pit mining region and throughout Bangladesh could establish the definition of Indigenous peoples under international law. As the term “Indigenous peoples” is not constructively used in the local context, throughout the paper I use “Adibasi” to mean Indigenous peoples from a Bangladesh perspective.

¹⁴ Mohammad Mahmudul Hasan, *Mining Conflict, Indigenous Peoples and Environmental Justice: The Case of Phulbari Coal Project in Bangladesh* (2020) (Ph.D. Dissertation, Osgoode Hall Law School of York University) (Osgoode Digital Commons), <https://digitalcommons.osgoode.yorku.ca/phd/50>.

¹⁵ Note: By “recognition politics” I mean to explain how many ethnic communities who identify themselves as Indigenous peoples are denied recognition as such by the Bangladesh Government which instead labels those communities as small ethnic minorities.

I. INDIGENOUS PEOPLES: FROM PAST TO PRESENT

Throughout the process of developing international law, the idea of Indigenous peoples has evolved.¹⁶ Spanish philosopher and theologian, Francisco de Vitoria,¹⁷ stated that nobody could possess the lordship over Indigenous lands even if s/he were an Emperor or Pope because Indigenous peoples own exclusive territorial rights over their lands.¹⁸ Though Vitoria supported the European invaders apprehending Indigenous peoples' lands through his theory of "just war," he suggested that the colonizers should respect certain autonomous powers and land claims of the original inhabitants.¹⁹ The UN agrees that the concept of Indigenous peoples was developed from the colonial experience, in which "original inhabitants" were either deported or marginalized by colonizers through different types of colonialism.²⁰ The term "colonialism" is broadly used to describe the atrocious experience that Indigenous peoples and original inhabitants faced, but the colonial systems could not fully capture Indigenous peoples' desires, visions, and strategies.²¹ Colonizers remap the discursive and physical spaces for Indigenous peoples through different policies.²² Besides, the validity of traditional or customary laws and forms of governance of Indigenous groups were recognized by colonial legacies around the world.²³ For example, in the Bangladesh context, the British colonial system adopted the CHT Regulation of 1900 (Act I 1900) that provides a unique administrative, legal, and judicial system for the CHT that includes Bandarban, Rangamati, and Khagrachhari hill districts.²⁴ The Regulation associates the functions of traditional chiefs and headmen (head or leader of a tribal village), with executive purposes of state functionaries, based on statutes and local customs, practices, and usages.²⁵

Altamirano-Jiménez identifies "settler colonialism" and "extractive colonialism" in her critical contribution to the debate over Indigenous peoples.²⁶ In settler colonialism, the colonizers evicted Indigenous peoples from their lands and established new settlements for the settlers.²⁷

¹⁶ See Andre Beteille, *The Idea of Indigenous People*, 39 CURRENT ANTHROPOLOGY 187, 188 (1998).

¹⁷ Francisco de Vitoria is considered one of the founding scholars of international law. Charles H. McKenna, *Francisco de Vitoria: Father of International Law*, 21 STUD.: AN IRISH Q. REV. 365, 367 (1932).

¹⁸ See J. G. Merrills, *Francisco de Vitoria and the Spanish Conquest of the New World*, 3 IRISH JURIST 187, 191 (1968).

¹⁹ See *id.* at 189-90.

²⁰ UNDESA, *State of the World's Indigenous Peoples*. Vol. 9, U.N. Secretariat, U.N. Doc. ST/ESA/328, at 6 (2009).

²¹ See Alfred & Corntassel, *supra* note 8, at 601.

²² See ISABEL ALTAMIRANO-JIMENEZ, *INDIGENOUS ENCOUNTERS WITH NEOLIBERALISM PLACE, WOMEN, AND THE ENVIRONMENT IN CANADA AND MEXICO* 28 (UBC Press 2013).

²³ Marcus Colchester, *Indigenous Rights and the Collective Conscious*, 18 ANTHROPOLOGY TODAY 1, 2 (2002).

²⁴ Chittagong Hill Tracts Regul., Act No. I of 1900 (1900) (Bangl.).

²⁵ Raja Devasish Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 (No.107) and the Laws of Bangladesh: a Comparative Review*, at 19-20, Int'l Lab. Org. (2009).

²⁶ Altamirano-Jimenez, *supra* note 22, at 8.

²⁷ *Id.*

Patrick Wolfe termed settler colonialism as “a structure and not an event,” based on what he called the “logic of elimination.”²⁸ In most of the British colonies, especially in North America, Indigenous peoples were evicted from their lands for settlement purposes, but “were not killed, driven away, romanticized, assimilated, fenced-in, bred White, and otherwise eliminated as the ‘original owners’ of the land but as ‘Indians.’”²⁹ Altamirano-Jiménez contrasts this to extractive colonialism that involved practices of reproductive labor, controlling resources, and labor distribution. Spanish colonizers used “extractive colonialism” approaches where they did not expel Indigenous peoples from their land, but instead employed them to reproduce mineral resources for the colonizers’ interests.³⁰ However, these types of colonial experiences are not the same everywhere.

Differences among Indigenous peoples around the world can be observed through their cultures, ethnicities, political-economic situations, and their relationships in some cases with settler societies created by colonizers. Through their long encounter with European settlers and colonizers, Indigenous peoples did not always remain tied to their homelands and often had to migrate to different places, holding distinctive languages and cultures.³¹ However, Indigenous peoples’ struggle to survive as distinct communities is ongoing throughout the world.³² One reason is the challenge of identifying their status in society. American ethnologists and scholars, Bartholomew Dean and Jerome Levi, investigate the puzzle of why and how the circumstances³³ of Indigenous peoples are improving in some places in the world while their human rights continue to be abused in other places.³⁴ The authors identify that in postcolonial societies, state actors and their political, intellectual, and development partners marginalized Indigenous peoples for the sake of modernization, development, and economic prosperity within their national territory.³⁵ Furthermore, contemporary nation-states uphold the colonizers’ mandate, not by attempting to uproot the physical presence of Indigenous peoples as “human bodies,” but by trying to eradicate their existence as “peoples.”³⁶ Equally, the current state practices corrupt the relationship between Indigenous groups and settlers by the process of assimilation which produces state-sanctioned legal and political definitional approaches to Indigenous identities.³⁷ Transnational alliances between environmental groups, political parties, human rights

²⁸ Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. OF GENOCIDE RSCH. 387, 388 (2006).

²⁹ *Id.*

³⁰ Altamirano-Jiménez, *supra* note 22, at 29-34.

³¹ *See id.*

³² Alfred & Cornassel, *supra* note 8, at 597-98.

³³ Dean and Levi identify the following issues: Indigenous land rights, cultural rights, ownership and exploitation of natural resources, self-determination, environmental degradation and incursion, poverty, health, and discrimination. *See* Bartholomew Dean & Jerome M. Levi, *Introduction to AT THE RISK OF BEING HEARD: IDENTITY, INDIGENOUS RIGHTS, AND POSTCOLONIAL STATES* (Bartholomew Dean & Jerome M. Levi eds., Univ. of Mich. Press, 2003).

³⁴ *See id.*

³⁵ *See id.* at 11.

³⁶ Alfred & Cornassel, *supra* note 8, at 598.

³⁷ *See id.* at 599.

organizations, and social movements, as well as Indigenous intellectuals and leaders have used “strategic essentialism”³⁸ in their efforts to define Indigenous identity, secure the recognition of Indigenous peoples and uphold their distinct cultural traditions.³⁹

Again, Indigenous identity should not be exclusively determined according to the history of European colonization.⁴⁰ Altamirano-Jimenez’s insights on settler colonialism are accurate for the Americas, Russia, the Arctic, and some parts of the Pacific, but are not applicable for all African and Asian countries where European colonizers did not replace whole populations with European settlers.⁴¹ As James Clifford argues, Indigenous movements are positioned concerning their experience of dispossession but are not always connected to European or other imperialist influences.⁴² The UN recognizes that it was not only European rulers and settlers but also existing dominant groups that marginalized Indigenous peoples and displaced them from their lands.⁴³ Nevertheless, many Asian state governments, such as India, Bangladesh, China, and Myanmar in the UN system, argue that as there was no large-scale European settler colonialism in many Asian and African countries, “there can be no Indigenous peoples in a given country and, therefore, there can be no distinction between the original inhabitants and newcomers.”⁴⁴ Scholars in opposition of colonization argue that in the context of European colonization, Africans are Indigenous to Africa, and Asians are Indigenous to Asia.⁴⁵ But, some contend that colonial rule had destroyed the earlier territorial boundaries and communal mapping of the region by creating new administrative units, which led to increasing dispossession of marginalized communities.⁴⁶

As part of exercising their rights to self-determination, freedom of expression, and participation in decision-making processes under international law, environmental and climate justice scholars, Robert Bullard and Glen Johnson, argue that Indigenous peoples and grassroots groups necessarily organize themselves, educate themselves, empower themselves, and resist in their communities.⁴⁷ These rights necessarily entail the ability of Indigenous peoples to pursue their own initiatives for resource extraction within their territories if they choose. Concerning struggles over the environmental and ecological impacts of mining

³⁸ The presence of essential characteristics distinguishing Indigenous from non-Indigenous identity. See GAYATRI CHAKRAVORTY SPIVAK, *THE POST-COLONIAL CRITIC: INTERVIEWS, STRATEGIES AND DIALOGUES* (Sarah Harasym ed., Routledge 1990) (showing examples of ‘strategic essentialism’).

³⁹ See Dean & Levi, *supra* note 33, at 13-14.

⁴⁰ UNDESA, *supra* note 20, at 6.

⁴¹ *Id.*

⁴² Clifford, *supra* note 11, at 472.

⁴³ UNDESA, *supra* note 20, at 6.

⁴⁴ *Id.*

⁴⁵ See *id.*

⁴⁶ Kawser Ahmed, *Defining ‘Indigenous’ in Bangladesh: International Law in Domestic Context*, 17 INT’L J. ON MINORITY AND GRP. RTS. 47, 71 (2010).

⁴⁷ See Robert D. Bullard & Glenn S. Johnson, *Environmentalism and public policy: Environmental justice: Grassroots activism and its impact on public policy decision making*, 56 J. OF SOC. ISSUES 555 (2000); see also James Anaya, *Indigenous Peoples’ Participatory Rights in Relation to Decisions about Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources*, 22 ARIZ. J. INT’L & COMPAR. L. 7 (2005).

activities on the lands of Indigenous peoples, Canadian scholars in mining, Arn Keeling and John Sandlos, illustrate that the efforts not only manifest themselves as local conflicts but also as global settings of capital accumulation, profit maximization, and neo-colonialism.⁴⁸ Indigenous communities and their leaders observe that the operation on their lands is a direct assault against their people as well as their cultural practices and beliefs.⁴⁹ Brosius argues that Indigenous campaigners have frequently found support outside national borders, as the rights of Indigenous peoples have become a global concern. Such groups, legitimately concerned about local issues, refer to global discourses and are increasingly brought into transnational advocacy networks.⁵⁰ Moreover, the solidarity sectors of the global North support the self-development of Indigenous peoples to gain a degree of self-determination to control their lands and economic conditions.⁵¹

Indigenous identity adheres to the groups, whose identity as distinct peoples necessitates a certain lifestyle, threatened by nation-states or by corporations to Indigenous political and economic structures⁵² where each person conforms to collectivity as a member of people, community, ethnicity, tribe, or nation.⁵³ The evolution of using the term “Indigenous peoples” has a long history in Europe and became popular during the process of decolonization.⁵⁴ Groups who are struggling for their identity as Indigenous peoples find that any recognition of their rights by a state will not be achieved easily.⁵⁵ Through their continuous struggle, Indigenous peoples are now realizing that they have the power to establish their identity and rights in society.⁵⁶ In this way, the identities of Indigenous peoples are often delimited within the dominating systems of their states, although sometimes they constitute a majority of the population.⁵⁷

According to Altamirano-Jimenez, “the concept of articulation is useful in characterizing the diversity of peoples making Indigeneity claims and multi-scalar production of Indigeneity politics.”⁵⁸ One of the most important issues in the “articulation of Indigeneity” is the question of “who is included and who is excluded.” This process of inclusion and exclusion of Indigenous identity has been shaped through colonial and post-colonial encounters with Indigenous peoples.⁵⁹ Altamirano-Jiménez

⁴⁸ Arn Keeling & John Sandlos, *Environmental Justice Goes Underground? Historical Notes from Canada's Northern Mining Frontier*, ENV'T JUST., Sept. 2009, at 117, 122.

⁴⁹ David Schlosberg & David Carruthers, *Indigenous Struggles, Environmental Justice, and Community Capabilities*, GLOB. ENV'T POL., Nov. 2010, at 12, 18.

⁵⁰ J. Peter Brosius, Univ. Ga., Address to Plenary Session on “Integrating Local and Indigenous Perspectives into Assessments and Conventions,” at conference *Bridging Scales and Knowledge Systems: Concepts and Applications in Ecosystem Assessment*, (March 17-20, 2004).

⁵¹ Pedro Garcia Hierro, *Reflections on Indigenous Self-Development*, in INDIGENOUS PEOPLES, ENV'T & DEV. 269, 284 (Silvia Büchi et. al. eds., 1997).

⁵² Popova-Gosart, *supra* note 3, at 87.

⁵³ Andrew Gray, *Who Are Indigenous Peoples?*, in INDIGENOUS PEOPLES, ENVIRONMENT AND DEVELOPMENT 15, 16 (Silvia Büchi et. al. eds., 1997).

⁵⁴ Dean & Levi, *supra* note 33, at 5.

⁵⁵ Gray *supra* note 53, at 18.

⁵⁶ Goehring, *supra* note 7, at 51.

⁵⁷ Popova-Gosart, *supra* note 3, at 87.

⁵⁸ Altamirano-Jimenez, *supra* note 22, at 4.

⁵⁹ *Id.* at 20.

shows how colonial powers, networks, host-states, and international agencies have developed and imposed their narrow and exclusionary definitions of Indigenous peoples. Contemporary nation-states use this strategy of forming exclusionary definitions to deny the existence of Indigenous peoples in their territory.⁶⁰

One example of such exclusionary definition of Indigenous peoples is Professor Daes' definition which declares Indigenous peoples as being the descendants of the original inhabitants of conquered territories possessing a minority culture and recognizing themselves as such.⁶¹ Considering the international context, James Anaya more narrowly identifies and defines Indigenous peoples as distinct communities with extensive kinship networks that clearly distinguish them from minority groups by highlighting the continued colonial domination of homelands as well as the ancestral roots of the "pre-invasion inhabitants."⁶² Wiessner contemplates Daes's suggested factors of Indigenous peoples' voluntary distinctiveness, self-identification, and recognition, as well as their experience of oppression, as the "narrowly empirical" definition.⁶³ Moreover, he suggests adding Indigenous peoples' "strong ties" to their ancestral lands, whether they can reside on these territories or not, as an additional factor to the definition.⁶⁴ Therefore, Indigeneity is reconstructed and reshaped through every process of colonial arrangement and actively enacted by Indigenous peoples when they fight against state oppression and external interference.⁶⁵

In my research, I adopt Benedict Kingsbury's constructivist approach by engaging empirically with community members to determine how they identify themselves in society and what they think about the government's non-recognition policy. Kingsbury, in his article "Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy," describes the current patterns in Asia as attempts to define Indigenous peoples.⁶⁶ Kingsbury rejects the "strict" historical test, which he terms a "positivist approach" often taken by Western scholars, NGOs, and intergovernmental organizations.⁶⁷ Hence, to avoid excluding peoples in Asia and other regions from claiming Indigenous status, Kingsbury suggests a flexible "constructive approach" with four essential elements: a) self-identification as a distinct ethnic group; b) historical experience of, or contingent vulnerability to, severe disruption, dislocation or exploitation; c) long connection with the region; and d) the wish to retain a distinct identity.⁶⁸ Jeff Corntassel

⁶⁰ *Id.* at 21.

⁶¹ Erica-Irene A. Daes (Chairperson-Rapporteur of UN Working Group on Indigenous Populations), *Standard Setting Activities: Evolution of Standards Concerning the Rights of Indigenous People: The Concept of 'Indigenous Peoples'*, UN Doc E/CN.4/Sub.2/AC.4/1996/2 (June 10, 1996).

⁶² See S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 3-5 (2d ed. 2004).

⁶³ Siegfried Wiessner, *Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis*, (1999) 12 HARV. HUM. RTS. J., at 115.

⁶⁴ *Id.*

⁶⁵ Alfred & Corntassel, *supra* note 8, at 612.

⁶⁶ See Benedict Kingsbury, "Indigenous Peoples" in *International Law: A Constructivist Approach to the Asian Controversy*, 92 AM. J. INT'L L. 414, 419-20 (1998).

⁶⁷ See *id.* at 420.

⁶⁸ See *id.* at 453-55.

supports each of Kingsbury's four essential indicators as being a reasonable basis for inclusion because Indigenous representatives stressed all four indicators as aspects of their distinct identity.⁶⁹ Kingsbury argues that a constructivist approach makes a global concept of "Indigenous peoples" possible while allowing functional specificity to meet diverse social circumstances and institutional requirements.⁷⁰ However, Kingsbury's constructivist approach means that understandings grow out of social encounters such as interactions, practices, ideas, and beliefs. As part of the approach, Kingsbury includes close natural affinity, "non-dominance," 'historical continuity,' 'socio-economic and socio-cultural differences,' [distinct] characteristics such as language, race," etc., and being "regarded as Indigenous by others" as strong additional indicators in his definition.⁷¹ I apply these essential characteristics for the construction of being "Indigenous" in the following sub-sections. My argument is that if any community is regarded as an Indigenous people, they need to fulfill the elements Kingsbury posed in his approach which is much more flexible than a strict definitional approach.

II. METHODOLOGY

As mentioned above, this research is an excerpt from my doctoral research conducted in April 2015, hence, it involves human participants and maintains the ethical standards of conduct required by the Research Ethics Review Board of York University. Before going to Bangladesh in December 2015, I finalized my interview questionnaires and the scope of interviews with the consultation of my doctoral supervisor. This research primarily utilizes a case study approach to facilitate an advanced understanding of the characteristics or features of being Indigenous.

I use both primary and secondary sources in developing the case study. I focused my fieldwork primarily on key informant interviews with Adibasi communities and some Bangalees of the study area in Bangladesh (a mining development area). Interviews with Adibasi members gave me a basic idea about whether they have or seek recognition as Indigenous peoples and whether their voices are heard. I also completed a document review, including the analysis of reports and policy documents.

For my doctoral research, I conducted forty-two semi-structured and open-ended interviews during my field activities in the Phulbari mining area and Dhaka, Bangladesh. I interviewed Adibasi elders (mostly from the Santal community, as they are the majority among Adibasis in that region including Adibasi people from the Munda, Karmakar, and Robidas), farmers, and teachers; Adibasi leaders and activists; local government representatives; local Bangalee people; local and national activists, civil society members; experts, and NGO spokespersons. Out of forty-two interviews, twenty interviews were conducted in ten Adibasi

⁶⁹ Jeff Cornthassel, *Who is Indigenous? 'Peoplehood' and Ethnonationalist Approaches to Rearticulating Indigenous Identity*, 9 NATIONALISM ETHNIC POL. 75, 81 (2003).

⁷⁰ Kingsbury, *supra* note 66, at 420-21.

⁷¹ Cornthassel, *supra* note 69, at 81.

hamlets of Khanpur Union of Dinajpur Districts which I am using for this research. Out of twenty Adibasi interviewees, fourteen are from the Santal community, six from the Munda community, one from the Karmakar community, and one from the Robidas community. Interviewees included eight farmers and four women (one interviewee was elderly, one was a local government representative, and two of them were farmers), two schoolteachers, four *Mandal*⁷² of *Manjhi Parishad*⁷³ from four hamlets, one Adibasi representative in a government institute, one college student, and one national leader. I also interviewed two representatives from Adibasi NGOs. I interviewed two local government heads—the Chairman of Khanpur Union Council of Birampur Sub-District and the Chairman of Phulbari Sub-district Council. Both of them are Bangalees. I interviewed five Bangalee farmers, including a woman in the Phulbari mining region.

Most of the Adibasi interviewees gave interviews in the Bangla language. In many instances, I could understand their Santal and Bangla mixed dialects, but my research assistant helped me to understand the meanings. Most of the interviews were transcribed. All participants in my research were informed in plain language about the nature of the project, condition, duration, topic of conversations, foreseeable risk, the methodology to be used, and potential benefits that may arise from research participation. I recorded most of the interviews by simple notetaking and an audio tape recorder (subject to the consent of each participant). They were allowed to ask questions before and after each interview. Each interview ranged in length from forty-five minutes to three hours depending on the situation. I selected a key informant first who had extensive knowledge about the Adibasi lifestyle. He helped me to identify the key people to be interviewed. But I also identified many interviewees during interview procedures.

I collected writings, data information, and other related documents on Indigenous peoples from a Bangladesh perspective to supplement my own empirical data in my research. The materials include government policy directives, national legislation, reports, environmental impact studies, press releases, company reports, leaflets, newspaper articles, television reports, NGO reports, and academic publications. To support the understanding of the rights of Indigenous peoples, I examined some international instruments. I examined domestic and international legal and policy instruments concerning Indigenous peoples.

⁷² The heads of the traditional institution of the Santal and Munda are called “Mandal.”

⁷³ Santals have Pargana Parishads (Circle councils). It is called Manjhi Parishad. Manjhi Parishad is the traditional governance institution of Santal people of Bangladesh and India. Through this institution, Santals practice their customary laws to govern the people in a hamlet. It has twelve members including a woman. Santals are known as Manjhi as well. There are four stages such as hamlet pargana hamlet circle), Union pargana (union circle), Upazilla Pargana (sub-district circle) and Zilla Pargana (district circle). In hamlets, the committee consists of 12 people under the leadership of a Mandal (chief). Mandal is responsible for all matters (land conflict, family matters, and other societal issues, small criminal matters) to resolve by discussing with other members. Santals governance system introduced to include women members in pargana system. According to their new rule, a woman can be a Mandal too. If the hamlet pargana is unable to resolve the issue, Union pargana, that also consists of 12 members under a Mandal. The issue would pass to sub-district level and then district level.

III. WHO ARE INDIGENOUS PEOPLES

A. Debates over Identifying and Defining Indigenous Peoples

The debates over defining and identifying Indigenous peoples have gained enormous concern in the international legal arena. As a result, various non-governmental and inter-governmental organizations⁷⁴ have attempted to institutionalize their own definitions of Indigenous peoples, bringing the category within contemporary international human rights discourse and practices.⁷⁵ However, little progress has been made and nation-states and Indigenous communities are still unclear on how to identify Indigenousness. To further complicate this picture, scholars and policymakers sometimes find themselves struggling to identify who ought to have the authority to define “Indigenous peoples.” Definitions by scholars, policymakers, and legal instruments have considered the circumstances, geographies, distinctiveness, and diversity of peoples or communities or groups to identify them as Indigenous peoples.⁷⁶

The continuing colonial process pulls Indigenous peoples away from their self-constructed identity towards ‘Aboriginal,’ ‘Indian,’ ‘Scheduled Tribe,’ ‘Scheduled Caste,’ ‘Tribal,’ ‘Native American,’ or ‘Ethnic Minority,’ which is an authoritative assault on Indigenous identity.⁷⁷ Bob Joseph, the founder of Indigenous Corporate Training Inc., and a member of the Gwawaenuk Nation states that the term ‘Native’ is considered to be uncivil and rarely used in respectful conversations. He added, “[u]sage of the word ‘Indian’ in Canada is decreasing due to its incorrect origin and connections to colonizer policies and departments such as the Indian Act, the Indian Department (precursor to Indigenous and Northern Affairs Canada), Indian Agent, Indian residential schools, etc.”⁷⁸ Although the term Aboriginal peoples was a new step, there has been resistance from many groups as they argue that the root meaning of the word ‘ab’ is a Latin prefix that means ‘away from’ or ‘not.’ And so Aboriginal can mean ‘not original.’⁷⁹

There are places where various terms such as ‘Native Americans’ (the USA), ‘Aboriginal peoples’ (Australia), Maori (New Zealand), Scheduled tribes (India), and Tribal peoples (Bangladesh) are used officially at the country level. However, countries who accepted the UNDRIP started using the term ‘Indigenous peoples.’ For example, the Canadian government started using the ‘Indigenous peoples’ term officially in 2018 instead of ‘Aboriginal peoples’ as part of their

⁷⁴ See, e.g., International Labour Organization (ILO) in the Indigenous and Tribal Peoples Convention No. 169 (ILO Convention 169); the World Council for Indigenous Peoples (WCIP); United Nations Permanent Forum on Indigenous Issues (PFII); Working Groups on Indigenous Peoples (WGIP); the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP).

⁷⁵ Douglas E. Sanders, *Indigenous Peoples: Issues of Definition*, 8 INT’L J. CULTURAL PROP. 4, 11 (1999).

⁷⁶ See generally *id.*

⁷⁷ Alfred & Cornthassel, *supra* note 8, at 599.

⁷⁸ Joseph, *supra* note 11.

⁷⁹ Don Marks, *What’s in a name: Indian, Native, Aboriginal or Indigenous?* YAHOO NEWS (Oct. 2, 2014), <https://ca.news.yahoo.com/whats-name-indian-native-aboriginal-101500776.html>.

commitment towards implementing UNDRIP nationally.⁸⁰ The United Nations Permanent Forum on Indigenous Issues (UNPFII) states that the term ‘Indigenous’ has prevailed as a generic term for many years.⁸¹ In some countries, there may be a preference for other terms, including Tribes, First peoples/nations, Aboriginals, Ethnic groups, Adibasi/Adivasi, and Janajati, but they should be treated equally in international and national law.⁸² Occupational and geographical terms like hunter-gatherers, nomads, peasants, hill people, etc., also exist and for all practical purposes, can be used interchangeably with ‘Indigenous peoples.’⁸³

Furthermore, Indigenous peoples want to be recognized as ‘peoples’ not ‘people.’ They find the ‘s’ distinction is crucial, which symbolizes the basic human rights as well as land, territorial, and collective rights.⁸⁴ Whenever we mean an Indigenous group, nation, or community, we would use ‘people,’ e.g., Chakma people, Santal people, Inuit people, etc. However, the whole Indigenous community in a country should be called the ‘Indigenous peoples’ of the country. Again, there should only be one name or term by which the world population can easily identify the community groups collectively. For example, the term ‘Indigenous peoples’ is used and accepted in international law to understand those community groups. There should not be any debate about the universally accepted term. The debate between ‘Tribal’ and ‘Indigenous peoples’ terms should be stopped, as it creates confusion when recognizing and identifying a marginalized group of people as a distinct group. As international law (both hard law and soft law) has provided certain rights and opportunities for fighting their vulnerabilities, they may get access to those rights and benefits by asserting their Indigenous identity.

The UN has continued to use ‘Indigenous’ alone, although ILO has regularly suggested to the UN that it refers to both Indigenous and tribal peoples in its work, following the usage of ILO.⁸⁵ The ILO Convention

⁸⁰ Although Canada marks the 22nd National Indigenous Peoples Day, 21st June of 2018 is the first instance the day is officially called and celebrated as ‘National Indigenous Peoples Day’ as part of the commitment made in international forum to implement UNDRIP. Starting in 1996, it was originally called ‘National Aboriginal Day’. Moreover, while celebrating the ‘National Aboriginal Day’ on 21st June 2017, Prime Minister has pledged to rename to ‘National Indigenous Peoples Day’ starting from 2018 to be consistent with the terminology used by the UNDRIP. Moreover, part of NDP’s mandate to make National Indigenous Peoples Day as a statutory holiday, one of the party’s MPs Georgina Jolibois tabled a bill in the parliament, which was endorsed by the Ontario Public Service Employees Union (OPSEU). Julie Payette, *Proclamation renaming “National Aboriginal Day” held on June 21 of each year as “National Indigenous Peoples Day,”* 152 CANADA GAZETTE (July 25, 2018), <https://gazette.gc.ca/rp-pr/p2/2018/2018-07-25/html/si-tr55-eng.html>.

⁸¹ U.N. ESCOR, Rep. on Permanent Forum on Indigenous Issues, 5th Sess., U.N. Doc. E/C.19/2006/11 (May 15-26, 2006).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ IUCN INTER-COMM’N TASK FORCE ON INDIGENOUS PEOPLES, INDIGENOUS PEOPLES AND SUSTAINABILITY: CASES AND ACTIONS 28-9 (Utrecht, Int’l Books ed., 1997).

⁸⁵ The ILO shows the reason of using both tribal peoples and Indigenous peoples as: The two terms ‘Indigenous peoples’ and ‘tribal peoples’ are used by the ILO because there are tribal peoples who are not ‘indigenous’ in the literal sense in the countries in which they live, but who nevertheless live in a similar situation – an example would be Afro-descended tribal peoples in Central America; or tribal peoples in Africa such as the San or

No. 169 is treated as a central feature of international law's contemporary treatment of Indigenous peoples' demands⁸⁶ that include an additional criterion of 'tribal peoples' along with an emphasis on 'historical continuity' in its legal definition of 'Indigenous peoples,' which will be applicable in all member states.⁸⁷ The ILO Convention No. 169 refers to 'peoples' and not to 'populations.' It refers to 'tribal peoples' but not to 'semi-tribal' peoples. However, there are regions of the globe where the tribal population is the Indigenous population, and this can be established by historical evidence.⁸⁸

The World Bank Operational Directive 4.20 definition used broader criteria to identify Indigenous peoples where both the much-debated terms 'Tribal' and 'Indigenous peoples' were used expressly to mean certain distinct groups.⁸⁹ However, the directive preferred to use 'Indigenous peoples' to understand all groups. Paragraph 3 of a new Operational Policy 4.10 of the World Bank provides the identification of Indigenous peoples which states:

Because of the varied and changing contexts in which Indigenous peoples live and because there is no universally accepted definition of 'Indigenous peoples,' this policy does not define the term. Indigenous peoples may be referred to in different countries by such terms as "indigenous ethnic minorities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes," or "tribal groups."

Therefore, OP 4.10 does not differentiate among 'Indigenous peoples,' 'tribal population,' and other terms used by states to mean distinct ethnic communities or tribal populations in various countries. In this regard, most of the ethnic groups who are claiming themselves as 'Indigenous peoples' but recognized by their governments as different names, can be identified as Indigenous peoples if we follow the World Bank's directives and policies.

Observers from various Indigenous organizations at the Working Group of the Commission on Human Rights⁹⁰ (hereinafter the Working Group) in 1996 took a common position and rejected the idea of a 'formal' definition of Indigenous peoples adopted by the state agencies.⁹¹ Governmental delegations from different countries expressed the view that it was neither desirable nor necessary to elaborate a universal definition of Indigenous peoples.⁹² Finally, the Working Group, at its fifteenth session in 1997, concluded that "a definition of 'Indigenous peoples' at the global level was not possible at that time, and indeed not necessary for the adoption of the United Nations Draft Declaration on the

Maasai who may not have lived in the region they inhabit longer than other population groups. *See also* U.N. ESCOR, *supra* note 81.

⁸⁶ Anaya, *supra* note 62, at 58.

⁸⁷ Kingsbury, *supra* note 66, at 420.

⁸⁸ Beteille, *supra* note 16, at 188.

⁸⁹ Sia Spiliopoulou Akarmark, *The World Bank and Indigenous Peoples, in* MINORITIES, PEOPLES AND SELF-DETERMINATION: ESSAYS IN HONOUR OF PATRICK THORNBERRY 93, 100 (2005).

⁹⁰ U.N. ESCOR, 48th Sess., 14th plen. mtg. at 5, U.N. Doc. E/CN.4/Sub.2 (Aug. 16, 1996).

⁹¹ Wiessner *supra* note 63, at 112-13.

⁹² ESCOR, *supra* note 90, para. 153.

Rights of Indigenous Peoples.”⁹³ Neizen argues that a “rigorous definition of Indigenous peoples would be premature and ultimately futile. Debates over the problem of definition are more interesting than any definition in and of itself,”⁹⁴ which I believe is justifiable because the debates about setting a standard and universally accepted definition of Indigenous peoples have arisen both by Indigenous groups/nations and state authorities. Therefore, the definition or identification of Indigenous peoples and other minority groups is contested, inadequate, and incomplete.

Altamirano-Jiménez observes that the formation of strict definitional standards in international and national laws excludes some Indigenous groups who need protection.⁹⁵ Taking into consideration the set of rights vested in the communities, they can benefit from adopting Indigenous political identities.⁹⁶ It is also observed that an inadequate universal definition of ‘Indigenous peoples’ gives many state governments a chance to repudiate the existence of Indigenous peoples within their national borders.⁹⁷ The pressure continued from some states such as Bangladesh, India, and Nigeria for a universal definition.⁹⁸ The Bangladeshi observer in the Working Group stated that a definition could be an essential step for safeguarding the rights of Indigenous peoples.⁹⁹ He said, “ambiguity or absence of criteria could be a convenient cover for states to deny or grant recognition of Indigenous status since there would be no international standard to go by.”¹⁰⁰ Both India and Bangladesh took the chance of the non-existence of any formal definition of Indigenous peoples.

Since the Indian government classified ‘all ethnic communities into ‘scheduled tribes,’ ‘scheduled castes or forward castes,’ and ‘other backward classes’ in the Constitution, India is motivated to gain support for its position that ‘no category of people in India can be singled out as ‘Indigenous peoples.’¹⁰¹ Indian Courts on different occasions use both ‘Scheduled Tribes’ and ‘Adibasi’ terms interchangeably to mean Indigenous peoples, however, the communities are not recognized by the Indian government as Indigenous peoples or Adibasis.¹⁰² According to Pooja Parmar, “though Adibasis could certainly be protected by the constitutional recognition of their status as ‘backward section of peoples,’ that recognition would not include a fundamental right not to be alienated from the lands they lived on.”¹⁰³ Following the Indian government’s position of recognizing Indigenous peoples, the Bangladesh government outright rejects the existence of Indigenous peoples or Adibasi in Bangladesh; instead, the government in 2011, through the 15th

⁹³ *Id.* paras. 33, 45.

⁹⁴ RONALD NIEZEN, *THE ORIGIN OF INDIGENISM: HUMAN RIGHTS AND POLITICS OF IDENTITY* 19 (Univ. of Cal. Press eds., 2003).

⁹⁵ Altamirano-Jiménez, *supra* note 22, at 20.

⁹⁶ *Id.* at 35-37.

⁹⁷ Colchester, *supra* note 23, at 2.

⁹⁸ ESCOR, *supra* note 90, para. 34.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Pooja Parmar, *Undoing Historical Wrongs: Law and Indigeneity in India*, 49 *OSGOODE HALL LAW J.* 491, 496-97 (2011).

¹⁰² *Id.* at 496-98.

¹⁰³ *Id.* at 512.

Amendment of the constitution, identified them as ‘the tribes, minor races, ethnic sects and communities’¹⁰⁴ and ‘small ethnic minority.’¹⁰⁵

Given the circumstances, Indigenous leaders and organizations often advocate for the direct endorsement of the accepted international definition of Indigenous peoples and reject any reference to national laws in identifying Indigenous peoples.¹⁰⁶ As Indigenous leaders in the fourteenth session of the Working Group announced in 1996, “We categorically reject any attempts that governments or states define Indigenous peoples.”¹⁰⁷ They argue that states should comply with international legal instruments in this regard and implement them in national legislation.¹⁰⁸ Their apprehension is that national laws may exclude some population groups (who are Indigenous peoples) from the definition of Indigenous peoples, which would adversely affect their rights.¹⁰⁹ They demand only Indigenous peoples can define ‘Indigenous peoples.’¹¹⁰

The Food and Agriculture Organization (FAO) claims, “The recognition or identification of certain collectivities as ‘Indigenous Peoples’ shall not be dependent on whether a national government has recognized them as such.”¹¹¹ Indigenous grassroots groups demand that only Indigenous peoples can define ‘Indigenous peoples,’ and believe that this right of ‘self-definition’ derives from international human rights instruments such as ICESCR and ICCPR. Article 1 of both instruments reveal, “All peoples have the right of self-determination. By that right, they freely determine their political status and freely pursue their economic, social, and cultural development.” Thus, while Wiessner argues that the search for the definition becomes tainted if interpretations are sought to exclude specific communities from the application of international instruments,¹¹² others argue that formal definitions might help to protect Indigenous peoples against governments’ positions of denial.¹¹³ The UN has acknowledged that “no formal universal definition of the term is necessary, given that a single definition will inevitably be either over or under-inclusive, making sense in some societies but not in others.”¹¹⁴ In my analysis throughout this paper, I attempt to identify the status/recognition of Indigenous peoples in Bangladesh by analyzing various international instruments and scholarships.

¹⁰⁴ The Constitution of the People’s Republic of Bangladesh Nov. 4, 1972, art 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”).

¹⁰⁵ The Small Ethnic Groups Cultural Institution Act 2010, (Bangladesh).

¹⁰⁶ Corntassel, *supra* note 69, at 75-76.

¹⁰⁷ ESCOR, *supra* note 90, para. 31.

¹⁰⁸ Indira Simbolon, *Law Reform and Recognition of Indigenous Peoples’ Communal Rights in Cambodia*, in LAND AND CULTURAL SURVIVAL: THE COMMUNAL LAND RIGHTS OF INDIGENOUS PEOPLES IN ASIA 63, 65 (Jayantha Perera ed., Asian Development Bank 2009).

¹⁰⁹ *Id.* at 65-66.

¹¹⁰ *Id.* at 65.

¹¹¹ FAO, *supra* note 2, at 12.

¹¹² Wiessner, *supra* note 63, at 113.

¹¹³ *Id.*

¹¹⁴ UNDESA, *supra* note 20, at 6-7.

B. Defining Indigenous Peoples under International Law

Though there are various contentions of identification or definition of Indigenous peoples, international legal instruments provide guidance on what criteria constitute Indigenous peoples globally.¹¹⁵ However, its global legal status remains unambiguous. The following part of the paper examines some features of ‘becoming Indigenous’¹¹⁶ by analyzing various working definitions and approaches to identify Indigenous peoples provided by international instruments and scholars.

One of the most cited working definitions of Indigenous ‘communities,’ ‘peoples,’ and ‘nations’ was given by José R. Martínez Cobo¹¹⁷ in 1982, which was endorsed by Indigenous representatives in the 1996 Working Group report. The working definition reads as follows:

Indigenous communities, peoples, and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions, and legal system.

This historical continuity may consist of the continuation, for an extended period reaching into the presence of one or more of the following factors:

- a. Occupation of ancestral lands, or at least of part of them
- b. Common ancestry with the original occupants of these lands
- c. Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.)
- d. Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family or as the main, preferred habitual, general, or normal language)
- e. Residence in certain parts of the country, or in certain regions of the world
- f. Other relevant factors.

On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.¹¹⁸

Indigenous peoples’ representatives have advocated the significance of Martínez Cobo’s ‘self-identification,’ as the essential element for

¹¹⁵ Patrick Macklem, *Indigenous Recognition In International Law: Theoretical Observations*, 30 MICH J. OF INT’L L. 177, 178 (2008).

¹¹⁶ Cornassel, *supra* note 69.

¹¹⁷ U.N. ESCOR, 35th Sess., at 1, PFII/2004’WS/1/3 (June. 20, 1982).

¹¹⁸ U.N. Prevention of Discrimination and Prot. of Minorities, Study of the Problem of Discrimination Against Indigenous Populations 29, E/CN.4/Sub.2/1986/7/Add.4 (1987) (e.g., Jose R. Martinez Cobo (Special Rapporteur)).

identifying Indigenous peoples.¹¹⁹ Taking Cobo's definition into consideration, Wiessner categorizes Indigenous peoples as: "peoples with historical continuity suffering from invasion or colonization; self-identification as distinct from other groups of the society; a present non-dominant status; and the determination to preserve the groups' ancestral land."¹²⁰ However, Kingsbury takes a different position regarding the working definition of Martinez Cobo. According to him, "this definition takes potentially a limited and controversial view of Indigenous peoples by requiring 'historical continuity' with pre-invasion and pre-colonial societies that developed on their territories."¹²¹

The ILO was the first international agency that addressed Indigenous issues. ILO has been working to protect Indigenous and tribal peoples' rights since the 1920s. The Indigenous and Tribal Populations Convention of 1957 (ILO Convention No. 107) defines both the 'Indigenous population' and 'tribal population' as populations that has experienced conquest or colonization in the past.¹²² It also explains the term 'semi-tribal' as "groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community."¹²³ However, the difference between 'Indigenous' and 'Tribal' communities, according to the definition of the ILO Convention No. 107, is minimal since Indigenous peoples are defined as "not only encompassing descendants of the inhabitants of the territory 'at the time of conquest or colonization,' but also descendants of people residing there at the time of 'establishment of present state boundaries.'"¹²⁴

The ILO Convention No. 169 definition ascertains the principle of 'self-identification' to be recognized as 'Indigenous peoples.'¹²⁵ The Convention introduces the concept of 'self-recognition' for protecting Indigenous peoples¹²⁶ and provides self-identification as a 'fundamental criterion' for determining the groups to whom the Convention applies.¹²⁷ The following definition proposed by the Convention is recognized all over the world. Article 1 of the Convention defines Indigenous and tribal peoples as:

- (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the

¹¹⁹ ESCOR, *supra* Note 90, para. 31.

¹²⁰ Wiessner, *supra* note 63, at 111.

¹²¹ Kingsbury, *supra* note 66, at 420.

¹²² Article 1(1) of the Convention states: (a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong. *See Roy, supra* note 25, at 3.

¹²³ *Id.*

¹²⁴ Wiessner, *supra* note 63, at 112.

¹²⁵ Macklem, *supra* note 115, at 196.

¹²⁶ *Id.*

¹²⁷ Kingsbury, *supra* note 66, at 440.

national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

The World Council of Indigenous Peoples (WCIP) has initiated the following definition of ‘Indigenous peoples’:

“Population groups who from ancient times have inhabited the lands where we live, who are aware of having a character of our own, with social traditions and means of expression that are linked to the country inherited from our ancestors, with a language of our own, and having certain essential and unique characteristics which confer upon us the strong conviction of belonging to a people, who have an identity in ourselves and should be thus regarded by others.”¹²⁸

According to the ILO Convention No. 169 definition, disruptions caused by colonization or by present government actions as a form of imperialism if they continue to struggle, are regarded as elements of a group’s identity as ‘Indigenous peoples.’¹²⁹ Corntassel argues that the definition of the Convention emphasizes the notion of social and cultural distinctiveness based on tradition.¹³⁰ It is acknowledged that both the ILO Convention No. 169 and the WCIP definitions ascertain the principle of ‘self-identification’ to be recognized as Indigenous peoples. UNDRIP did not provide any explicit definition of Indigenous peoples, fearing that a definition would result in harming the actual beneficiaries of the rights of the Declaration. Although the Declaration has no solid definition of Indigenous peoples, there are some defining components there. Paragraph 2 of the Annex of the UNDRIP states: “The General Assembly is affirming that indigenous peoples are equal to all other peoples while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.”¹³¹

Paragraphs 18 and 19 say:

The General Assembly is convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith.

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular, those related to human rights, in consultation and cooperation with the peoples concerned.¹³²

From the above definitions of Indigenous peoples under international law, I have identified the following common characteristics for ‘being Indigenous’: self-identification as Indigenous; historical continuity with pre-colonial and/or pre-settler societies; a shared

¹²⁸ IUCN, *supra* note 84; *see also* ESCOR, *supra* note 90, para. 11.

¹²⁹ Corntassel, *supra* note 69, at 86.

¹³⁰ *Id.*

¹³¹ G.A Res. 61/295, at 2 (Sep. 13, 2007).

¹³² *Id.* at 6.

experience of colonialism and oppression; vulnerability in current society; occupation of or a strong link to specific territories; distinct social, economic and political systems; distinct language, culture and beliefs; belonging to non-dominant sectors of society; recognized by others; and resolved to maintain and reproduce their ancestral environments and distinctive identities. Kingsbury's four essential criteria (discussed in the conceptual framework section) are included in this list. In the following section, I examine if Adibasi communities in Bangladesh qualify as Indigenous peoples under international law by relying on these features for testing their identity.

IV. TEST OF INDIGENEITY IN BANGLADESH

In the previous section, I analyzed various definitions accepted in international law, but there are many countries, including Bangladesh, that are inclined to disregard those definitions; instead, they try to assimilate the communities into dominant groups and their cultures. However, advocates argue that the state-enforced assimilation process ultimately leads to the non-recognition of Indigenous identity.¹³³ According to the UN, Indigeneity does not depend on government recognition.¹³⁴ I have taken Adibasi communities around a mining area as the subject of my research, and as such, my analysis of the debate over the recognition of Adibasis or Indigenous peoples is limited to that specific area, not the whole of Bangladesh. Though the study is limited to one location, there is a discussion of the recognition politics of Adibasis in Bangladesh.

A. Self-Identification and Self-Definition

Most of the definitions put forward by international organizations and prominent scholars highlight the self-identification approach. The significance of Martínez Cobo's 'self-identification,' "as the most crucial component for identifying Indigenous peoples," was advocated by many UN member observers who attended the Working Group in 1996.¹³⁵ Furthermore, the definition of the ILO Convention No. 169 ascertains the principle of 'self-identification' to be recognized as Indigenous peoples. Self-identification or self-recognition is a criterion for being Indigenous that prevents states from putting forward a claim of not having Indigenous peoples in a territory by enacting law or policy.¹³⁶ Therefore, people who consider themselves as 'Indigenous peoples' must be a self-defined class of people since international law already recognizes this principle of self-identification as one of the essential characteristics of being 'Indigenous.'

Members of the Adibasi communities of my research area in Bangladesh identify themselves as Adibasi. While I was interviewing a Santal farmer, I observed a resilient attitude toward the debate about

¹³³ Corn tassel, *supra* note 69, at 86.

¹³⁴ FAO, *supra* note 2.

¹³⁵ ESCOR, *supra* Note 90.

¹³⁶ Macklem, *supra* note 115, at 196.

identifying his community. He said, “I identify myself as an Adibasi from a Santal community. I find no distinction between Santals and Adibasis. If you call me or identify me as a Santal, you have to recognize me as an Adibasi as well.”¹³⁷ Ram Soren is an Adibasi leader from the Santal community who was also actively involved in a local resistance movement. He told me that it does not matter to Adibasis whether the government recognizes them as Adibasi or not because the government has no authority to define or identify them. He contended that it is enough if someone regards himself as an Adibasi. He questioned: “Why should the government identify whether any community or group is Indigenous or Adibasi or Bangalee?”¹³⁸

Rob Soren, the president of a national Adibasi NGO and a key activist of the Phulbari movement, claimed during the interview that ethnic groups in the northwest of Bangladesh (where the mining area is located) are always known and called Adibasi. Not only Adibasis themselves, but also local Bangalees and local government bodies use the term ‘Adibasi.’¹³⁹ Mr. Soren added that he has been called and recognized locally as a Santal and an Adibasi since he was born.¹⁴⁰ Therefore, throughout my interviews, I heard the view that all ethnic and linguistic communities should be recognized in accordance with their wishes.

B. Regarded as Indigenous by Others

Indigenous peoples require themselves not only to be recognized as self-determining agents, but they should also be recognized by another self-conscious group.¹⁴¹ Therefore, the institutionalization of a liberal regime of reciprocal recognition would enable Indigenous peoples to realize their status as distinct and self-determining actors.¹⁴² The UN has pointed out that the self-identification feature alone cannot contribute to building a specific group for becoming ‘Indigenous peoples,’ they should have close ties to their lands, with culture and languages distinct from the dominant groups, and be regarded as Indigenous by other communities.¹⁴³ During my stay in the township of Phulbari and Birampur sub-districts, I talked, discussed, and interviewed with Bangalee activists, local government representatives, farmers, and teachers about mining, resistance, and Adibasi issues. Local Bangalees’ sense of identifying the communities as ‘he or she is from an Adibasi village or hamlet.’ Bangalees call the self-recognized ethnic communities in the mining area ‘Adibasi,’ though some people call pointedly as the Santal, Munda/Pahan, Mahili, and Karmakar. Though the term ‘small ethnic minority’ is being imposed on the self-identified Adibasi communities by the government, nobody in the area uses or refers to them

¹³⁷ Interview with D. Hansda, Lakshipur, Phulbari (March 07, 2016).

¹³⁸ Interview with Ramai Soren, in Phulbari Bazaar. (March 11, 2016).

¹³⁹ The local people disregard government-imposed term *upojati* or *khudro nrigoshthi* or *tribes*.

¹⁴⁰ Interview with Rob Soren, in Dhaka (April 11, 2016).

¹⁴¹ GLEN SEAN COULTHARD, *RED SKIN, WHITE MASKS REJECTING THE COLONIAL POLITICS OF RECOGNITION* 28 (Minneapolis: University of Minnesota Press, 2014).

¹⁴² *Id.*

¹⁴³ *Id.*

as a ‘small ethnic minority’ or ‘upojati’ or ‘tribes.’¹⁴⁴

R. Begum, a Bangalee woman whose family settled in an Adibasi hamlet, contended that she calls the ethnic communities ‘Adibasi’ because they are Adibasi in nature. She also claimed, “I call them Adibasi because they love to be called Adibasi, and I respect their self-recognition and identification.”¹⁴⁵ Her argument explores that all people have their own identity, and they should be regarded as such. She questioned, “if anyone calls me Adibasi, I feel insulted because I am not an Adibasi. Why should someone be called or identified what he/she is not?”¹⁴⁶

B. Roy, another Bangalee farmer and a rickshaw puller who was shot and severely injured during the Phulbari movement on August 26, 2016, rejected the government’s position and stated that the government has to recognize the communities according to their demand and has to take initiatives to stop persecuting them.¹⁴⁷ I also observed that one Adibasi community (such as Santal) recognizes and identifies another Adibasi community (Robidas) through their long-standing understanding of the lifestyle.

Thus, I find that being ‘recognized by others’ is an important criterion, which can be read with self-recognition or identification. Accordingly, Bangalee respondents of the Phulbari mining area were asked: “what do they think about the people who are identifying themselves as Adibasi but are not regarded as Adibasi by the government?” Most of the respondents, regardless of their race, ethnicity, gender, age, literacy, or occupation, claimed that they are Indigenous peoples, and they must be called either ‘Adibasi’ or ‘Indigenous peoples’ because the people want to be called so.

C. *Historical Continuity*

Many scholars favor the ‘historical continuity’ criterion arguing that historical continuation is enough for being ‘Indigenous.’ Macklem claims that Indigenous peoples in international law are communities who maintained historical continuity in occupied and governed territories before colonization.¹⁴⁸ Benedict Kingsbury contests Cobo’s working definition of Indigenous peoples and argues that by requiring “‘historical continuity’ with pre-invasion and pre-colonial societies that developed on their territories,” the definition takes potentially a limited and controversial view of Indigenous peoples.¹⁴⁹ Kingsbury observes that this historical continuity may consist of the continuation of reaching into the present.¹⁵⁰ Macklem supports this position of Indigenous peoples in international law and argues that they are the people who maintained ‘historical continuity’ in occupied and governed territories prior to colonization.¹⁵¹

¹⁴⁴ Interview with K. Kisku., in Phulbari (March 07, 2016).

¹⁴⁵ Interview with R. Begum, in Dhontola Hamlet, Birampur (March 3, 2016).

¹⁴⁶ *Id.*

¹⁴⁷ Interview with B. Roy, in Sujapur, Phulbari (March 13, 2016).

¹⁴⁸ Macklem, *supra* note 115, at 189.

¹⁴⁹ Kingsbury, *supra* note 66, at 420.

¹⁵⁰ *Id.* at 422.

¹⁵¹ Macklem, *supra* note 115, at 179.

The World Bank takes a criteria-based approach for Asian countries by adding ‘historical continuity’ and ‘colonialism’ because some Asian countries such as India, Bangladesh, and Myanmar have argued that Indigenous peoples are descendants of the original inhabitants who have suffered from conquest or invasion from outside.¹⁵² The principle of “being conquered and being dominated by another group is a precondition for Indigenous status”¹⁵³ implies that European conquest and invasion over Indigenous peoples by the military is necessary,¹⁵⁴ which I find problematic because not all Indigenous peoples were conquered militarily by colonial powers, nor are all Indigenous peoples non-dominant.¹⁵⁵

All Adibasi communities in my research area have a similar historical and cultural background and belong to the earliest inhabitants of the Indian subcontinent. Adibasi communities are distinct in their way of life, cultures, and languages from dominant Bangalee Muslim and Hindu populations, though they have coexisted with them for a long time. Mezbah Kamal, a Bangladesh historian, argues that since the period of the Mughal in the 15th century, the boundaries of the region had been altered various times and became part of at least three countries. Since the whole region was a part of the Indian sub-continent until 1947, people could migrate from one place to another place, and they could settle anywhere they wanted.¹⁵⁶ Therefore, it cannot be said that “you migrated from India or Pakistan, and as such you are not an Adibasi or Indigenous.” After becoming an independent country in 1971, Bangladesh has not experienced much migration into its territory.¹⁵⁷ However, the ethnic groups claiming themselves as Adibasi in Bangladesh have lived in the region since before the independence, and even before the British invasion in 1757.¹⁵⁸

Therefore, the government’s position that ‘all people of the country are Indigenous’ or ‘there are no Indigenous peoples in Bangladesh’ is invalid in the sense of ‘historical continuity.’¹⁵⁹ Concerning the notion of Indigenous peoples as the ‘people who came first,’ I support the argument made by the Indian representatives in an international forum that it is impossible to determine ‘who came first.’ Accordingly, the concept of ‘who came first’ or ‘historical continuity’ cannot be applied in the Indian sub-continent context because of its continuous migration, absorption,

¹⁵² See Kingsbury, *supra* note 66, at 434.

¹⁵³ Ted Gurr from Minority At Risk (MAR) project defines Indigenous peoples as: “Conquered descendants of earlier inhabitants of a region who live mainly in conformity with traditional social, economic, and cultural customs that are sharply distinct from those of dominant groups... Indigenous peoples who had durable states of their own prior to conquest, such as Tibetans, or who have given sustained support to modern movements aimed at establishing their own state, such as the Kurds, are classified as ethnonationalists, not indigenous peoples. TED ROBERT GURR, PEOPLES VERSUS STATES: MINORITIES AT RISK IN THE NEW CENTURY 17 (2000); *see also*, Corntassel, *supra* note 69, at 79-80.

¹⁵⁴ Altamirano-Jiménez, *supra* note 22, at 22.

¹⁵⁵ Alfred & Corntassel, *supra* note 8, at 607.

¹⁵⁶ See Mesbah Kamal, *Introduction to CULTURAL SURVEY OF BANGLADESH SERIES: INDIGENOUS COMMUNITIES*, at xi, xxi (Mesbah Kamal et. al., 2007).

¹⁵⁷ *See id.* at xxi-xxii.

¹⁵⁸ *See id.* at xii

¹⁵⁹ UNDESA, *supra* note 20, at 6.

and differentiation in the following centuries of colonization.¹⁶⁰ Therefore, the question of ‘who came first’ is illogical in this context. If we take the ‘historical continuity’ criterion from Bangladesh’s perspective, Adibasis pass the test of ‘Indigeneity’ as well. Therefore, in my analysis, the Adibasis of undivided Bengal are to be treated as Indigenous peoples of independent Bangladesh.

D. A Long Connection with Regions and Kinship Networks

Indigenous peoples are often demanding recognition as Indigenous peoples based on their long connection with regions. They also wish to retain a distinct identity by practicing their traditions, cultures, and strong ties with the lands.¹⁶¹ The interconnected factors of the relationship to the land, language, and cultural practices appear to have some promises for discussing the adaptability and resurgence of Indigenous communities.¹⁶² Considering the international context, James Anaya identifies ‘Indigenous peoples’ as distinct communities with extensive kinship networks that clearly distinguish them from ‘minority groups’ by highlighting the continued colonial domination of homelands as well as the ancestral roots of the ‘pre-invasion inhabitants.’¹⁶³ Their extensive kinship networks and continually devising cultural traditions also form an Indigenous identity.

The Santals and other Adibasi communities had been living in the mining area before the victims of displacement arrived there. They could have settled comfortably in the region because of their kinship networks.¹⁶⁴ They started clearing the jungle for houses and carried their livelihoods by hunting, gathering wild foods from the forest, and working as agricultural laborers.¹⁶⁵ However, they now became victims of marginalization and deprivation. A Santal farmer recalled his childhood memories: “the area was full of forest, and now you can barely see the forest. Many Bangalees migrated here lately from different places, cut trees for settling, and created cultivated lands. Now it has become a crowded area with agricultural lands.” He added, “If you see any community live close to a forest and if they depend their livelihood on it, you will understand that they are Indigenous peoples.”¹⁶⁶

E. Historical Experience and Vulnerability

Erica-Irene Daes, the UN Chairperson-Rapporteur on the Concept of Indigenous, defines ‘Indigenous peoples’ as “descendants of the first inhabitants of the lands which today form America, and in order to offset the deficiency in their physical and intellectual development, have a

¹⁶⁰ Kingsbury, *supra* note 66, at 434-35.

¹⁶¹ *Id.*

¹⁶² Alfred & Corntassel, *supra* note 8, at 606-09.

¹⁶³ Anaya, *supra* note 62.

¹⁶⁴ Interview with Cherobin Hembrom, in Dhanjuri Hamlet, Birampur, (April 05, 2016).

¹⁶⁵ *Id.*

¹⁶⁶ Interview with B. Tudu, Letason Hamlet, in Birampur, (February 29, 2016).

preferential right to the protection of the public authorities."¹⁶⁷ Wiessner contemplates Daes's suggested factors of voluntary distinctiveness, self-identification, and recognition, as well as the experience of oppression as a reasonable functional definition.¹⁶⁸ Kingsbury's 'historical experience of vulnerability, severe disruption, dislocation, oppression or exploitation' of self-identified distinct communities who form non-dominant classes in society is common everywhere in the world. Santals, Mundas, and other Adibasi from plain lands always live in the northern part of Bangladesh and are being persecuted and marginalized from the very beginning of the civilization, getting more intense as time passed.¹⁶⁹ Adibasi people in Bangladesh form the non-dominant sectors of society as against the majority of Bangalees.¹⁷⁰ Their historical situation can be labeled as politically powerless, legally unprotected, economically inferior, numerically inferior, and victims of violence.¹⁷¹ Their present psychological states also support the 'powerless' class in every aspect of society.

Some of the Adibasi and non-Adibasi respondents of my research confirmed that Bangalees are buying and alienating Adibasi lands through unlawful means. Multiple incidents happened in this area where clever Bangalees deceived and tempted Adibasis and offered more than existing land prices. As they were unaware of land laws and rights, Adibasis agreed to sell their lands to those Bangalee land grabbers. Adibasis get the agreed prices, but the proerty sizes being sold were written wrong by Bangalees. Most of the Adibasis became poor by losing their lands through illegal processes, and now they are bound to work as day laborers. Adibasis are so frustrated that they stopped going to court because they do not get justice. Judges and government officials help those Bangalees who grab Adibasi lands illegally through corruption.¹⁷² Adibasi communities feel so marginalized due to these ongoing incidents that they think that all their land will eventually be lost.

F. Establishing Non-dominance in the Society

Indigenous peoples around the world are persecuted and discriminated against due to their unbending mindset of not being assimilated with dominant groups. Consequently, they keep themselves isolated. One of the essential features of Indigeneity, as stated in the definition under international law, is establishing non-dominance in society. Adibasi communities in the Phulbari mining area have formed a non-dominant section of people. I have visited at least twelve Adibasi hamlets during my field activities and observed that local Adibasis are dominated by Bangalees. Though Adibasis are the majority in the

¹⁶⁷ See, e.g., Daes, *supra* note 61, paras. 43-44 ("Indigenous people and their communities have a historical relationship with their lands and are generally descendants of the original inhabitants of those lands").

¹⁶⁸ Wiessner, *supra* note 63, at 115.

¹⁶⁹ Interview with Cherobin Hembrom, in Dhanjuri Hamlet, Birampur, (April 05, 2016).

¹⁷⁰ Ahmed, *supra* note 46, at 71.

¹⁷¹ *Id.* at 72.

¹⁷² Interview with S. Baske, in Ratanpur Village, Birampur (Mar. 06, 2016).

possible affected mining area, they segregate in the whole area and do not have a mechanism to establish their dominance.

A Santal leader claimed that Bangladesh's quota system, which mandates five percent of the appoint to be made from 'ethnic minorities,' is not maintained accurately. Even if it is maintained, the opportunity is not distributed equally among all Adibasi groups. Some Adibasi groups get more privileges than other groups.¹⁷³ The Santal leader also said: "We are marginalized among marginalized. I saw many graduates in our community who got no suitable job, as they are working in the garments industry with low wages. Since the Santal people have nobody in the job fields, they would not get a job. Therefore, the Santal people are discouraged from going for higher study."¹⁷⁴

Cherobin Hembrom expressed his frustration by stating that the majority and dominant Bangalees want to dispossess and displace powerless Adibasis by alienating their lands. Adibasis, in plain lands and hill areas everywhere, are being oppressed by Bangalees and as a whole by the government.¹⁷⁵ He claimed that if this continues, Adibasis and other marginalized groups will have to leave their ancestral and motherland.¹⁷⁶

G. Socio-economic and Cultural Differences

Socio-economic and cultural differences are one of the essential criteria for being Indigenous.¹⁷⁷ I find Indigenous peoples are distinct in geographical territory regarding socio-economic and socio-cultural contexts. They need to maintain their traditional cultural practice and socioeconomic activities in their traditional way. Indigenous peoples can be singled out through their economic events, festivals, rituals, expressions, folklore, and other cultural events. Adibasi communities in the research area are distinct from other ethnic groups considering their socio-cultural differences. An Adibasi respondent contends that their cultures such as traditional dances, songs, histories, arts, crafts, musical instruments, and customary governance, are entirely different from the Bangladeshi majority Bangalee community.¹⁷⁸ He also added that Adibasis observe festivals and rituals following their ancestors' traditions. Adibasi culture and historical presence are portrayed in their artworks on walls in their homes. Most of the Adibasi families I observed during my fieldwork have mud houses, and they display their artwork on the walls. Moreover, most Adibasi communities play musical instruments that they make themselves.¹⁷⁹ The Santal dance and music traditionally revolved around Santal religious celebrations.¹⁸⁰ Their music and dance both retain connections to conventional ceremonies. The names of many Santal tunes and lyrics are derived from traditional rituals and sacred

¹⁷³ Interview with Rob Soren, in Dhaka (Apr. 11, 2016).

¹⁷⁴ *Id.*

¹⁷⁵ Interview with Chebrobin Hembrom, in Dhanjuri Hamlet, Birampur (Apr. 05, 2016).

¹⁷⁶ *Id.*

¹⁷⁷ Sanders, *supra* note 75, at 11.

¹⁷⁸ Interview with S. Baske, in Ratanpur Village, Birampur (Mar. 06, 2016).

¹⁷⁹ Interview with Chebrobin Hembrom, in Dhanjuri Hamlet, Birampur (Apr. 05, 2016).

¹⁸⁰ 2 STEVEN L. DANVER, NATIVE PEOPLES OF THE WORLD: AN ENCYCLOPEDIA OF GROUPS, CULTURES AND CONTEMPORARY ISSUES 560 (2013).

histories. For example, *Sohrai* tunes were those sung at the *Sohrai* festival.¹⁸¹

The Santal have some festivals such as *Sohrai Parban* (also known as *Bandana*), *Baha Parban*, *Dalpuja Parban*, etc. that are entirely different from the celebrations of Bangalees and other ethnic communities in surrounding areas. Cherobin Hembram stated that Santals also have *Nobanno Utsab* what they call *irgondli* (celebrate with new paddies, traditional alcohol, and worship). In celebrating *Sohrai*, *Yog Manjhi* (communication member of a *Manjhi Parishad*) takes responsibility for organizing. *Baha* is observed during the blooming of Sal tree flowers. Santal women celebrate the *Baha* with traditional dances and water throwing among family members. *Holi* (Adibasis regard it as the celebration of love) is also commemorated together with the *Baha* festival, and Santals drink their traditional *haria*.¹⁸² Cherobin discussed Santal's traditional way of making *haria*. He said that *haria* is used in *Sanatan* Santals' marriages, other festivals, and rituals sacredly, but Christian Santals do not use *haria* as their sacred anymore.¹⁸³

The local Union Council chairman told me that he had chances to see Adibasi festivals and rituals closely due to his responsibilities. According to him, Adibasis honor their ceremonies and celebrations in their distinct style, which is entirely different from dominant Bangalees. They make *haria* and drink during their festivals. This is their ancient tradition, and local Muslim Bangalees do not complain much and respect Adibasi traditions and customs, although alcohol is prohibited in Islam.¹⁸⁴

H. Distinct Characteristics such as Language, Race, Sacred Oral Story, Religious Functionality

Kingsbury and the World Bank identify that the surrounding community should also recognize that the communities who claim to be Indigenous maintain distinctiveness and non-dominance in relation to other groups. Most of the Bangalee respondents of my research area call the communities 'Adibasi' and recognize their distinct cultures, their different languages, backwardness, and their long connection with the traditional knowledge of cultivation and hunting methods. Ethnic groups in Bangladesh who identify as Adibasi or Indigenous continue to struggle for their rights and identity, bearing in mind the international law context. Though Adibasis in my research area have been living in miserable economic and social conditions and are subjected to multiple sources of discrimination and exploitation, they retain their traditions such as myths, belief systems, languages, rituals, and other cultural practices which they inherited from their ancestors. The overall situation of Bangladeshi

¹⁸¹ Interview with Chebrobin Hembron, in Dhanjuri Hamlet, Birampur (Apr. 05, 2016).

¹⁸² *Haria* is a homemade alcohol with rice and honey, which is the oldest tradition of Adibasis. This is also called rice beer. See Vivek Kumar and RR Rao, *Some interesting indigenous beverages among the tribals of Central India*, in 6 INDIAN J. OF TRADITIONAL KNOWLEDGE 141, 143 (2006).

¹⁸³ Interview with Chebrobin Hembron, in Dhanjuri Hamlet, Birampur (Apr. 05, 2016).

¹⁸⁴ Interview with Y.A., in Birampur (Apr. 04, 2016).

Adibasi communities is acutely disadvantaged compared to the rest of the country.¹⁸⁵

Religious functionality is inseparably linked to Indigenous peoples' distinct language and dialects, where their unique Indigenous expressions, sacred oral history, and myths, can be traced in their ceremonial festivities.¹⁸⁶ One of my Santal respondents stated that they are a distinct ethnic group and have maintained different cultural, religious, and linguistic features from dominant Bangalees and other ethnic communities of Bangladesh. The Santals also follow their diverse societal values and ethics which make them distinct from others.¹⁸⁷

Adibasis kept their ancestors' customs and traditions. Though Bangalee Hindus and *Sanatan* religious Adibasis have similar kinds of worship, Adibasis have distinct systems of observing.¹⁸⁸ Adibasis also have different customs of observing the rituals of a deceased person, which is entirely different from Hindus and other Bangalees. When an Adibasi dies, the *Mandal* of a hamlet must take responsibility and arrange the funeral rites. The *Sanatan* Santals arrange *Shraddha* (obsequies) after a lapse of eight days following the death. In *Shraddha*, traditional food with *haria* is served. The Christian Santals arrange prayer sessions within one to two years following the death.¹⁸⁹

Tattoos on body parts are one of Santal's oldest traditions which people continue, though the predisposition of tattoos among converted Christian Santals decreases day by day. There is a sacred oral history behind the art of making tattoos. Santals believe that if they do not draw tattoos on body parts, snakes will attack them after death, and they cannot go to heaven.¹⁹⁰ Munda people continue inscribing three vertical lines on their foreheads to mean their victory over the Mughals.¹⁹¹

There are many sacred stories that continue through generations in Santal communities. The story of the *Jado* (the deceiver) exists among Adibasi communities. *Daini* (witch) and *Dakin* (wizard) are seen as wicked souls that transfer to people. The *kabiraj*¹⁹² usually goes to a family, reads *mantras*,¹⁹³ uses *bustle*, and later says that a *Daini* exists in a family and stays with someone who he identifies can harm all family members. The news spreads to all the family members and hamlets. Later, people start blaming that person for any accident that happens in the hamlet. I observe that Adibasis are much inclined to believe their

¹⁸⁵ See Roy, *supra* note 25.

¹⁸⁶ See *id.*

¹⁸⁷ Interview with T. Murmu, Dhakundah, Birampur, (Mar. 02, 2016).

¹⁸⁸ Adibasis (especially Santal and Munda people) are primarily animistic nature worshipers. Most of their deities are similar to Hindus, but they do not worship any idols like Hindus. The chief of the Gods of Adibasis is *Sing Bonga* (the God of the sun), next is *Marang Budu* (the God of mountain), and *Abe Bonga* (house-deity). Their belief is that soul is immortal, and supernatural soul determines the goods and bads on earth; see ABUL BARKAT ET. AL., LIFE AND LAND OF ADIBASHIS 244 (2009).

¹⁸⁹ Interview with Chebrobin Hembron, in Dhanjuri Hamlet, Birampur (Apr. 05, 2016).

¹⁹⁰ *Id.*

¹⁹¹ Dristi Sharma, *A Link Through the Ink*, INDIA TODAY, <https://www.indiatoday.in/interactive/immersive/contemporary-tattoo-culture-know-history-tattoo-types-and-other-details/>.

¹⁹² Kabiraj is an occupational title found in persons of India or Indian origin. In old days the people practicing Ayurveda in India were also called Kabi (Vaidhya).

¹⁹³ Mantra is believed to have a special spiritual power. See Editors of Encyc. Britannica, *Mantra*, in ENCYC. BRITANNICA 1, (Encyc. Britannica, Inc. 2022).

sacred story and kinship networks, which affect their traditional way of life.

V. POLITICS OF RECOGNITION AND FIGHT FOR SELF-DETERMINATION OF ADIBASIS IN BANGLADESH

A. *Are 'Adibasi communities' Indigenous Peoples?*

Bangladeshi Indigenous leaders who are vocal for their rights prefer the term 'Indigenous peoples' in English and 'Adibasi' in Bangla,¹⁹⁴ arguing that there is no difference between the two terms. The Sanskrit word 'Adibasi' is comprised of the phrases 'Adi' and 'Basi'; the former means 'original or earliest times,' and the latter means 'residents or inhabitants.'¹⁹⁵ In this sense, Adibasis are the original and earliest residents or inhabitants in a particular region. These groups are descendants of a 'pre-Dravidian race,' who are considered the oldest inhabitants of the Indian subcontinent.¹⁹⁶ In the Indian sub-continent, especially in India and Bangladesh, self-defined Indigenous peoples call themselves and prefer to be called 'Adibasi,' but they are neither recognized by the state constitution nor other legal instruments exclusively. The Indian government classified 'all ethnic communities who are calling themselves Indigenous peoples' into three categories in its constitution: 'scheduled tribes,' 'scheduled castes or forward castes,' and 'other backward classes.'¹⁹⁷ As Pooja Parmar points out in the Indian context, "the claims of Adibasis as original inhabitants were thus effectively written out of the Constitution, foreclosing any possibility of a future recognition in the country's law. Since there are no recognized Adibasis, there is no legal basis for any claim as an original inhabitant."¹⁹⁸ Adibasis are also not recognized in Bangladesh, and no such categorizations exist in India. However, some ethnic groups are generally recognized as 'tribes,' 'minor races,' 'ethnic sects' and 'communities,' 'small ethnic groups,' 'upojati,' etc., and some are not recognized at all. For example, the 1991 official census data identified and recognized only 27 'tribal' communities in Bangladesh, as reflected in the Small Ethnic Groups Cultural Institution Act 2010 (SEGCI Act) comprising 1.7% of the total population of Bangladesh. However, Adibasi leaders and researchers came up with almost double that number.¹⁹⁹ Surprisingly, the 2001 and 2011 official censuses did not categorize any Indigenous groups and their numbers, because both the censuses considered the religious

¹⁹⁴ Bangladeshi Indigenous peoples, both from the CHT and the plains, have started to refer themselves as Indigenous in English and as Adibasi in Bangla when the International Year of the Indigenous Peoples was declared by the United Nations. *See also* Roy, *supra* note 25.

¹⁹⁵ Kamal, *supra* note 156, at xi; *see also* DAVID HARDIMAN, *THE COMING OF THE DEVIL: ADIVASI ASSERTION IN WESTERN INDIA #* (Delhi: Oxford University Press ed., 1987).

¹⁹⁶ *Id.* at xii.

¹⁹⁷ The complete list of Scheduled Tribes and Scheduled Castes was made through two subsequent Presidential Orders. *See* Ministry of Law, S.R.O. 385 (Notified August 10, 1950); Ministry of Law, S.R.O. S.R.O 510 (Notified September 6, 1950).

¹⁹⁸ Parmar, *supra* note 101, at 516.

¹⁹⁹ GAIN, *supra* note 12, at 1.

base of the population.²⁰⁰ Although Chattogram²⁰¹ Hill Tracts (CHT) (the southern hill districts) have the largest concentration of Adibasis, the northwestern region of North Bengal, the north-central part, the north-eastern region, and coastal regions have a large number of Adibasis. Most of the Bangladeshi Adibasi communities are also concentrated in neighboring countries such as India and Myanmar.

Table 1: Location of [Adibasis] in Bangladesh²⁰²

| Adibasi Groups | Regions | Divisions and Districts | Relevant Information |
|--|--|---|--|
| Chakma, Marma, Tripura, Mru, Khumi, Lusai, Bawm, Pankhua, Tanchangya, Chak, and Khyang | Chattogram Hill Tracts (Southern-East) | Bandarban, Rangamati, Khagrachhari | These 11 Adibasi communities are collectively called as 'Jumma people.' The Chakma is the largest in number. Each community group has distinct features regarding language, culture, and social settings. |
| Santal, Munda, Oraon, Paharia, Koch, Mahili, Mahato, Malo, Kol, Karmakar, Robidas etc. | North-western region or North Bengal | Rajshahi and Rangpur Divisions (Concentrated in all 16 districts) | The Bangladesh Statistics Bureau in their Population Census estimates that Adibasis in this region constitute 1.5% of the total population and represent 26% of the entire Adibasi group of Bangladesh. They are also regarded as Adibasis or Indigenous peoples of the plains. Santal is the largest Adibasi community in Bangladesh, and |

²⁰⁰ *Id.*

²⁰¹ It was Chittagong before; the government recently changed the spelling officially into Chattogram to comply with Bengali pronunciation. Chattogram is one of the eight administrative Divisions (bivag) of Bangladesh. In Bangladesh, 64 district administrations are divided into different Divisions. Kazi Anis Ahmed, *Mixed Reactions as Govt Changes English Spelling of 5 District Names*, DHAKA TRIBUNE (Sep. 5, 2023), <https://www.dhakatribune.com/bangladesh/142256/mixed-reactions-as-govt-changes-english-spellings>.

²⁰² Directorate of Primary Education Ministry of Primary & Mass Education Government of the People's Republic of Bangladesh, *Indigenous Peoples Framework Primary Education Sector Development Program 3 (PEDP III): ADB TA NO. 7169-BAN, ASIAN DEV. BANK 1, 7-8* (prepared 2010), <https://www.adb.org/sites/default/files/linked-documents/42122-013-ban-ippfab.pdf>.

| | | | |
|-------------------------------|---------------|---|--|
| | | | throughout its history, it has been one of the most marginalized, persecuted, and disadvantaged communities in Bangladesh. |
| Garo, Hajong, Koch, and Dalu. | North-Central | Dhaka and Mymensingh | Garo is the largest in this region. |
| Manipuri and Khasia | Northern-East | Sylhet (Sylhet, Sunamgonj, Moulavibazar, Habigonj districts) | A considerable number of Garo live in this region too. |
| Rakhine | Coastal | Chattogram and Barisal (Cox's Bazar and Pautakhali districts) | Some Marmas are found in the region too. The Rakhine and Marma have similarities regarding their social matters. |

As Pooja Parmar has demonstrated, considering the literal meaning, government authorities of the Indian sub-continent have tried to argue that ‘Scheduled tribes,’ ‘Tribal,’ or ‘Ethnic groups’ are not ‘Adibasi’ or ‘Indigenous peoples.’²⁰³ Some regard them as ethno-occupational groups.²⁰⁴ The Bangladeshi government contends that the entire Bangalee community of Bangladesh had ‘coexisted’ with other ethnic groups before the geographical divisions by British administrators, and therefore, “all Bangalee people are Indigenous or Adibasi.”²⁰⁵

At the international level, Bangladesh ratified the ILO Convention No. 107 on July 22, 1972, which is now closed for further ratification. Ratification remains valid for those countries that have ratified it but have not ratified the ILO Convention No. 169. Since Bangladesh has not ratified Convention No. 169, the government has obligations to adopt provisions for Indigenous and Tribal populations under Convention No. 107. Bangladesh became a party to the International Convention on Elimination of All Forms of Discrimination in June 1979. Bangladesh is one of the eleven countries that abstained from voting when UNDRIP was adopted by the General Assembly in 2007, reasoning that there are no ‘Indigenous peoples’ in Bangladesh, and ‘therefore, Bangladesh has no responsibility to implement its international law obligation.’²⁰⁶

²⁰³ POOJA PARMAR, *INDIGENEITY AND LEGAL PLURALISM IN INDIA: CLAIMS, HISTORIES, MEANINGS*. (New York: Cambridge University Press, 2015).

²⁰⁴ Gain, *supra* note 12.

²⁰⁵ *Id.*

²⁰⁶ Binota Moy Dhamai & Pallab Chakma, *Bangladesh* in *THE INDIGENOUS WORLD* 2015 314 (Cæcilie Mikkelsen, ed., 2015).

Nevertheless, Bangladesh has promised several times to work together with Indigenous peoples for the implementation of the UNDRIP.²⁰⁷ As Bangladesh is a member state of the UN, the country is an automatic party of the UDHR and the UN charter. In this regard, Bangladesh is obliged by the UN's mandates. The Bangladesh government ratified ICESCR on October 5, 1998, and ICCPR in 2000, but did not sign the optional protocols of both covenants. The covenants have provided declarations and reservations upon ratification, accession, or succession for each of the countries.²⁰⁸ The ICESCR delivered the obligation for the Bangladesh government to implement it at the country level. Article 1 under 'Declarations' states: "It is the understanding of the Government of the People's Republic of Bangladesh that the words "the right of self-determination of Peoples" appearing in this article apply in the historical context of colonial rule, administration, foreign domination, occupation, and similar situations." The Declaration also, in Article 7, 8, 10, and 13, state that the government must "implement the said provisions progressively, in keeping with the existing economic conditions and the development plans of the country," and the government has to adopt the Covenant's provision in the constitution and the relevant legislation of Bangladesh. The Bangladesh government has made reservations about specific provisions²⁰⁹ which Germany and the Netherlands strongly opposed.²¹⁰ The ICCPR also provides some directions for Bangladesh to implement its guiding principles.

B. Government's Systematic Denial of Indigenous Existence

As part of international law obligation and to end the debate on Indigenous or Adibasi identity and recognition of Indigenous peoples in Bangladesh, the Ministry of Cultural Affairs formed a committee in 2009 to identify the ethnic groups in Bangladesh.²¹¹ Executive heads of all districts, who were asked to make a list of Indigenous groups, sent a list of 228 community names collected from the whole country to the ministry. After carefully examining the list (excluding 27 Indigenous communities that are listed in the 2010 SEGCI Act) and visiting some places to identify the ethnic groups, the committee by the Ministry of Cultural Affairs finally decided to include a total of 50 Indigenous groups on the list.²¹² However, Indigenous organizations and activists are not satisfied with the initiatives taken by the Ministry, which they believe are ill-motivated and attempt to deny Indigenous people real recognition.²¹³ In 2013, the Bangladesh government pre-empted a legislative proposal entitled "Bangladesh Adibasi Rights Bill" that had been submitted by the

²⁰⁷ Pallab Chakma, *Fight for Indigenous Rights in Bangladesh Continues*, THE DAILY STAR, (Aug. 9, 2016), <https://www.thedailystar.net/opinion/human-rights/fight-indigenous-rights-bangladesh-continues-1445536>.

²⁰⁸ International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S 3.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Dhamai & Chakma, *supra* note 206.

²¹² Pallab Chakma & Bablu Chakma, *Indigenous World 2019: Bangladesh*, IWGIA, (Apr. 24, 2019), <https://www.iwgia.org/en/bangladesh/3446-iw2019-bangladesh>.

²¹³ *Id.* at 1.

Caucus, aimed to ensure the recognition of Adibasis as ‘Indigenous peoples’ or ‘Adibasi’ and protect their rights.²¹⁴ However, the bill was never tabled by the government in the Parliament, who argued that if the bill was presented as a private bill, “the recognition of the ethnic minorities as Adibasi” would be a political issue, which the government wants to avoid.²¹⁵

In various diplomatic discussions, government officials have rejected the claim of the existence of Indigenous peoples in Bangladesh, though the United Nations (UN) acknowledges that the recognition of Indigenous peoples should not be dependent on whether national governments recognize them as Indigenous or not.²¹⁶ Moreover, various international legal instruments and scholars emphasize ‘self-identification’ as a significant criterion. However, instead of taking the self-identification principle as the basis of recognizing Indigenous peoples, the Bangladesh government took ‘historical continuity’ as the primary basis. During a discussion with foreign diplomats and UN agencies representatives in 2011, Bangladeshi former Foreign Minister Dipu Moni insisted, “‘tribal people’ of the CHT did not exist before the 16th century, and they were not regarded as ‘Indigenous peoples’ in historical reference books or legal documents; instead, they have been identified as a ‘tribal’ population.”²¹⁷

When the UN Special Rapporteur Lars Anders Baer presented a study titled “Status of Implementation of the CHT Accord of 1997” in 2011, Iqbal Ahmed, the First Secretary of the Bangladesh Mission in New York, said, “Bangladesh does not have any Indigenous population.”²¹⁸ He also added, “We urged upon the UN forum not wasting time on politically fictitious issues in Bangladesh.”²¹⁹ The government authority also contends that the CHT has a more dominant Bangalee population than ‘tribal people,’ but they do not want to recognize the enormous population migration from various parts of Bangladesh that settled in Indigenous lands in the late 1970s, which continues. Bangalee settlers occupied Indigenous territorial lands and legally registered for ownership.²²⁰

²¹⁴ Binota Moy Dhamai & Sanjeeb Drong, *Bangladesh, in THE INDIGENOUS WORLD* 2014 324 (Cæcilie Mikkelsen, ed., 2014).

²¹⁵ *Id.* at 324.

²¹⁶ FAO, *supra* note 2, at 12.

²¹⁷ *Ethnic Minority, Not Indigenous People*, THE DAILY STAR, (Jul. 27, 2011), <https://www.thedailystar.net/news-detail-195963>.

²¹⁸ *No Indigenous People in Bangladesh*, THE DAILY STAR, (May 28, 2011), <https://www.thedailystar.net/news-detail-187527>.

²¹⁹ *Id.* at 2.

²²⁰ In 1947 the Indigenous constituted more than 98% of the population of the CHT, the Bangalees less than 2%. In the period 1951 to 1974, the Indigenous numbers increased by 71.7% while the Bangalees increased by 125.1%. Bangalee population in the Hill Tracts rose to 9% in 1951, 12% in 1961, and 40% in 1981. See Syed Aziz-al Ahsan & Bhumitra Chakma, *Problems of National Integration in Bangladesh: The Chittagong Hill Tracts*, 29 ASIAN SURVEY 959, 965-66 (Oct. 10, 1989); Between 1980 and early 1984, 4,00,000 Bangalees were settled in the CHT which accounted for almost 50% of the total population of the CHT. Since the government could not provide lands for Bangalee settlers it promised, settlers started to grab Indigenous lands with the help of military which is still continuing. See Bhumitra Chakma, *Structural Roots of Violence in the Chittagong Hill Tracts*, 45 ECON. POL. WKLY. 19, 21 (Mar. 20-26, 2010).

C. *Adibasi Voices are Strong! Hear them!*

N. Mardi, a Santal woman from an Adibasi hamlet of the mining area, claimed that the government is trying to disregard the existence of Adibasi in Bangladesh. Moreover, the government assimilates Adibasi communities into Bangalee cultures so that Adibasis will forget their traditional practices.²²¹ Again, their culture, language, spiritual beliefs, customs, and festivals are different from dominant Bangalees. I observed in my research area that all characteristics of Indigenous peoples in internationally accepted definitions are also found in Adibasi communities.

Adibasi leader Rob Soren rejected the term ‘small ethnic minority’ which, according to him, is an assault on all Adibasis of Bangladesh. Adibasis feel dissatisfaction with the imposition of this term on them. He added that he would be happy to be known as a ‘Santal’ and as an ‘Adibasi/Indigenous,’ but not as an ‘upojati,’ a ‘tribe,’ or as a ‘small ethnic minority.’ He claimed that if there is a ‘small,’ there should be a ‘large.’ Adibasis are proud of their ancient history, and they would not tolerate being identified as other than Adibasi or Indigenous peoples.²²² B. Murmu expressed his anger in the following words: “A huge number of dominant Bangalees think that ‘Santal’ is the name of an animal. They do not consider Santal and other Adibasi communities as human beings. They do not want to understand Santal is one of the earliest ethnic communities in the region.”²²³ T. Murmu, a schoolteacher from the Santal community, said:

We want recognition as Adibasi. There are different ethnic groups living in this area. I am a Santal; nobody can denounce my identity. Now the question is if Santals are Adibasi or not. Identity should emerge from ethnicity, not religion. I have no problem if the government wants to recognize me as a Santal. Besides Santals, I want all other communities to be recognized as such.²²⁴

Adibasi communities in Bangladesh claim that since they are clearly distinctive regarding linguistic, cultural, and socio-political means and they identify themselves as ‘Indigenous,’ they demand a separate status in the constitution as ‘Adibasi.’²²⁵ Adibasis who are aware of their rights and recognition are concerned about the role of the Adibasi leaders to push the government for their recognition. Cherobin Hembram blamed Adibasi leaders and organizations who were supposed to help Adibasi; instead, they are harming the rights of Adibasi communities since they have no courage to go against the government's decision but agree with them in exchange for their benefits. He claimed that there were four Adibasi members in the Parliament, but they never protested when the bill (he meant amendment of the Constitution) was tabled and passed. Moreover, Adibasi leaders are blamed for the recent language debate.²²⁶ All courses in the elementary schools to a higher level in the Adibasi area

²²¹ Interview with N. Mardi, in Lakshipur, Phulbari, (Mar. 7, 2016).

²²² Interview with Rob Soren, in Dhaka, (Apr. 11, 2016).

²²³ Interview with B. Murmu, in Dhakundah, Birampur, (Mar. 1, 2016).

²²⁴ Interview with T. Murmu, in Dhakunda, Birampur, (Mar. 2, 2016).

²²⁵ Sanchay Chakma, *The Legal Rights Situation of the Indigenous Peoples in Bangladesh*, in 80 VINES THAT WON'T BIND 151, 151 (IWGIA, 1996).

²²⁶ Interview with Cherobin Hembrom, in Dhanjuri, Hamlet, Birampur, (Apr. 5, 2016).

are taught only in *Bangla* and English languages, although the government is trying to introduce six more Adibasi languages such as Chakma, Marma, Tripura, Garo, Santali, and Sadri languages. If the plan is implemented, children from six Adibasi communities can have chances to practice their words in school. Jovan was contending that their distinct culture, heritage, and identity would be lost if their words are lost. Adibasi NGO worker, K. Kisku, said that his NGO tried to introduce Adibasi languages at the community level so that Adibasi people can learn. He added that his NGO established a few schools in different Santal hamlets where the Santali language in Roman scripts is taught. He also added that the NGO and local Adibasi leaders are negotiating with the government policymakers to improve the situation.²²⁷ It is documented and evident that throughout Bangladesh, self-identified Indigenous peoples are marginalized, and their voices are rarely heard. The respondents of my research articulated that they have been facing discriminatory treatment, not only from the government, but also from powerful Bangalee neighbors. In recent times, the Bangladesh government obstructed the respondents' fight for recognition as Adibasi or Indigenous peoples. Some of my Adibasi respondents pointed out that their fights for their rights to be incorporated into the state policy and in the constitution will be continued.

D. Only Bangalees are “People” in Bangladesh?

Despite strong demands from Indigenous peoples to be recognized as ‘Adibasi’ in the 15th Amendment of the constitution, this issue was also not considered in the 16th amendment.²²⁸ Instead, “all ‘people’ shall be regarded as Bangalee as a nation” provision²²⁹ is inserted in the constitution. By incorporating this Article in the constitution, the government intended to include them as dominant Bangalees, which is a threat to further self-determination of Adibasi. The insertion of the above clauses in the constitution ensured the political and cultural dominance of Bangalees within the state.²³⁰ The imposition of Bangalee nationality on all the residents of Bangladesh underestimates the ethnic groups. This classification is a disavowal of the cultural distinctiveness of the other groups.²³¹ However, the Supreme Court of Bangladesh in a recent (September 2017) judgment stated that the 16th Amendment is invalid, as such, the provisions it inserted in the constitution would be invalid as well.²³²

²²⁷ Interview with K. Kisku, in Phulbari, (Mar. 7, 2016).

²²⁸ Dhamai & Chakma, *supra* note 206.

²²⁹ Article 6(2) of the current constitution reads as follows: “the peoples of Bangladesh shall be known as Bangalees as a nation, and the citizens of Bangladesh shall be known as Bangladeshies.” See THE CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGLADESH Nov. 4, 1972, art. 6(2).

²³⁰ AMENA MOHSIN, THE POLITICS OF NATIONALISM: THE CASE OF THE CHITTAGONG HILL TRACTS BANGLADESH 92 (University Press Ltd., 1997).

²³¹ Saleem Samad, Commentary, *State of Minorities in Bangladesh: From Secular to Islamic Hegemony*, REG’L CONSULTATION ON MINORITY RTS. (1998).

²³² Ashif Islam Shaon, *16th Amendment scrapped, parliament loses power to impeach SC judges*, DHAKA TRIBUNE (July 3, 2017), <https://www.dhakatribune.com/bangladesh/court/23695/16th-amendment-scrapped-parliament-loses-power-to>.

Most of the respondents of my research identified themselves as ‘Adibasi,’ not ‘Bangalees.’ When I asked a Santal (one of the Adibasi communities in Bangladesh) people during my fieldwork in the Phulbari coal mine project area, “Do you feel comfortable being known as a Bangalee,” he replied:

I am not a Bangalee. We two have dissimilarities in many senses (pointing at me). I am proud to be a Bangladeshi, but I am not a Bangalee. Bengali is not my mother tongue. I have my own language. Again, according to the constitution, I am not a ‘people.’ Then who I am? I have no existence in the country! The constitution is the highest place for everyone where I am not regarded as a ‘people.’ All Adibasis rejected to be ‘Bangalees,’ they would not be treated as ‘people.’ As I said before, I am a Santal, an Adibasi, not a Bangalee. The Santals and Bangalees have distinct cultures, distinct languages, distinct families, and social settings.²³³

However, the state constitution extends guarantees for Bangalee, the dominant group of the country. In the name of majoritarian rule or democracy, Adibasi communities in Bangladesh have been marginalized politically, economically, and culturally.

E. Cease to be Indigenous?

According to the World Bank’s Operational Policy 4.10, Indigenous peoples cease to hold Indigenous status or identity by leaving their communities and land.²³⁴ In this regard, Jeff Corntassel argues that the realities of Indigenous refugees caused by war or state policies of resettlement would harm their identity as ‘Indigenous’ through the policy established by the World Bank.²³⁵ Considering the example of the CHT, the author asks whether Adibasi communities who were displaced by the state-induced Bangalee settlement in the region would be regarded as Indigenous or not under the World Bank definition despite their illegal removal from the area.²³⁶ Corntassel also argues that if a group even pursues statehood, as Adibasi communities in the CHT in Bangladesh, or Mohawk Nations in Canada and the US have shown their intention various times in their history, they would cease to be Indigenous in this conceptualization.²³⁷ So, if any Indigenous community or all groups in a geographical location pursue statehood and form a state, they would lose their indigeneity.

In India, it can be effortlessly argued that some Scheduled tribes ceased to be Indigenous and have become castes or something else. This has happened extensively elsewhere as well.²³⁸ Although self-identified Indigenous peoples of India are recognized in the Constitution as ‘Scheduled Tribes,’ ‘Scheduled Castes,’ and ‘Other Backward Castes,’ their claims have never been established as ‘Indigenous peoples’ or

²³³ Interview with Rob Soren, in Dhaka, (Apr. 11, 2016).

²³⁴ See The World Bank Group [WBG], Operational Policy 4.10, <https://thedocs.worldbank.org/en/doc/947def0fc95418e924aa3258b010679b-0290012023/original/OP-4-10-Annex-B-Indigenous-Peoples-Plan.pdf>.

²³⁵ Corntassel, *supra* note 69, at 87.

²³⁶ *Id.* at 87-88.

²³⁷ *Id.* at 80.

²³⁸ Beteille, *supra* note 16, at 190.

‘Adibasis.’ A similar situation can be seen in Bangladesh, where self-identified Indigenous peoples are called and named ‘small ethnic groups’ or ‘tribes.’ In Russia, under new law ‘Indigenous peoples’ are treated as only those ethnic groups living in the territories of their ancestors who enjoy a traditional lifestyle, and whose populations remain under 50,000, known as ‘small,’ ‘numerically small peoples,’ or ‘small-numbered peoples.’²³⁹

Most of the Adibasi communities in my research, especially the Santal people, are leaving their ancestral religions and converting to Christianity.²⁴⁰ Not all but most of them left their ancestral *Sanatan Dharma* and began practicing new religions by assimilating with their old religious deities and rituals.²⁴¹ Christian Adibasis in the area do not stop practicing their traditional festivals, but they practice them under the supervision of the ‘Father’ (priest) of the Church during Easter, Christmas, and the English New Year.²⁴² Due to the conversion of religion, the Church is involved in Adibasi festivals. K. Kisku said that the government helps poor Adibasis celebrate Christmas, although *Sanatan* Adibasis do not receive any financial help from the government.²⁴³

Moreover, they follow their distinct customary laws and traditions regarding ‘*panchayet shalish*’ (hamlet court) system, inheritance, marriages, birth and naming, and oral history. Though most Adibasis still make and drink traditional *haria* on every occasion and try to be distinct from Bangalee communities,²⁴⁴ I observe that many Adibasis are leaning towards accommodating the Bangalee way of life and their new religious cultures into Adibasi cultures. The former Chairman of the Phulbari sub-district, who was one of the central leaders of the Phulbari resistance movement, told me with frustration:

Adibasis themselves do not want to be ‘Adibasi’ because they are so marginalized that they cannot protest publicly. Moreover, they are losing their distinctiveness by the influence of the Church and NGOs. Their main identity was their culture, their livelihood, dress, languages, festivals, rituals, etc., but due to converting into Christianity, they now have to follow the Church’s rule and the Father’s order. Churches and NGOs are polluting their distinctiveness by engaging them into different religious functionalities and detaching them from Santal’s customs and traditions.²⁴⁵

He observed that one of his friends who has a close relationship with Christian missions, started introducing himself as a Christian, not an Adibasi. They must struggle to keep their identity safe from the polluting influence of the dominant culture in society.²⁴⁶ There was a case found in

²³⁹ Popova-Gosart, *supra* note 3, at 100.

²⁴⁰ Cherobin Hembrom confirmed that Santals are being converted into Christianity, some of them also converted into Islam too. The Dhanjuri Church was established in 1906. See Interview with Cherobin Hembrom, in Dhanjuri, Hamlet, Birampur, (Apr. 5, 2016).

²⁴¹ Interview with S. Baske, in Ratanpur Village, Birampur, (Mar. 6, 2016).

²⁴² Interview with Cherobin Hembrom, Dhanjuri Hamlet, Birampur, (Apr. 5, 2016).

²⁴³ Interview with S. Baske, in Ratanpur Village, Birampur, (Mar. 6, 2016).

²⁴⁴ Cherobin told me that converted Christians are not using and drinking *haria* as their sacred deity anymore. See Interview with Cherobin Hembrom, in Dhanjuri, Hamlet, Birampur, (Apr. 5, 2016).

²⁴⁵ Interview with A.I.B., in Phulbari Bazaar, (Mar. 14, 2016).

²⁴⁶ *Id.*

the Birampur Land Revenue Office where a man named Kanai Nunua claimed himself as a Santal man and tried to buy and register a piece of land from another Santal man. When the land officer informed a *Mandal* to confirm whether the man was a Santal or not, the *Mandal* reported to the officer that ‘Nunua’ was neither a member of a Santal clan (title) nor any of the Adibasi clans in Bangladesh. Therefore, Kanai Nunua cannot be an Adibasi. Later it was proven that he was a Bangalee man who tried to forge the land deed.²⁴⁷

Furthermore, considering the current debate on the existence of Adibasi in pre-colonial settings in Bangladesh, I argue that the Indigeneity of people would not be suspended if any community was forced to leave their ancestral place and resettle involuntarily in another location of the same geographical area. However, the question arises whether those communities are still considered as Indigenous to a region or country if they are migrated from another area that was not colonized or occupied by colonial rulers. Given the above instance, are they going to lose their ‘Indigenous’ or ‘Adibasi’ identity? What about not speaking their distinct languages or becoming economically stable and educated? Alternatively, can we say, once an Indigenous is always an Indigenous, no matter what happens after? What about the self-expressed identity of people who are native speakers of an Indigenous language, live in a community with rituals and social institutions different from that of the cosmopolitan culture, and continue to adopt markers of ethnicity such as hairstyles and clothing and who, nevertheless, do not identify as Indigenous?²⁴⁸

CONCLUSION

The disregarded communities of Bangladesh have emphasized the need for official recognition as ‘Adibasi’ or ‘Indigenous peoples.’ They have also accentuated the importance of recognition of their right to land and control over natural resources. The Adibasi representatives, leaders, and activists have expressed their concern about development issues related to using land despite the signing of an agreement with the government.²⁴⁹ However, the marginalized communities of Bangladesh meet the requirements of the international legal concept of ‘Indigenous peoples.’ The claim of the distinct ethnic communities in Bangladesh to the status of Indigenous peoples cannot be defeated on the ground of a lacking or unclear definition or for the common excuse that the entire Bangalee population of Bangladesh are Indigenous.²⁵⁰ Moreover, one major challenge persists, as Bangladeshi Adibasi or Indigenous peoples are not recognized legally, and non-governmental development agencies are unlikely to gain government approval for their projects and

²⁴⁷ Interview with P. Murmu, in Boro Bukshi, Birampur, Dinajpur, (Mar. 3, 2016).

²⁴⁸ Andrew Canessa, *Who is indigenous? Self-identification, indigeneity, and claims to justice in contemporary Bolivia*, URB. ANTHROPOLOGY & STUD. OF CULTURAL SYS. & WORLD ECON. DEV. 195, 209 (2007).

²⁴⁹ Ahmed, *supra* note 46, at 51.

²⁵⁰ *Id.*

development initiatives if they use the term Adibasi or Indigenous peoples in their description of activities.²⁵¹

In the above discussion, I reviewed various definitions of Indigenous peoples in international law. According to the definitions, Indigenous peoples are those people who have distinct identities and form non-dominance in society with long-standing persecution and marginalization history. In the case of the Indigenous situation in Bangladesh, after reviewing oral histories, participant observation, and interviews from Adibasi communities (especially Santals and Mundas) of the Phulbari mining area, Adibasi communities are the ‘peoples’ who can be identified as Indigenous peoples under international law. In my analysis, I have shown that Adibasis in the mining region retains most of the characteristics which have been identified by scholars and international institutions.. Most of the respondents recognized and identified themselves as ‘Adibasi,’ which means to understand the universally accepted term ‘Indigenous peoples.’ Moreover, local Bangalees also identified them as Adibasi, and they are habituated to calling them ‘Adibasi.’ Many respondents claimed that their ancestors had settled in the area long before Bangalees had settled in the area. Moreover, the historical documents I have reviewed also supported that the communities existed in time immemorial. Some even said that Adibasis migrated and settled in the mining area and other parts of Bangladesh from Jharkhand and Nagpur of current India (Bangladesh was also a part of India before 1947). However, in all instances, it is proved that Adibasi existed in the area before British colonial rule.

Adibasis are victims of colonial and post-colonial oppression and persecution. Their rights are violated, and their territorial lands are being alienated and grabbed by the dominant Bangalee people with the help of the government. Adibasis have traditions and customs of maintaining kinship networks, and they have strong ties with natural resources and their traditional knowledge. Interviewees also claimed that they maintain a sacred oral history of what they believe, maintain their religious and cultural functionality by following their tradition and customs, and have distinct languages that they practice among their communities. Through all of this, Adibasis find themselves as completely distinct communities from the dominant and majority Bangalees. The festivals and rituals Bangladeshi Adibasi communities observe are also unique. Furthermore, Adibasis are struggling to retain their distinct identity, and sometimes they fight for self-determination. As their properties are being illegally grabbed, alienated, and dispossessed by dominant Bangalees, they demand to establish a separate land commission to deal with this matter and return their lands. They also demand to recognize their language, culture, and traditions.

²⁵¹ Dhamai & Chakma, *supra* note 206.