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CONCERNS AND EXPERIENCES IN PROMOTING, SUSTAINING
AND SAFEGUARDING THEIR TRADITIONAL KNOWLEDGE,
TRADITIONAL CULTURAL EXPRESSIONS AND GENETIC
RESOURCES"**

CUSTOMARY LAW AND PRACTICES OF THE INDIGENOUS
COMMUNITIES OF BANGLADESH:
THE CASE OF GARO COMMUNITY

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THE INDIGENOUS COMMUNITIES OF BANGLADESH

1. Indigenous Communities of Bangladesh

Though the word ‘indigenous’ primarily connotes ‘traditional’ and ‘local’, it is not wholly so in Bangladesh perspective. It also includes two other constituents such as ethnic identity and their inseparability with the land or the hill or the forest or the valleys they have been living in from generation to generation. In Bengali they call themselves ‘Adibashi’ that literally means original dwellers (‘Adi’ means original and ‘bashi’ means dweller). They are also termed as ethnic communities by some anthropologists for their distinctive socio-cultural traits and ethnic ethos. They have long and inherited sense of belonging and linkage to the land along with a sense of separateness of difference, from other cultural groups that may also live in the same country. Looked from this angle, the indigenous communities of Bangladesh are many in number, spread over the south-eastern hilly areas, popularly known as Chittagong Hill Tracts (CHTs) and east-north-western plain land and forest areas, usually known as plain-landers. In the Constitution of Bangladesh they are called ‘Upajati’ (tribe or sub-nation), but nowadays the Bangladesh Adibashi Forum, a national forum of the Adibashi peoples of Bangladesh, have refused to be called so, since they claim their legitimate and equitable share in the multi-ethnic structure of the Bengali nationalism that has shaped Bangladesh as a nation-state based on unity in linguistic and cultural plurality.

Now they like to identify themselves as the original sons and daughters of the fertile soil and the hills and plains forming territorial boundary of Bangladesh in the Ganges delta bordering the Bay of Bengal. So their claim as indigenous community is unambiguous within the framework of Bangladesh as a nation-state. The plain-dwelling citizens of Bangladesh are mostly Muslims followed by Hindus, Buddhists, Christians and devotees of other religions known worldwide. Muslims are the majority, followed by Hindus – both of them constituting mainstream plain-dwellers of the country.

On the other hand ethnic groups in hills and plains have their own religious beliefs such as animism and spirit-worship. However, many of them have been baptized into other beliefs including Hinduism, Buddhism, Christianity and Islam in the main. Conversion to Hinduism and Buddhism started in the ancient times, whereas Christianity made an overwhelming influence among communities like Garo (greater Mymensing district), Khasi (greater Sylhet district), Bawm and Panhko (CHTs). Almost all the members of these communities are Christians by faith in today’s Bangladesh. Conversion of ethnic people into Islam is rarely seen. Apart from their religious identity, all these indigenous communities have their distinctive way of life based on customary laws, practices, protocols that they have inherited from their ancestors, who believed in spirits and animism.

2. Number of Indigenous Communities (ICs)

A list of the major indigenous communities with population (1991 census) is given below:

Serial	Name of ICs (with other names)	Habitat	Population
1.	Bawm (Bam, Bum, Baum)	CHTs	471
2.	Buna (Bonai, now almost extinct)	(Outside CHTs)	7421

3. Chakma	CHTs	252858
4. Garo (Mandi, Achik)	(Outsite CHTs)	64280
5. Hajong	(Outsite CHTs)	11540
6. Harijan (almost extinct now)	(Outsite CHTs)	1132
7. Khumi (Khami, Kami)	(CHTs)	1241
8. Khasi (Khasia)	(Outsite CHTs)	12280
9. Khyang (Khyen)	(CHTs)	2343
10. Koch (Coach, Kutch, Kots)	(Outsite CHTs)	16567
11. Lushai (Kuki, Mizo)	(CHTs)	662
12. Mahat (Mahatu)	(Outsite CHTs)	3534
13. Manipuri (Meithei, Bishnupriya etc.)	(Outsite CHTs)	24882
14. Marma (Mag, Mogh, Mug)	(CHTs)	157301
15. Mro (Mroo)	(CHTs)	126
16. Mrong (Murang, Mrung)	(CHTs)	22178
17. Munda (Mundari)	(Outsite CHTs)	2132
18. Oraon (Urang, Urao)	(Outsite CHTs)	8216
19. Paharia (Pahari, Pahary)	(CHTs)	1853
20. Pankho (Pangkhu, Pankhua)	(CHTs)	3227
21. Rajbansi (Rajbangshi, Bongshi)	(Outsite CHTs)	7556
22. Rakhaing (Rakhaine, Marma)	(Outsite CHTs)	16932
23. Sak (Chak, Tsak, Thak)	(CHTs)	2127
24. Santal (Saontal)	(Outsite CHTs)	202162
25. Tanchangya (Tonchongya)	(Outsite CHTs)	21639
26. Tipra (Tripura, Tripuri)	(Outsite CHTs)	810114
27. Urua (almost extinct now)	(CHTs)	5561
28. Others (such as Bonojogi, Shendu, Dalu, Hadi, Kac(h)ari, Paliya, Pathor, Riyang, Pnar, Bede, Bhumiali, Bhuiya, Ganghu, Jalia- Kaibartta, Kukamar, Kurmi, Malla, Nanasudra etc)	(Plains and Hill)	261743
Total		1205978

According to the census report of 1991, the number of indigenous people of Bangladesh was 1.2 million, almost 1.13% of the-then population in the country. Now it is estimated that the total population is nearly 140 million and indigenous people have largely increased in number. According to an estimate by the Bangladesh Adibashi Forum, this number is three million in the minimum. They have also listed 45 different indigenous peoples living in the plains and hills of the country. These people are integral part of our nation because of their distinct traditional wisdom and cultural manifestations that have contributed towards the cultural diversity and sustainable economic development of the country. In the following pages we would make a humble attempt to briefly identify their customary law, practices, usages and protocols, if any.

3. Ethnic and Linguistic Composition

Most of the CHTs-based indigenous communities have certain Mongoloid features in their physical appearance. Beside, the Garos (Mymensing, Tangail, Jamalpur, Sherpur districts) and the Khasis (greater Sylhet Division) outside CHTs are also descendant of the Mongolian race. Santal, Munda and Oraon are descendant of Dravidian origin and they are called Austro-Asiatic from linguistic point of view. However certain admixtures have also happened among various indigenous communities living in the country, especially in the tea estates of Sylhet division, where employees belonging to

diverse ethnic origins have been working in different capacities for ages together. Here we can trace physical interactions among various ethnic groups like Koch, Hajong, Rajbangshi, Manipuri Meithei, Pathor etc, who look like a combined icon of both Mongolian and Dravidian races. It is popularly believed that the original ancestors of today's nation called Bengali are mainly Dravidians both in their physical appearance and language. A comparative study of the indigenous communities of Bangladesh with ethno-linguistic affiliation is given below:

<i>Language Family</i>	<i>Branch</i>	<i>Indigenous Communities</i>
1. Tibeto-Burmese	Kuki-Chin	Bawm, Chakma, Khami, Khyang, Lushai, Manipuri, Marma, Mro, Pankho, Sak, Tanchngya, (other groups : Bonojogi, Shendu)
	Bara (Bodo)	Garo, Hajong, Koch, Mrong Rajbangshi, Tipra (Dalu, Hadi, Kac(h)ari, Paliya, Pathor, Riyang)
2. Austro-Asiatic (Mon-Khmer)	Khasi	Khasi (other group : Pnar)
	Munda	Munda, Santal (other groups : Mahili, Ho)
3. Dravidian		Oraon, Paharia
4. Indo-Aryan		Bede, Bhumiali, Bhuiya, Ganghu, Jalia-Kaibartta, Kukamar, Kurmi, Mahato, Malla, Nanasudra

Though all the above communities are deemed as original dwellers of the land forming today's Bangladesh, their distant forefathers came not only from various neighboring territories, but also from distant shores. Indigenous communities in CHTs are believed to have migrated from Arakan (Myanmar) and Thailand in the main. On the other hand, Garo, Khasi, Manipuri, Rajbangshi, Koch, Munda, Oraon and Santal peoples came from Indian territories that include Chotanagpur, Kochbihar, Jalpaiguri, Assam etc. They are descendants of Tibetan ethnic communities who migrated to Bangladesh through Assam. But the fact remains that those who migrated to the fertile plains and picturesque hills of today's Bangladesh in the distant past shook off their nomadic character and made here their permanent homes that stood the test of time. Some of these communities like Santals, Munda and Oraos are considered to be first human inhabitants in this deltaic region. Successors of races from different parts of the world followed them making the people of today's Bangladesh an integrated race with a multicultural plurality.

4. Religion, Descent and Kinship System :

4.1 Religion : Animism, Buddhism and Hinduism are the most dominating religious beliefs among the indigenous peoples of Bangladesh. But the situation has changed considerably as Christianity made its influence on a host of them since the British rule in the subcontinent after 1757. In CHTs, Chakmas, Marmas and Tanchangyas are still dedicated Buddhists. Some members of other small communities have also been influenced by Buddhism. Rakhaings (Cox's Bazar, Ptuakhali) are also devoted followers of Buddha. Nonetheless, most of the small indigenous communities in CHTs still worship various spirits. They are largely

animist in their belief. They still practice their traditional rites and rituals. Due to the process of Christianization some communities like Bawm, Lushai and Pankho have been converted into Christians. At present members of other communities like Mro and Mrongs are also inclining towards Christianity. Outside CHTs, Garo community is fully baptized into Christianity. The process of Islamization is insignificant, since none but a negligible number of Rajbangshis, Garos and Manipuris (locally called Pangal) believe in Islam. However, most of the converted Muslims from ethnic communities have entered into the mainstream population leaving behind their traditional identity. Interestingly enough, other indigenous communities including Garo, Bawm or Pankho have largely retained their traditional customs, rites, rituals and festivals despite the fact that they changed their religions long back from animism to Buddhism or Hinduism or Christianity. This transformation of religious belief as well adaptation of and compromise between tradition and modernity is an interesting field of investigation to ethnographic researchers. Going back to origin means identifying one's own roots – this realization has inspired the ethnic groups increasingly tradition-seekers in the recent times.

- 4.2 The descent system in the indigenous communities is no less fascinating. All the indigenous communities except the Garos and the Khasis are patrilineal in their lineage. They reckon descent from their father's side. The property inheritance also relates to the father. The sons get legitimate share of the property of their father. Nowadays the daughters are also allowed rightful shares in their paternal property. This is somewhat similar with Muslim property law (shariat) where both the sons and daughters are proportionately given the share of their paternal property. The Hindu property law does not give share of father's property to both the male and female children. However, the daughter is given a handsome dowry by her parents during her marriage.
- 4.3 The residence pattern in most of the patrilineal societies is patrilocal. It means the wife comes to her husband house to live with him for the rest of her life. It applies to all the mainstream religious communities like Muslims, Hindus, Buddhists, Christians and local and indigenous communities except two : the Garos and the Khasis.
- 4.4 The Garos and the Khasis are matrilineal in their descent system and law of inheritance. Mother is the custodian of all property in a family and father is but a supervisor to her. Likewise, the post-marital residence of the bride and bridegroom is matrilocal. The husband comes to the residence of his wife's mother to live for good. According to Garo inheritance, the youngest daughter gets all the properties of her mother. She is called Nokna. The person who marries her is Nokrom. Nokrom usually comes from the sept of her mother. There are various septs and clans among this matrilineal society and marriage cannot take place among the boys and girls of the same machong (motherhood) or sept. Say, Mankhin is a sept and Marak is another. Boys and girls of these two septs may marry as per traditional rules and practices. But marriage within the same sept, -- between a Mankhin boy and a Mankhin girl -- cannot take place as per traditional law. This practice is valid even after Christianization of the whole community. However, it can be looked upon as an exceptional customary law and traditional practice that protect the identity of an indigenous community. More details of Garo customary law have been given towards the end of this paper as a sample of

various customary laws and practices of the indigenous communities of Bangladesh. Identification, documentation and preservation of all the customary laws and practices of the indigenous and local communities of Bangladesh taken together is a huge task. This is both laborious and time-consuming. We feel that such this task has to undertaken for the sake of protection of cultures and promotion of cultural diversity across the world apart from utilizing traditional wisdom and traditional cultural products as tools for sustainable economic development of the less privileged peoples. Shown below almost all the indigenous communities of Bangladesh with their religious and kinship affiliation in general:

Christians	Garo, Bawm, Khasi, Lushai, Pankho
Hindus	Santal, Koch, Hajong, Manipuri, Pathor
Buddhist	Chakma, Marma, Tanchngya
Animist	Other communities (they also observe Hindu rituals)
Matrilineal	Garo, Khasi
Patrilineal	Other communities.

5. Occupation:

- 5.1 Like the mainstream people living on the fertile plains, all the indigenous communities irrespective of their residence at hills or plains, depend on agriculture for their sustenance. They are farmers by profession since time their earliest settlement here. Other side occupations include hunting, fruit gardening, weaving, basketry and other handicrafts for meeting both ends. However there are exceptions with a few communities like Manipuri and Khasi people. Manipuris are famous for their gardening, carpentry and jewelry. They are skilled craftsmen in weaving, too. The Khasis live on producing pan or betel leaf in their hill-top villages called punjis. They also grow lemon, pineapple, jackfruit etc. They seldom work as farmers to produce paddy in the hills or plain land. Both the Manipuris and the Khasis are concentrated in the four districts of Sylhet division.
- 5.2 Almost all the indigenous communities in the CHTs are traditional farmers. They are engaged in planting paddy on the hills on a shifting basis. This shifting cultivation is called *jum*. The communities who make their Machang or trestle houses on top of hills are skilled cultivators of shifting crops on the slopes and hills around them. The communities like Chakma and Marma usually make their residences in the valleys and plain land within the hilly region. They are accustomed to plough cultivation in the lower areas. In *jum* cultivation, the people make small holes in rows in the slanting surface of a chosen hill, which was earlier made suitable for farming after cutting, clearing and burning all the trees, plants and bushes there. Seeds of rice and other crops are sown in order to get multi-crops. *Jum* cultivation is an ideal example of traditional system of biodiversity promoting harvest of multiple crops emanating from natural fertility.
- 5.3 The indigenous peoples have their characteristic dress and wears. The women weave the clothes in their domestic handlooms called komar-tant or waist-handloom. Most known dress is Pinon Khadi of the Chakma women. Pinon is the cloth for the lower part of body and Khadi is worn around the breast. Chakma men wear Kobo, a kind of shirt, and a dhuti or gamsa as the dress of lower body. They also wear a turban called khobong. All the communities have distinct designs and color combination, by which a member of a community can be easily

identified. All the designs used by these communities are collected in a catalog woven in a piece of cloth. It is known as 'Alam'. Such a catalog among the Koch and some other communities of the northern and western part of Bangladesh is called 'Waksuksaka'.

6. Socio-political life

6.1 These communities have no formal laws or protocols in their social and political life. From administrative point of view, the indigenous communities have divided their regions into some villages with headmen to rule over them in a loose form. In absence of any statutory law or protocol they depend on their traditional customs and practices followed by their ancestors over the ages. For dispute settlements they depend on the decision of the headman, in whom they have vested their trust. The basis of this trust is an age-old communal harmony within a given community who cared little for any socio-political bindings or subjugation imposed upon them by the outsiders. However, this system was changed by the British ruler after gaining political control over them in the later half of eighteenth century. Though some communities like Santals and Hajongs resisted the British aggression with unequalled bravery, the mighty British soldiers with improved arms and war-techniques brought them under total subjugation. Thereafter the British ruler introduced a central political authority and hierarchical administrative organization for them. This is how they were brought under a new administrative network to collect revenue for the government fund. Every village headman was given the responsibility of collecting rent from the common people. It gave them political command on the general masses. In the plain regions the revenue collectors were mainly Hindu landlords, but in CHTs and other hill areas the collectors were selected from the headmen of respective villages. The whole of CHTs was divided into three 'circles' under three chiefs, also called Raja. Each 'circle' consisted of some 'mauzas' with some villages under it. One headman was engaged to collect revenue from each mauza and village. Eventually, the revenue collectors became more powerful than the traditional village chiefs. This shift in the socio-political structure of the indigenous communities was a major deviation from their tradition and the trend is still continuing with increased interference and intrusion by the non-indigenous people into their rights on land, forest and socio-cultural identity. A process of acculturation is also underway owing to their constant contact with the mainstream Bengali society having a dominating culture linking with cross-cultural transformation in the wake of urbanization. However protests from the indigenous and local communities of CHTs against violation rights started long since. The government of Bangladesh signed a historic peace treaty with the representatives of CHTs indigenous communities as remedial measure on December 2, 1997. A separate Ministry for the region has also been set up. But these political steps have not proved adequate as of now to stop violation of land rights of the hill people in particular. Violations of human rights results from the negation of one's fundamental rights. However, there is no specific example of gross misappropriation of traditional cultural rights in the region.

7. Practices :

The practices of the indigenous communities are somewhat homogenous and they have hardly gone any significant metamorphosis except religious transformation. Despite their affiliation with religions other than animism, they have not altogether forgot their primitive practices. In some cases these practices

are re-structured to cater to the need of time, but the traditional form is retained in its essence. For example, Wangala was a highly religious festival to pay gratitude to the Sangsarek deity called Salajong or the sun-god and the god of creation. Nowadays this festival has been revitalized as a thanksgiving ceremony and the priest as the representative of Jesus Christ has replaced the traditional deity. All the traditional practices of the indigenous communities are reflected in their festivals that offer a fascinating platform to display their tangible and intangible cultural expressions relating to their music, dances, oral literature, ballads, legends, dramas, rites and rituals, tangible expressions like weaving, bamboo works, clay works, herbal medicines and healing art, etc. The most outstanding festivals of such nature are Baishabi, Biju, Sangraing (CHTs), Sohrai (Santal), Lai Haraoba (Monipuri), Wangala (Garo), Naya Khawa (Hajong), Panikhela (Rakhaing) etc. Details of customary law and practices of all the communities may be outlined after empirical researches in a planned manner. Though a uniform code of law for all indigenous communities seems to be an absurdity, compilation of all customary practices and usage may reveal some rewarding findings to reach a consensus at local, national and global level. Here we would mention some significant features of Garo customary law and practices. Our findings are mainly based on 'Garo Ain' (Garo Code of Law) compiled by Father G. Costa along with Advocate Jangsan Sangma and translated into Bengali by Mr. Subhash Jengsam. Both Mr. Sangma and Mr. Jengsam belong to Garo community. We have also consulted some resource persons like Father Simon Haccha, a senior Garo priest, Mr. Sanjeeb Drong, the Secretary General of Bangladesh Adibashi Forum and Mr. Matendra Manhkin, a Garo poet and cultural activist.

8. GARO CUSTOMARY LAW, PRACTICES

8.1 Although there is no formal law devised by the Garo people, they own some traditional customs, practices and usages which may be termed as law or protocols, since the Garo society has been regulated by these norms over the ages. These laws are broadly divided into three categories : **Asimalja, Dakmalja and Nim-a.**

8.2 ASIMALJA

8.2 Asimalja : It is suggestive of a kind of unique good conduct that protects the Garo society from any kind of corruption, mutilation or misappropriation. Legend says, Asi was a Garo man and Malja a Garo woman in the ancient age. Both of them committed serious sin, for which they died untimely. Asi was killed by a tiger and Malja was swallowed by a crocodile. Sinners like Asi or Malja are hated in the society and they are not buried formally and honorably. They are given punishment by Mitte or deities called Saljong (sun) and Susime (moon). Such sinners always suffer from the sting of their own conscience. One is guilty of Asimalja if one commits the following crimes: (a) *marang oattani salrangku manigijani* or disobeys and disregards the religious days which they must observe with due honour; (b) *kegija Khimani* or marries one within one's own sub-tribe (since the male and female members of the same Mahari or social clan are considered brothers and sisters); (c) *silla khimani* or marries the elder sister of wife; marries the widow of the younger brother; marries the aunt or some one of her status; marries the widower of one's younger sister; (d) *akring gnanggipa aku piani* or collects woods, bamboo etc from a holy place considered as the dwelling

place of the deities; (e) *kushi balgrimni bal warangkhu denni jakkhalni* or collects woods, bamboos and other materials from kushi or holy places which are reserved for ritual, festival or other holy purposes; (f) *asongni rangkhu jakkhalani* or displaces a holy stone of a holy place or misuses a holy stone where the deities sit or rest; (g) *mittena nokmani dangipa basturangkhu ramram jakkhalani* or ignores/disregards the offerings or materials dedicated to the deities by Aking Nokma or the Chief of the region; (h) *thoole depanthe thangni skhuko rimme mikhchetani* or makes false oath placing hands on the head of own children; (i) ahayegija, wangalgija abani gittal bitherankhu chananggijani or does not offer the first crop produced in the land cultivated by one; it may bring famine and other natural calamity.

Comments :

1. *A person committing any crime mentioned above may not be directly or formally punished by the people of his society, yet he is looked down upon as a criminal by every body of his Mahari including his near and dear ones, which is why he suffers relentlessly.*
2. *Asimalja may be effectively used as a customary law to protect the TK and TCEs of the Garo society. It will be useful for defensive protection of secret TCEs as well as incentive protection for endangered and extinct ones.*

8.3 DAKMALJA

- 8.3 **Dakmalja** : Dakmalja literally means improper, unbecoming, unreasonable, unjustifiable, wrong etc. In practice, it means forbidden things. It encompasses the whole Garo law including moral, civil and criminal ones. Any person found guilty of such crimes shall be punished by the deities. Moreover he will be compelled to comply with the punishment and fine determined by a local court or justice.

8.3.1 Garo Moral Laws

Moral laws include among others (a) *Amitba* or adultery. It is a serious offence. There is no prostitute among the Garos. A husband may accuse a wife and vice versa, which, if proved in Chra (village court) shall give appropriate punishment and a fine of Taka 1500. (b) *Monga Sal-A* or tempting some one to go astray. To utter erotic words, songs and poems of temptation, to signal by hand, to call by whistling, to caste amorous look, to catch hand for ill purpose, to slap purposely, to touch the breast by hand, to press one's toe by legs etc includes such crimes. Chra can punish the guilty person with a fine of Taka 1000. (c) *Sikdra* or attempting to make sexual intercourse forcefully. (d) *Saldra* or attempting to make sexual abuse. It includes *chumna* (entering a woman's house at night with a bad intention), *thudrapna* (to embrace a sleeping woman forcefully), *salganggila-salmittala* (to cause a lady to lie flat on her back forcefully), *rimkhepa* (to press a lady hard), *salana* (to cause lady to sit down forcefully), *rimtatta* (to hug a lady with force). The person found guilty will have to pay a fine Taka 1000 for sikdra or saldra. (e) *Thelekmanca* or rape. Unmarried young men and girls can not complain against each other if they meet sexually with their mutual consent. In any other case non-marital sexual intercourse is a crime. The Chra may take appropriate decision to punish the guilty person. The fine may vary from Taka 1000 to Taka 6000 depending on the nature of the crime committed. In some cases, the person committing the rape may be killed by the owner of the house where the crime occurred. This is called *nokca mala* in Garo language. (e) *Al Sala*

or allurement. This is a kind of conspiracy by the parents to get a husband for their daughter. There is no specific punishment or fine for it. (f) *Namgija Khupattia* or giving ill advice to some body. A fine of Taka 1000 has to be paid for such a crime.

Comments : *Garó moral laws are effective tools for heightening the moral values among young generation who may often go astray out of various temptations and allurements. More to it, they have been given freedom based on mutual consent. It is somewhat similar with prior informed consent and user agreement as suggested in various drafts of IPRs laws. So these laws may work as basis for defensive protection for one's sanctity and positive protection for a joint venture that may generate material gains.*

8.4 Garó Religious Law

8.4 Religious Law

Religious activities and social practices and festivals are almost analogous in Garó society. (a) *Mitte amuani salrangkhu aro sarkari maniani salrangkhu simsakna*. It means the days for worshipping the deities as well as days which are socially acknowledged and dedicated for prayers, functions, congregations, rites and rituals. All the people of a village shall participate in such celebrations directly and indirectly and discharge his or her responsibilities accordingly. (b) *Saana Khripani* or showing sympathy and compassion. To show sympathy and compassion to a person who is in a danger is the moral and religious duty of everybody. He, who will not do so, may not be punished by Chra; but such a person will be cursed by the deities and he will be hated socially. (c) *Mangona Mania* or showing respect to a dead person. This is the funeral rite and ritual conducted for the salvation and redemption of the dead body in the next world. Every body should participate and do his or her duty with due solemnity for the eternal peace of the departed soul. Any one violating this norm may be punished by the Mahari and fix a fine, the amount to be decided by Chra.

Comments : *Moral ethical values are promoted by this law. These may be basis for defensive protection for highly sacred and secret TK and TCEs.*

8.5 Garó Civil and Criminal Law

8.5 Civil and Criminal Law

The customary law relating to above issues have changed during the British regime. There was a time when killing an enemy, killing an innocent person, collecting human heads, killing a dishonest wife; killing men in a skirmish were recurrent phenomena. During the British period, the above customs were declared as illegal. Now Chra (Family Chief), Mahari (Village Chief) and Nokma (Community Chief) have lost their authority to settle such criminal offences. Now crimes of this category are dealt with as per relevant section of an order passed by the Indian government in 1953. The district council shall settle such disputes between two indigenous persons and District Commissioner and his colleagues shall settle such disputes between a member of indigenous community and a member of non-indigenous community. Offences include *chon nikani* (treat with contempt), *jegrika*, *saia*, *gisia* (raising hue and cry, rebuking, debating), *mittakani* (false slandering), *ettal mikkani* (ridiculing), *kading stekani* (jesting), *dok grika* (scuffle), *gisiana doka* (exchanging blows for exchanging words), *jegrikki*

khaonagye doka (fighting after quarrel), *kadona/khuchinga* (to pledge for killing some one), *nokku napdrappi doka* (beating some one after attacking at home) and *dena* or killing some one. Fine for all civil offences except criminal ones is taka 1000 together with any other punishment decided by Chra. As said earlier, any crime of killing is now settled in district court. The following cases do not come within the definition of killing according Garo customary law: (a) *bobilku chodrape nokku warachakkani* or opposing an intruder entering the home with bad intention, (b) *chauna rebagipa mande, wigija ba agangijagipako* or resisting a thief or an outsider who does not give his identity, (c) *bobil ku warachakkani* or resisting an assassin (d) *bobil dena* or killing the enemy (f) *memang khamna sata* or killing one for the sake of funeral performance and (g) *nangrimgrikki dengrik-a* or killing in a duel.

8.4 Chawani (Theft) :

In the past the thief had to return all the materials stolen or pay a fine of the total value of the materials stolen. The thief was also required to work as a slave for a definite period determined by Nokma.

8.5 Nok wal khamat ani (Putting fire to a house) :

It was done in revenge in the past. The person guilty of such acts had to reconstruct the burnt house along with a fine as decided by Mahari or Nokma.

8.6 Gro-chotna mangijani (Defaulter to pay the debt):

The rate of interest for the prescribed period was determined as fifty percent. The debtor must repay the debt within three years. If he failed to do so, the debt could be realized by selling his movable and immovable propertie.

8.7 Sarkari kham rang (Public works)

Any one unwilling to do public works like constructing roads, digging well for drinking water etc was severely dealt with. No one came to his help in time of his danger. He was made person non-grata in the society.

8.8 Tholle Aganani (Telling lies or giving false evidence) :

Garo people are not accustomed to tell lies in general. However, if any body is found guilty of producing false evidence, he shall have to pay the compensation for the loss incurred.

8.9 Khuchinga (Threatening)

A fine of Taka 1000 has to be paid for threatening some body for no valid reason.

8.10 Snakna Khuchinga (Threatening with evil look or charms)

This is considered as the most serious crime among all kinds of threatenings. The person so threatened may fall ill or even he may die. In that case the accused person shall bear all expenses of treatment of the sick or the funeral ceremony of the dead. Besides, he will be hated by every body in the village. He has to go away from his community to live a secluded life.

8.11 Skhal Pottani (Defaming some one as a witch)

It is also a serious offence. If the person who makes such complaint fails to prove it, he will have to pay a fine upto Taka 2000.

Comments : *These may be used as firm basis for taking action against any misappropriation of moral, ethical and commercial rights of TK, TCEs and GR of a traditional society.*

8.12 Garo Marriage Law

8.12 Akhim Custom

The Garo marriage is never an inter-caste marriage. It is wholly regulated by Akhim custom. (a) Nobody can marry a member within his own Mahari, treated as caste or sub-tribe. Chisim is a Mahari, which is why a Chisim boy can not marry a Chisim girl. As per kinship law all Chisim boys and girls are sisters and brothers. If such marriage takes place it is considered as an act of adultery and the couple must leave the community. (b) Once married or betrothed for marrying as per khim or akhim custom, none of the engaged couple can live an independent life or marry a third person. This rule remains valid even after the death of the husband or wife. Everything thereafter is decided by Mahari. (c) Mahari means a group within a community to settle all disputes. However, all Maharis are usually composed of two small groups ; *Chra-Panthe* and *Fa-gachi*. Chra-panthe is composed of the eldest daughter and youngest brother of the family along with all maternal uncles. Fa-gachi includes the elder sister of all sons of the family, younger sisters and their husbands, uncles and aunts. In time of a crisis Chra-panthe support the women's side and the Fa-gachi support the men's side.

8.13 Bandabos Kaani (Preparation of wedding)

(a) According Garo social practice it is the girls who would make proposal for marriage. If a boy proposes a girl to marry, she may take it as an offence. A fine of Taka 1000 may be charged for such offence. (b) The girl does not send a proposal directly, rather it goes through her Mahari, who has almost supreme power to settle marital arrangement as per traditional law and protocols. (c) The proposal may be refused by the Chra of the concerned Mahari. (d) Marriage is arranged as soon as the proposal is accepted and both the girl and the boy are engaged. The time limit is from one week to one month in general. The pair can not meet with each other after their marriage is fixed. (e) The marital engagement may be withdrawn with mutual consent from both the Maharis. If one party breaks the contract for their interest, they shall have to pay fine as per Akhim law. (f) If there is a sexual intercourse between the couple before marriage and the boy refuses to marry the girl subsequently, he will be punished by Akhim law with a fine of taka 2000 to be paid to the girl. If a third man makes sexual intercourse with a girl already engaged for marriage, the guilty person shall have to pay a fine of Taka 1500 to each of the girl and boy engaged. In this case, the boy may refuse to marry the girl abused. The same is also true of the girl so engaged.

8.14 Customary Practices of Garo Marriage

8.14 Customary Practices of Marriage

There is no law or practice to control the age of marriage. The marriage customs, laws and practices are based on matrilineal system, since the descent is always traced from the mother. Machong or motherhood is the most important factor in the marital relation between a boy and a girl. The law of exogamy and Akim

regulate the Garo marriage. Child marriage is hardly seen among them. There are many customary practices, which are not accepted as formal bindings or contracts or protocols. Some of these practices are given below:

- (a) **Dosia/ dodakka/Dobuk Nia (Killing the fowl)** : It is considered as the principal form of marriage among the Garos. It is Sansarek or pagan kind of marriage performed by the village priest by invoking the gods to bless the couple. The bride takes the initiative in a dosia marriage. She goes to fetch the bridegroom from hiding. A feast will be arranged and a cock and hen will be furnished by the girl's people for sacrifice. After the sacrifice a feast is arranged along with dancing and drinking Chu, the traditional drink made of rice. If both boy and girl take part in the feast they will be eligible for marriage. If the boy does not marry the girl after the function, he or his guardian must pay a fine of Taka 2000 to the girl.
- (b) **Thunap A (Sleep by entering)**: The boy enters into the home of the girl secretly at night and sleeps with her. It usually happens when both of them fall in love. The parents give silent consent in such cases, but the Mahari people do not know of such incident. If the incident comes to the knowledge of the Mahari people and they do not drive the boy out of their society, the marriage is accepted. Since then both of them lead their life as married couple.
- (c) **Nakpanthe Gaa (Entering the house of an unmarried young man by a girl)** : A girl may enter into the house of a boy (*nokpanthe*) she loves. If the boy responds to the call of the girl, the union between them takes place. Next day they go to the girl's home and since then they live as married couple. If the boy refuses to take the girl as his wife after the union, he will be punished by the Mahari with a fine decided by them.
- (d) **Sekke Kath A (Leaving home on mutual agreement)**: The interested couple may leave their home and get married to each other and stay at some other place. If the guardians do not agree to this marriage, the couple may be separated. In such cases the boy has to pay no fine.
- (e) **Sek A (Inducement and elopement)**: A married woman may be induced by a man and if she responds, both of them may live together at some other place. Though they are then considered as husband and wife, every one of the society hates them. However they have to pay a fine for adultery and violating Akhim law.
- (f) **Cha dila (to induce to eat)** : A young girl desiring to marry some particular young man visits him during his meal-time and tries to partake of meal with him. If the young man takes the meal with her in front of his friends he becomes husband to the girl. Another *chadila* marriage is to send a dish by a girl to the boy of her choice. If the boy accepts the meal, they are considered as married.
- (g) **Akhim Khang A (Marriage after death of wife or husband)** : The widow or the widower has to take his or her wife or husband from the same Mahari. They cannot choose their partner independently without the consent of the

Mahari. If the Mahari cannot provide a partner to a the concerned man or woman, he or she can marry a person from other Mahari paying fine Taka 500 to the original Mahari.

- (h) Kegija Khim A (Inter-caste marriage) :** Interestingly enough, the Garo society is fully regulated by inter-caste marriage. People belonging to same Mahari (sub-tribe) and Machong (motherhood) can not marry each other. There are many Chatchi or Clan (matrilineal descent group) such as Marak, Sagma, Momin, Areng, Shira and so on. These clans are again subdivided into hundreds of sub-clans called Machong (motherhood). Any couple violating this rule loses the right to ancestral property and they have to live secluded from the society. In the past, their relatives did not hesitate to kill them.

Comments : *Though there are differences of opinions regarding the divisions and sub-tribes, the fact remains that the whole of the Garo society from the hills to the plain land are divided into many groups following the descent from motherhood. Marriage among different Machongs both protects and diversifies the kinship pattern and property ownership of the whole community. It may act as an effective tool to protect and diversify their traditional cultures, which are direct and indirect products of their agro-based economy and kinship system.*

- (i) Nokrom (The husband of the Heiress of a family):** The husband of Nokna (heiress) is the resident-husband at her wife's house. He will enjoy facilities and privileges accordingly and stay at his father-in-law's house permanently. In fact, Nokrom is decided much earlier, sometimes during the childhood of both Nokna and Nokrom with the mutual consent of both the Maharis. This is called *Sandhiani*. The would-be husband and wife exchange their looks, known as *Meskani*. However, any one of them may express their dissent in the marriage after they are grown-up. In that case, the concerned person or persons have to show valid grounds.
- (j) Chawari (Husband of other daughters of the family) :** An ordinary husband is called Chawari. He marries a girl who is not a Nokna. He stays with the family of her wife for some time after marriage and then makes a residence of his own at a short distance from father-in-law's home.
- (k) Gro Chotani (Paying compensation) :** After the death of her husband, the wife, whatever may be her age, can take another husband from the Mahari of his dead husband. But she or her Mahari shall have to pay compensation to the mother (in mother's absence to one who is mother-like) of his dead husband. This is called 'wiping out the tears of a widow'. The compensation includes a piece of cloth or a bow or a cow or any dowry valuing not more than Taka 3000.
- (l) Jik Bange Khim Ani (Polygamous Marriage):** A man can marry more than one wife. He may marry two sisters and if he does so he will have to marry the elder sister first. The younger sister can be married with consent of the Mahari. She is called Jikgitte or associate wife. More interestingly, if a young man is chosen to marry a middle-aged widow, the Mahari may allow

the man to marry the daughter of the widow as an associate wife. In absence of a daughter of the widow from her dead husband, the Mahari can arrange another girl for the young man as *jikgitte*.

(m) Jik Se Gal Ani (Divorce) : The Garo customary law does not restrict any person from divorcing the partner on sufficient valid grounds. The husband and wife may divorce with mutual agreement. Other grounds of divorce include : (1) if the husband or wife is in danger of death; (2) if one of the couple indulge in adultery; (3) when one of the couple is insane; (4) when the husband and wife lives separately without any relation for at least two years; (5) when the husband is absconding; (6) when they are extremely cruel to each other and attempt to kill or make physical harm; (7) when one is or both of them are sterile; (8) when one of them refuses conjugal life. (9) when a woman is pregnant by some other person; (10) if the husband is impotent etc. In case of husband's absconding, he will be guilty of violating Akim law, for which he shall have to pay a fine of Taka 5000 to his wife or her Mahari.

(n) There are also provisions of reunion between the separated or divorced couple on their mutual consent.

8.15 Garo Law of Inheritance regarding land

8.15 Land and other property

The lineage is counted from mother's side in the Garo community since it is mother-dominated. The daughters inherit the land and other properties of their ancestors. However, such ancestral properties are divided among their successors in many ways such as *Aking, Amate, Amillam, Nokni Aba, Sarkari Aba, Gam* etc. No man can either possess or inherit any property of the family. What the sons earn before they are married, is also owned by their mother. After the marriage the son goes to the house of her wife and a new relation is established between two Maharis of the wife and the husband. The newly married husband shall grow into an inseparable entity of his mother-in-law's family. The two Maharis shall look after following two things in the main: (1) The Mahahri of wife's side shall look after her property, so that it is not misused or misappropriated by any means; and (2) the Mahari of the husband's side shall keep vigil on the fact that the son-in-law and the heiress of property are chosen from their clan in the days to come.

8.16 Aking : Aking is an area occupied by a family from generation to generation for their living and cultivation. The rights of Aking land shall vest in the mother, from her to her youngest daughter and so on. This property can never pass out of the control of motherhood. However there are few exceptions as well. The mother may give some portion of her property to one of her favorite children.

8.17 Amate (Transferred land property) : If the Aking Nokma is pleased on some person and donates him some property she owns, it will be Amate or transferred property. The Nokma shall lose all her authority on that land. The new owner shall be called Amate Nokma.

- 8.18 Amillam (Land acquired by sword) :** It means the land captured after winning a war. A Nokma may defeat another Nokma in a war and capture the land of the defeated. This is not in vogue today. At present khas or government-owned land is also called Amillam. Anybody can occupy such land for cultivation. If such a land is fairly large in size, it is considered as Aking land.
- 8.19 Nokni Aba (Land on house tax) :** The Garos cultivate their hilly land following the jum method. Every family gets a piece of land for jum cultivation. In such cultivation, land has to be changed every year. On the contrary, there are some fertile land which can be cultivated every year. Eventually, such fertile land goes within the possession of the family and it, too, takes the form of Aking land. This land is not transferable under any circumstances. Mahari has no rights or control on such land. The family who occupies the land enjoys its rights paying house tax instead of land tax.
- 8.20 Sarkari Aba (Taxable land) :** Land other than the Aking area remains under direct control of the government. Some of this land is reserved forest. Some portion is occupied by people and the remaining one is leased to some interested persons. Land acquired on lease in this manner is suitable for paddy cultivation and it can be sold and transferred as per legal procedure. The government may also acquire the Nokni Aba land for leasing out among common people and in such cases the government shall pay compensation to the concerned Aking Nokma.
- 8.21 Gam (Movable Property) :** Gam includes all movable properties. These are also inherited from one generation to another. Agricultural instruments, fishing instruments, musical instruments, furniture, jewelry etc are considered as movable property. The Mahari has no control over these things. However, sale and transfer of such materials are discouraged, since it degrades the goodwill of the family and the clan concerned. The mementoes and artifacts of the ancestors are deemed sacred and it is the moral duty of all concerned to preserve and protect the same.
- 8.22 Classification of Property :** In the past there was hardly any difference between the inherited property and the property occupied, captured or otherwise gained. At present these are differentiated from one another for practical reasons of resolving disputes in the court of law. The Garos consider their inherited property with utmost sanctity, since these are not saleable or transferable. In case of selling the self-earned property, the seller is required to take permission of Nokna and Nokrom. If they do not give their consent, the Mahari shall give the final decision.
- 8.23 Rights of Men :**
- (a) Men can keep no property under his control, although he is supervisory chief of the family. (b) If a man acquires some property by any means, he will deposit the same to his mother or wife. (c) No man can donate or give away any property by any means, since he owns nothing. (d) No man shall keep any money in his custody, except on journey or for the purpose of trade and commerce. (e) **Panthe Gita** (As an unmarried young man) : All his earnings shall go to his mother. When the son grows adult, his mother may give him some land for cultivation. This is called *Atot*. The son may grow crops there and sell the same to buy his

personal things. An unmarried son may work at an affluent family of another village on contract basis. He may keep some part of his earning for his personal expenditure and the rest has to be given to his mother. All property of the son dead before his marriage are owned by his mother. (f) **Chawari Gita** (As a son-in-law) : On the day of his marriage, the son may take some portion of his *Atot* property with him. The rest has to be deposited to his mother. The parents may give him some dowry. On reaching the mother-in-law's house, he will deposit all his belongings to the mother-in-law. (g) **Miyapa Gita** (As a husband or a father) : In order to invest some capital from the earnings of ancestral property the husband shall take permission from his wife, the nokna and nokrom of the family, and at times from the concerned Mahari. nowadays he may spend some money for any good work. (h) **Wangipa Gita** (As a step father) : He becomes the supervisory chief of the family. He needs permission from his Mahari in order to invest some capital or spend some money for good purpose. (i) **Jik Sianggimin** (As widower) : The man shall remain in his wife's house until he is given a new wife by the Mahari. He will supervise the family as advised by Mahari. On the other hand, if he takes a new wife from a Mahari other than the Mahari of his dead wife, he must leave the home empty handed. Moreover, he will have pay Taka 3000 to his dead wife's Mahari for violating the Akhim law. (j) **Jik Se-wat grikgipa** (Divorced man) : If the divorce is done on mutual consent, the man shall leave the home empty handed. If the divorce is done on fault of the wife, she would leave the home with the children who will opt to accompany her. The man shall stay back at the home with other children. He will also take hold of the property for the time being. If his wife's Mahari does not give him a new wife or if he does not agree to marry some one from the same Mahari, he may leave the home marry a new wife from some other Mahari. It will not amount to violation of Akhim law. (k) **Kathanggipa Gita** (The absconding father) : Such a man can take nothing from his family. If he takes some thing, he must return the same. What he earns staying away his family, he has to send to his wife. If the man marries some other woman there, he has to pay her first wife Taka 3000 to his first wife for violating Akhim law.

8.24 Adoption of children : (a) According to Garo matrilineal system, the mother having no female child and if there is daughter who is not fit for being a nokna, she can adopt female child from her nearest relative such her sister or any other from her motherhood. (b) In absence of a suitable child from her own motherhood, she may adopt some one from any other Mahari. (c) There is the practice of adopting a newborn baby of unknown parents from a clinic or hospital.

8.25 Losing the Rights : (a) Mother shall lose her rights on the earnings of her son after his marriage. (b) If a wife leaves his married husband without valid reasons, she will lose her rights to all family property. The nokna of the family or the new wife given to the man by his Mahari shall own such rights. (c) If the selected nokna does not marry the man previously engaged with her, she will lose her rights to become a heiress. (d) If the nokna leaves her parental house along with nokrom and resides at some other place, she will lose her rights as a heiress. (d) The adopted daughter lose her rights as nokma if she does not remain obedient to her foster parent. (e) A nokrom loses his rights to work as supervisor of his family property if he leaves the house; if he leave his wife without valid ground; and if he takes a new wife not selected by the Mahari of his dead wife. At times

a nokrom may lose his authority for his inability to discharge the family duties. However, such incidents are very rare.

Comments :

It is now obvious that any inherited property, either movable or immovable, is owned by the heiress. Rights of such property are owned by the community in perpetuity. Newly earned property may be transferred or sold with permission from appropriate authority of the community. So it is arguable that rights of traditional intangible things such as products of intellect and creativity inherited from one generation to another are also inseparable and inalienable. The community owns such rights from moral and ethical point of view. However they may delegate the use of such rights based on a valid user agreement following the principle of Amate land. Acquisition of rights of their tangible and intangible property will certainly amount to an act of misappropriation. Those who have respect for such rights shall not violate the same on any ground.

8.26 NIM-A

8.26 Nim-a :

The third category of Garo customary laws are called Nim-A. These laws are mainly composed of traditional practices and usages for ages together. These practices largely regulate the working process of daily life and the behavior pattern as a whole. One is punished severely or liable to a fine if one disobeys these norms. Yet violation of these laws is deemed as draws indignation from the society. Nim-a literally means something unapproved or informal. Some examples of Nim-a rules are as follows : (a) Women shall remain behind the men while walking on a road. (b) Minor girls and married women may walk before their father and husband. (c) A male member must make some sound signaling his presence before approaching a fountain or a river or a lake etc. where women usually take baths leaving out their cloths. (d) On the walk a man should make some sound from a distance before crossing a woman. (e) No woman shall stand at door-step if a male member remains seated inside home. (f) Women shall avoid loitering before their male relatives. (g) No woman shall make fun with the husband of her younger sister. (h) Girls and women shall not touch or wash the dress of their uncles and brothers or similar relatives. (i) No man shall wear the cloth of his sister's husband or brother-in-law. (j) No woman shall entertain a male member with *Akham* or the rice burnt at the bottom of a rice pot. (k) In any drinking session, the inaugural glass of *Chu* or traditional wine shall be given to the eldest member present. (l) No woman shall enter *Nok-Panthe*, the dormitory of the unmarried young men. (m) The younger ones shall not sit on the chairs temporarily evacuated by the elders. (n) No one shall blow a whistle by lips while working in a field from the time of sowing seeds to harvesting the crops.

Comments :

It seems that Garo customary laws and practices are partially effective to protect the IPRs of TK, TCEs and GR of their society since they cover almost all the aspects of statutory laws prevalent in a modern society. Since there is no direct rule, practice, protocols or law regarding IPRs of GRTKF, we may deduce the some inferences from similar laws applying to morality, religions and land property. For doing so we must have highest kind of respect for their customary law. These laws have suited to them from time immemorial and it is

not logical to opine that modern laws imposed upon them are superior or more convenient for them. Recording, analysis and comparing of various such laws of all the indigenous communities may help us formulate a unified code of indigenous law for all of them to the mutual benefit of all nationals at home and beyond.

9. TRADITIONAL CULTURAL EXPRESSIONS OF THE GAROS

9.1 Let us begin with a commonest definition of culture that it is an aesthetic pursuit of a person or a community giving vent to their lifestyle in its totality. The Garo culture, which is essentially traditional even at the outset of twenty-first century, is no exception to it. The cultures of all indigenous and local communities of Bangladesh are agro-based, eco-based and ritual-based including that of the Garos. Agriculture presupposes land, instruments for cultivation, water, seeds, fertility and safe harvesting. Joys and sorrows of our traditional people are indissolubly linked with these factors. They sing and dance, play and act, narrate ballads and improvise rhymed stories while tilling the land, sowing the seeds, nourishing the plants, harvesting the crops, offering the new rice to the sun-god and creator, and making a wild festival of dances accompanied by music and drinks as a final offering and gratitude of the giver of food and wealth to them. The environment they live in is equally important for the subject as well as style of expression of their cultural expressions. In brief, Garo traditional culture like that of any other indigenous community of the country is ceremonial and festive giving it the brand of a composite TCE. Affirmation of all the components is a positive aspect for nourishment of its traditional uniqueness, whereas negation of any of those components is denial to its uninterrupted growth. We would keep in mind these factors while sorting out the cases of rightful application and illegal misappropriations in a bid to make a brief list of TCEs of the Garos. **Let us also keep in mind that all the Garo TCEs are closely associated with Garo TK, since the way they invented it and the agricultural, fishing, musical instruments and dress used are all products of Garo traditional knowledge. Though there is a subtle difference between the process (knowledge or strictu sensu) and products (expressions, commodities), one is inseparable from the other.** Distortion of TK goes with distortion of TCEs in most cases. It has happened in various phases of Garo life and their history of evolution from the spirit worshippers to the devoted Christians.

The cultural history of the Garos is as varied as the history of their evolution from a hill-people believing spirits to modern men embracing Christianity. Their culture is as diversified as that of any other indigenous community of Bangladesh, a country of plains, rivers and hills in the main. Lands, hills, forests and water constitute the womb of its culture. The earliest expressions were linked with all these factors. However, the starting point is the *Jum* or shifting cultivation of the hills, since one of their ancient abodes was the hilly area called *Garopahar* bordering the northern part of Bangladesh.

The festivals as composite TCEs are presented below chronologically as far as possible:

- (1) ***Agamalka*** : It starts with the agricultural year. It is the first festival to begin with *jum* cultivation on the hills. First phase of *jum* is to cut, burn and clear the hill-land for sowing seeds. The burnt ashes are used as fertilizers. **The purpose of this festival is to get rid of bad influence of spirits, to ensure grace of gods for**

fertility, sunshine, rains and good harvest. Some rituals like sacrificing eggs by every family, a chicken by village chief *Nokna*, throwing seeds all around along with eating, drinking, singing and dancing in groups are quite noteworthy. It continues till the end of sowing seeds. This festival is almost endangered now, since the Garos now living in Bangladesh are no more hill-dwellers nor they have enough forest land to continue with *jum* cultivation. It has happened due to a host of factors that includes change of religion and violation of their customary land rights (*Aking* rights) by the majority people and the government policy in most cases.

- (2) ***Rangchugala*** : It follows the final cultivation of the field since the *Sangsarek* Garos believe that it is their holy duty to offer first fruits of harvest to the deities who have blessed them. Achik is the mother tongue of the Garos. In the *Achik* language *Rangchu* means a kind of preparation of dried rice, and *gala* means to throw it around. This festival is still in vogue.
- (3) ***Jame Gappa Ahua*** takes place after the completion of paddy harvest. This is associated with the sacrifice of a dried fish by all the households. Then the festival of collective merriment continues for several days. This merrymaking with intangible TCEs like singing and dancing is being revitalized nowadays.
- (4) ***Wanna or Wangala*** is the most prominent and representative of the Garo traditional culture depicting almost all the events of their day-to-day life. This is indeed a carnival held in the post-harvest period in the month of October. It is a fertility ritual performed for propitiating the *Sangsarek* deity *Saljong*, who stands as giver of food and fortune to them. *Saljong* is worshipped as Sun-God and Creator of the universe. The festival is celebrated for three days at a go and it starts with the pronouncement of village chief, *Nokma*. Before the start of the ceremony, the village is cleaned, houses are repaired, *Chu* or rice beer is prepared, new clothes and necessary domestic things are bought by the villages. The ceremony of the first two days are called *Chu-rugala* and *Gakhat-a* respectively. Cows and pigs are sacrificed and rice beer is distributed among the festive people in abundance. Nights are characterized by singing, dancing along with series of incantations, rites and rituals. Other common foods include *Nakham* (dried fish), beef, *Miwa* (bamboo stems) etc. **Wangala was long forgotten as a festival among Christian Garos since it depicted a kind of pagan way of life. But for over a decade this festival has been revitalized by the progressive tradition searchers of the community. However, the ritual has changed making it almost a Christian thanksgiving ceremony. *Saljong* is no more remembered. Instead of the village Chief *Nokma*, the Father of the Church starts the ceremony formally.** I have witnessed a *Wangala* in the campus of *Bhalukapara Church* in 2005. All offerings and gratitude are dedicated to Jesus Christ, who is represented by the priest. The Garo Father *Simon Haccha*, who is keen to trace back his traditional roots inaugurated the ceremony at *Bhalukapara*.
- (5) ***Traditional Dances***: *Wangala* is dominated by dances in the main and most of these dances are 'stylized pantomimes of everyday life'. There are as many as forty-six dances that include *Garongdok-a*, *Dockroshu-a*, *Durata ratta*, *Oping ratta*, *Azema rua*, *Nomil panthe*, *Shaliding-a*, *Dama jong-a*, *Chu khanna*, *Chame chang-a* etc. These are all presented in plain body-language with highly rhythmic pattern accompanied by narrative songs.

- (6) ***Songs, ballads and musical instruments:*** Most of the long forgotten traditional songs and ballads have come back to life after revival of Wangala in a modified form. Among popular songs *Ajia, Ahaoe, Dani doka, Rey Rey, Dura, Khabi, Ringa* and *Gollo* are frequently sung during different festivals and fiestas. Two most known ballads narrating the origin of life and its transformation that has evolved later on are *Sherenjeen* and *Shonajeen*. These ballads have stimulated creativity in the contemporary Garo poets who are contributing to contemporary Bengali poetry significantly. It is to be noted that most of the Garo people are now bilingual, speaking and writing Bengali as their mother tongue Achik. Commonest musical instruments are handmade flutes, drums etc such as *Dama, Kram, Shinga, Elongma, Banshi, Nagra, Kamal Jakmora, Aduru, Rangbong, Oru, Ganganda, Dimsrang* etc.
- (7) ***Dress and ornaments :*** Like all the indigenous communities of Bangladesh the Garos have their own weavers and jewelers. Now the educated Garos wear westernized dress like shirt, trousers etc. The traditional Garo male dress is *Gando*. It is a seven-feet long cotton made cloth used as a loose under wear. They also wear *Pagri* or turban on their heads. The female wears produced in their domestic handlooms are very colorful and attractive. These dresses include *Dokmanda* and *Doksha*. The indigenous ornaments still used by the village women are very fashionable. Mention may be made of *Jaksam, Ripobok, Thang Shora, Shengkhi, Filni, Nathek Jasrang* etc. All the Garo festivals including Wangala are comprehensive exhibitions of these ornaments, dresses, songs, ballads, dances and merrymakings presenting the diversity and aesthetic excellence of their cultural milieu and creativity.

10. MISUSE AND MISAPPROPRIATION OF TK, TCES, GR

10.1 Internal and External Factors for Misuse :

Marked transformation has happened to Garo rituals and allied TK and TCES mostly owing to their change in religious beliefs. This is what we may call, among others, the internal factors. From traditional animist to devoted Hindu, then to enlightened Christians – in this triangular conversion of beliefs their kinship and customary practices have changed considerably. For example, nowadays free marriage among the young couples is permissible by Christianity, but this is a gross violation of customary Akhim law among Garos. To the primitive Garos, like the ancient ancestors of humanity in general, religion was the culture and a pious man with his good conduct (*Asimalza*) was a cultured man. Today religion is being replaced by culture among the modern men, who are apt to look upon religious practices as merely traits of their tradition and heritage. This kind of attitude is also seen among the educated and Christian Garos. They are at liberty to make free choice to arrive at a decision within their own sphere. However, we have noticed the internal factors causing distortion and mutilation in Garo festivals and other expressions. One may also note that the absence of assembly houses like *Nokpante* for the unmarried young men (also recognized as a place of cultural interaction) is a marked deviation from tradition, for which the Garo people are no less responsible. It is the lack of awareness among the Garo community that they are losing many of their significant knowledge, products and expression stemming from their traditional wisdom. It has signaled a kind of auto-displacement of Garo

culture. However, this factor can be removed by a concerted awareness-raising program among the community members. This process has already begun.

However, the external factors are playing the real havoc posing continuous threats amounting to violation, misappropriation and extinction of their rights in all spheres of life. It ruins the freedom and delight of their life. So it jeopardizes their creative and cultural expressions. These threats have come from the dominating communities in a bid to capture their land and other property. Added to that is the disrespect towards their identity and customary laws by the mainstream majority people and the administrative machinery as a whole. The attempt of globalization of culture trying to make it homogenous is also to be noted carefully. It is a kind of cultural aggression of the so-called civilized citizens of the urbanized metropolitan cities upon the ones who are less privileged, still dwelling in hills, forests and plains of the least developed regions of the world. We would list below some practical experiences of violation of customary rights of the Garos and some other indigenous communities leading to distortion of Tk, TCEs and GR in Bangladesh.

10.2 Denial of Aking Rights :

(a) **S. Chambugong's Aking Land** : During our field tours in the later half of the year 2005 conducting the study on IPRs protection on the TCEs of Bangladesh, we noticed many individual cases of denial of ancestral property to the Nokna Garos by their influential neighbors and their fake agencies. They used force and forged documents in doing so. One such incident is narrated here. The name of the Nokna lady is S. Chambugong, aged over 80. She owned 35 acres of land as her ancestral property. In 1971 her husband took part in the liberation war of Bangladesh, which is why she had to take shelter in India. When she came back after the war, she found most of her land occupied by some of her influential Bengali neighbors. She could recover her homestead that measures roughly two acres only. It was full of Sal forest. Meanwhile her husband died and other hooligans attempted to capture her homestead forcefully. She complained against them to police and local forest officials with no favorable response. This incident along with many other cases of such violation of Aking rights are mentioned in many recent studies on the Garos.

(b) **Modhupur Eco-park** : The most serious violation of all-encompassing indigenous rights of the Garos is the setting up of an Eco-park in Modhupur, a most known habitat of traditional Garos within an area blessed with biodiversity. It is one of the most controversial development projects known as Modhupur National Park Development Project (MNPDP). We have got adverse response about this project from Garo Community leaders including Mr. Sanjeeb Drong, the Secretary General of Bangladesh Adibashi Forum. This project is on 3,000 acres of land, a habitat of 21 Garo and Koch villages, threatening the eviction of 1,510 families. Six mauzas such as Aronkola (11,872.70 acres), Gachabari (52.00 acres), Pargacha (88,178.53 acres), Chapaid (140.00 acres), Rasulpur (350.00 acres), Bijoypur (243.00 acres) are included in the project. The government is investing about ten million US dollar for this project. Mr Sanjeeb Drong writes, "The Garos in Modhupur forest are still under the threat of forcible eviction from their lands due to plans for eco-park. For years the Garos have been struggling to stop the eco-park, because they would be evicted from their ancestral home. Their protests have been met by police violence, torture, filing of false legal cases, detention etc.

On 3 January 2004, thousands of Garos staged a peaceful protest rally against the eco-park project in Modhupur forest. In Jalabada, a remote village in the forest, the police force and forest guards opened fire killing Piren Snal, a young Garo man on the spot and injuring 25, including women and children. Another Garo boy named Utpol Nokrek, a student of class ten was seriously injured by the bullets and became paralyzed.’ (*Indigenous Peoples* by Sanjeeb Drong, an article published in ‘*Human Rights Bangladesh 2005*’, Published from Ain O Salsh Kendra or ASK, Dhaka).

(c) Denial of Aking Customary rights of the Garos by such decision amounts to misappropriation of their rights to survive as a distinct people. Modhupur forest is not only the habitat of the Garos residing there, but also the source of their cultural recreation, traditional healing herbs and genetic resources. The entrance of the Garos has also been restricted in the forest which has barred them from collecting fuel, extracts from trees and barks, hunting animals etc, the rights which they have been enjoying since their primitive settlement as children of wild life. Roots, barks, herbs, creepers, leaves, juice of various plants and trees that they identified were used for food and medicine. This is indicative of their traditional knowledge. Personal interviews with some wise Garos reveal that plants like gasonto, ramanism, satmul, basak, sarpagandha etc are some of the useful medicinal plants. They also collected sal, koroi, chambal, jogini chakra, sidah and such other strong woods to construct there dwelling houses, furniture etc. So the Modhupur forest plays a decisive role providing basic needs to them and as per their customary practices and law they can collect it without permission from any quarter. These are their birth rights, now denied by vested quarters. The forest department has also cut down valuable traditional trees like sal and koroi, which were the favored nests of birds of various kinds. Newly planted foreign invasive plants like eucalyptus, acacia are not environment-friendly in the ecosystem of this area. It will cause loss of traditional plants, animal species, birds, soil erosion and may bring disaster and famine among the indigenous communities. This is also a clear violation of the Convention of Biological Diversity 1992 ratified by Bangladesh.

(d) It is an internationally accepted norm to take free and prior informed consent of the concerned community before implementing a development plan displacing them from their homestead. It is also included in the draft law for protection of GRTF as suggested by many regional organizations under WIPO. Decision for setting up an eco-park in Modhupur is a violation of such international practice. It is to be noted that similar violation was also done in Chittagong Hill Tracts in the past while constructing Kaptai Dam that displaced Chakma indigenous community from their habitat in the area. It also ecological balance in the region.

(e) Chakaria Sundarban’s GR and Biodiversity: Destruction of ecological balance, biodiversity and genetic resources has also happened in other parts of Bangladesh, such as Chakaria Sunderban in Cox’s Bazar district. I personally hail from this region. The unique mangrove forest on both sides of the Moiscal channel and coastal villages like Badarkhali, Tattakiaghona, Gomatatali and Chaufaldandi were fully destroyed in a bid to develop shrimp ponds there in the rainy season and salt-producing beds in the dry seasons. The exclusive shrimp culture has destroyed many known species of sea-fish and the grazing ground for numerous cattle and the rendezvous of birds coming from distant shores. The salt-beds have destroyed the natural fertility of land for growing paddy and other crops. Most of the shrimp

projects have been leased to people who live far away from this area. So the local communities have been deprived of their legitimate rights to own it. Moreover, no free or prior informed consent of the coastal people were taken before implementing such a project. It may be mentioned here that the mangrove forest is a natural barrier for protecting the coastal people from devastating tidal bore that claims many lives in its wake almost every year.

(f) Direct instances of violation and misappropriation of IPRs of TCEs, TKs and GR and legal actions against such violations by the owners of rights rare, since the holders of such rights in the indigenous and local communities are not conscious of their rights in absence of an awareness raising program. Above all, there is no customary law or statutory law in the country to protect IPRs of GRTKF in a direct manner. The existing copyright and patent rights do not cover any aspect of community-owned rights of GRTKF, since these community-based rights continue in perpetuity. However, I would mention here a few incidents of direct violation of IPRs of some living Baul singers of today's Bangladesh.

On August 14, 2005 I had a brief discussion with Mr. Saymon Zakaria, a young folk researcher, fieldworker and playwright, who has traveled in the remotest parts of Bangladesh making investigations into the living cultural expressions of folkloric origin. He is now employed in Bangla Academy Folklore Section as a fieldworker.

As regards protection of IP-rights of TCEs, he demanded positive protection with a view to preserving traditional form as well as augmenting income-generating aspects of relevant folk items that could be converted into cultural commodities. He opined that urbanization is a most serious threat to our TCEs and most of our folk songs are being used for such purposes, which do not fit in with their traditional intention. He argued that in the absence of an effective legal system for protection of IPRs of our TCEs, violations of IPRs are occurring quite frequently. He cited one such example in Kushtia. Baul Jalaluddin Tuntun Shah is a famous mystic poet-performer of Bangladesh now. His songs are popular in Kushtia and other places of Bangladesh. Some Dhaka-based cassette producer proposed him to bring out cassettes of his songs, which he did not agree with. But that producer has brought out his songs as the Baul songs by a truck driver without mentioning Tuntun Shah as the real performer. Tuntun Shah, a Baul saint indifferent to worldly affairs, could do nothing against this IPRs violation, though existing Copyright Act 2000 protects such violation since he is still alive as an individual. I have got similar information from today's illustrated folk-poets and singers like Abdul Halim Bayati and Saidur Rahman Bayati, who are not being properly paid royalty for their songs broadcasted or telecasted or transmitted from radio-television and other media. In a recent interview with Mr. Mahfuzur Rahman, a dedicated folk researcher of greater Sylhet region, the illustrious Baul poet Shah Abdul Karim, who has been nationally awarded for his achievements, has made the similar complaint. He has accused that the urban-based popular singers often change the words and tune of his lyrics without free and prior consent from him. He mentioned one of his most famous lyrics "Agei Kee Sundar Din Kataitam or What goods we passed in the past" which has fallen prey to such plagiarism by pop singers in the cities. As a matter of fact, different cassette-producing companies of Bangladesh, in absence of a specific IPRs Law for TCEs, are free to produce as many cassettes or CDs as they wish, and there is no single instance of law-suits against such violation by any of our stakeholders. Victims are the

innocent folk performers who are not aware of their creative, performing, ethical and moral rights. On the other hand, some popular baul performers of urban origin, such as Ms. Farida Parveen (*Baul* singer) or Mr. Bari Siddiqui (folk singer) are highly paid for their performances.

Mr. Zakaria also opined that living folk poets, creators, actors and other individual stakeholders may be given protection for their lifetime plus sixty years after their death, but rights linked to the community should be indefinite. Folk creations are community based and individual folk creators should remain obliged to their original communities. A governmental authority must manage effective administration of rights and community-based organizations such as IPRs Societies should work under its jurisdiction.

11. COMMUNITY RESPONSES, NEEDS AND EXPECTATIONS

- 11.1 **Responses** : The community responses on the all kinds of misappropriations and violations of rights are quite encouraging. Major communities in CHTs and outside CHTs have their own platforms as well as their concerted efforts to resist any act of infringement of their rights. They are all the way committed to bring back harmony within their communities. They have been persistently protesting against settling the outsiders in their region since the British regime in early nineteenth century. At present they are struggling for regaining their land rights and autonomy for self-rule. The CHTs people rose in armed struggle and continued to do so till the historic Peace treaty signed in 1997. Among many existing platforms we may name the *Parbatya Chattagram Jonosanghati Samiyi* for CHTs and *Bangladesh Adibashi Forum* for outside CHTs. They feel that if their rightful demands are fulfilled, the nation-state called Bangladesh shall become a welfare state for all its citizens upholding multi-ethnic identity and cultural diversity. In our field trip during July 2005 to January 2006, almost all the community representatives expressed their views in favor of protecting their TK and TCEs under the umbrella of an effective Intellectual Property Protection Act, which will link up the indigenous and local communities with mainstream people as well as interregional and international forums. Most of the indigenous communities in Bangladesh have their community-members in the neighboring countries. So the question of equitable benefit sharing is also pertinent here. They want to learn more about these intricate aspects of intellectual property, continuity of rights, moral rights, positive and defensive protection and the management of rights.
- 11.2 **Needs and Expectations:** The needs of these communities are varied, but their expectations are few. First of all they expect unpretentious and genuine respect for the indigenous communities and willing suspension of disrespect and mistrust for them from all quarters. It is by dint of this unbiased respect for their customary laws and practices that they may exist with their distinctive identity. It is not arguable that customary law and practices of the indigenous communities are inferior to statutory laws, since the communities concerned have survived till as of now within the framework of these norms. They also expect that they will be consulted in time before taking any decision for them. So it is also needed that every community should have an appropriate agency to be acknowledged by the government. In our study we have mentioned it as *IPRs Society*. Some of the communities feel the need to identify, revive and preserve all the TCEs in their

respective locality in a museum of their own called Community Museum. Manipuri community in Bangladesh has already started the process of setting up such a museum under personal initiative of Mr. Hamom Tanubabu, a researcher and cultural activist. *The Weekly Manubarta* published from Maulavibazar reports that the proposed museum is called '*Chauba Memorial Monipuri Intellectual Property Museum*'. A famous Bengali poet of this locality laid the foundation stone of this museum on October 1, 2006. We may mention here a similar platform called *Nokpante*, a bachelor dormitory of the Garo community. It was the centre of cultural activities in the past. Now it is not seen in any Garo village. A community museum for each community may hasten the task for identifying, valuing, preserving and protecting their extinct, endangered and revitalized GRTKF. However, the primary response should come from the members of the respective communities. Eventually it will become a representative platform for dealing with cultural activities and products both for aesthetic and gainful purposes. This may also serve for the whole community as an awareness raising centre and training institute providing lessons for intellectual property and related rights.

12. RECOMMENDATIONS FOR INTERGOVERNMENTAL COMMITTEE

Since little has so far been attained to protect the endangered GRTF and their intellectual property rights of Bangladesh and other least developed countries with indigenous societies, we would not prefer to go fast to reach our goal. Political intention within our national boundary and willingness of the privileged communities of the world to enter into a balanced agreement for the protection of IPRs of GRTKF may improve the situation in near future. Our humble recommendations towards this end are :

- To respect with highest priority the identity of all indigenous and local communities and to adopt a resolution in this regard by all the State Parties.
- To request all the States to compile and acknowledge the customary laws, practices, usages, and protocols of all indigenous communities and to apply them to resist any misuse and misappropriation of their traditional rights.
- To assist the LDCs to conduct surveys of the TK, TCEs and GRs in phases exploring their aesthetic and commercial viability.
- To encourage the community-members to set up Community Museums in their locality and to provide them with appropriate support in this regard.
- To agree upon a standard draft law following WIPO guidelines for protection of GRTKF at national and international level.
- To call upon the States to enact, in the first phase, an Act at national level for the Intellectual Property Protection of TK and TCEs following the draft adopted by IGC.
- To call upon the States to enact, in the next phase, an Act at national level for the Intellectual Property of Genetic Resources following the draft adopted by IGC.

- To negotiate among the State Parties to find out minimum points of agreement for a balanced cultural flow and trade, where applicable, among all nations to gain equitable benefits, stimulation of creativity and cross-cultural diversity.
- To call upon all the States to stop violation of human rights in any form for peaceful and harmonious co-existence of all the communities of the world.

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