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Tribal representation & local land governance in India:

A case study from the Khasi Hills of Meghalaya

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ABSTRACT

In India, the Schedule Tribes have remained on the fringes of growth, but less so in the majority tribal areas of the North East. This has increased the interest in the *Sixth Schedule*, the special constitutional provision relating to these areas, recognising the tribal communities' rights of ownership and control over their land and natural resources. These communities have the advantage of protective provisions against 'external threats' from the state or private actors, compared to their tribal counterparts in other areas.¹ This article presents a case study of the socio-political dynamics of community ownership and control of land in the Khasi Hills of Meghalaya. It shows how land loss and marginalisation of families occurred in relation with a state-led township project around the capital Shillong, bringing interesting perspectives to the debates on land management in this *Sixth Schedule* region. The study indicates, firstly: that land alienation, displacement and socio-economic marginalisation affects vulnerable people in the tribal communities, despite the constitutional protection. Community land control does not in itself ensure protection for individuals against land alienation and marginalisation. Secondly: Land alienation and marginalisation can gain impetus through "external threats", including development initiatives by the state. However, displacements are also driven by *intra-community* land alienations. Thirdly: The *Sixth Schedule* aimed to protect and preserve the tribal communities' way of life and was primarily a 'settlement' between the Indian state and particular social groups. Individual social justice would presumably flow from protection and preservation of the communities' own social justice mechanisms. Communal land holdings are one such tribal social security convention that has been assumed to serve the cause of social justice. However, with time, and the influences of modern communications and the market economy, the communities are becoming more heterogeneous, which also challenges the 'tribal ethics' of land relations.

¹ The LARR Act 2013 and PESA and FRA indicate a progressive approach by the Indian state lately.

INTRODUCTION

This article is an enquiry into the social dynamics of community ownership and control of land in Meghalaya, a state in North East India. Meghalaya has a majority tribal population and is governed under a special constitutional provision, the *Sixth Schedule*, which recognizes the tribal communities' rights of ownership-control over land, forests and natural resources. The Scheduled Tribes have remained on the fringes of economic growth in India's developmental state. However, the North East Indian tribal communities, governed under the *Sixth Schedule* have on most indicators fared better than those governed under the *Fifth Schedule*, where the State has a stronger say in deciding over and acquiring land and natural resources.² This has lead activists to call for the extension of the *Sixth Schedule* to other tribal areas and to an on going debate on its efficacy among scholars concerned with marginalization and social exclusion of Indian tribes. This analysis aims to bring new perspectives into the scholarly and political discussions about the efficacy of the *Sixth Schedule* as a governance framework. The common approach has been to look at the development debate around social exclusion and marginalization of the scheduled tribes in terms of 'external threats' from the state or external private actors, such as big corporations. This article also investigates internal group dynamics as they play out under the *Sixth Schedule*. Meghalaya is the only Indian state entirely under the auspices of this special constitutional provision, unlike other states in the North East where this is only applied to certain areas with majority tribal populations. It is thus a good case for gaining insights into the workings of the Sixth Schedule.

When it was introduced in the 1949 Constitution, the *Sixth Schedule* was a unique and progressive model of asymmetric governance, and a bold step towards managing heterogeneities in the vulnerable border regions of India's North East. It was primarily a design of engagement by the modern state with its tribal communities, and as such it is rightly viewed as a form of political accommodation.³ It can also be seen as a 'settlement' or social contract between the state and the social groups, where social justice for individuals is supposed to flow from social justice for their group.⁴ Communal land holdings was one such example of an 'in-built' tribal social security net serving the cause of individual social justice.

While the practice of tribal ownership of land was constitutionally protected, the tribal institutions managing those lands were not.⁵ Instead, parallel bodies called *Autonomous*

² Virginius Xaxa, Field Notes, Assam, 2013.

³ Two main points of view dominated the Constituent Assembly debates over creation of special constitutional provisions for Assam and its Hill districts. The more assimilation-minded argued for direct federal jurisdiction owing to the volatile borders of the region that over weighed over arguments for provincial autonomy. Another dominant view, influenced by leaders such as Nicholas Roy and Gopinath Bordoloi, promoted self - government. Finally the idea of Autonomous District Councils found majority acceptance in the Constituent Assembly and was constitutionalised through the Sixth Schedule.

⁴ To what extent the framers of the constitutional provision presumed that tribal norms would (continue to) provide social protection to individual members, is open to debate

⁵ With the exception of an administrative duty of appointment and removal of Syiem (Headman), no traditional powers were assigned to the District Councils. In addition, in the *Wes Bamon v. Jaintia Hills District Council*, 1996(3), Gau LT 30

District Councils (ADC) were created. The hierarchical tribal institutions continued to evoke strong clan and tribal allegiances but faced local challenges through the operation of the new formal institutions to govern local affairs. It has been argued that the *Sixth Schedule* helped give rise to a new tribal elite changing the relations between the formal and the traditional institutions around land. These changes and challenges have weakened the social protective nature of tribal communities through increasing monetization and privatization of community land. Although the extent of these changes is difficult to establish due to the lack of land records, few question that this has been a trend. The interaction between the formal and the traditional institutions has been heightened by private extractive industry requiring control over tribal land, as well as through development interventions by the state, ranging from public developments that require land acquisition, to 'welfare' programs like bank loans requiring individually registered land holdings as collaterals. The land disputes amongst individuals and communities have also led to enhanced juridification as traditional officers as well as individuals increasingly take land disputes to formal courts of law. The courts adjudicate in part based on existing tribal norms, re-enforcing and re-inventing the social norms and practices over tribal land.

This study indicates that the benefits of community land control and the problems of land alienation and marginalisation are closely interlinked. The case studies from Meghalaya indicate problems of land alienation, displacement and socio-economic marginalisation amongst the most vulnerable of the tribal communities despite the constitutional protections. It also indicates that land alienation and marginalisation-pauperisation gains an impetus when development initiatives by the state affect the communities. However, our case studies show that displacements and marginalisation also stem from intra-community land alienations. The constitutional protections aiming to preserve the institutions and security nets provided by tribal customary law seem unable to stop marginalisation through land alienation and displacement of vulnerable members of the tribal community.

MEGHALAYA AND THE NORTH EAST

There is a host of literature concerned with the development in tribal pockets of mainland India as well as the North East of India including Meghalaya, and this study feeds into the growing debate over sustainability and the inclusivity-exclusivity discourse around the developmental Indian state.

Meghalaya is part of a larger North East Indian region that is rich in traditional natural resources such as coal and timber that fuel India's industrial economy.⁶ The region has also been recognized for its hydroelectric- and more recently nuclear energy potential. Its geo- strategic importance as India's frontier space is tremendous.⁷

decided that the District Council is only the approving authority of (this) election. B. L. Hansaria, *Sixth Schedule to the Constitution*, Universal Law Publishing Company, New Delhi: 2011, p. 60.

⁶ One of the first substantial works on the North East India was from B G Verghese, *India's Northeast Resurgent: Ethnicity, Insurgency, Governance, Development*, Konark Publications, New Delhi : 1996.

⁷ India shares porous and volatile borders with China, Bangladesh, Bhutan and Myanmar on its East.

In Meghalaya the so-called 'modernising' initiatives have come either from state agencies or have been based (although restrictively) on the private capital-based resource extraction industry. This is not unlike the other mineral and resource rich pockets of the rest of India, which also happen to be lands and forests upon which the tribal communities have traditionally relied for their livelihood and survival. These issues are deeply embroiled with challenges stemming from broader socio-cultural, political-economic and legal environmental trajectories.⁸ However, in the North East, the socio-cultural gap,⁹ and the sense of historical and geographical alienation from the mainland/peninsular India¹⁰ creates a sense of 'unevenness'.¹¹ This coincides with the political-constitutional variation between the tribal regions of India and those in the North Eastern parts of the country, exemplified by the sixth and the fifth schedules.¹² The *Sixth Schedule*, which is the focus of this study, has also been viewed as an attempt by the Indian state to federalise its frontier space.¹³

The resource rich nature and volatility of borders have lead many to highlight the 'resource curse' of Meghalaya and the rest of North East India. Nationalisation through development¹⁴ has been a core argument for numerous autonomy and separatist movements,¹⁵ as analysed in numerous studies of the North East region.¹⁶ Anthropological and sociological studies have tried to trace the development in Meghalaya and its effects upon the tribal norms and practices around land, forests and

⁸ Bengt G. Karlsson, *Unruly Hills Nature and Nation in India's Northeast*, Orient Black Swan, Social Science Press, New Delhi: 2011.

⁹ "According to Dr. B. R. Ambedkar, the tribal people of Assam differed from the tribals of other areas. As for the latter, they were more or less Hinduised (Manipur, Tripura?), more or less assimilated with the civilization and culture of the majority of the people in whose midst they lived. As for the former, their roots were still in their own civilization and their own culture. They had not adopted either the modes or the manners of the Hindus who surrounded them." B. L. Hansaria, *Sixth Schedule to the Constitution*, Universal Law Publishing Company, New Delhi: 2011, p. 12.

¹⁰ The North East is connected physically with the rest of India through a narrow corridor sometimes called the chicken's neck. Speaking of India's North East states as a region Monirul Hussain places it at the bottom of a hierarchy of peripheries. "North East suffers from being both, far from the centre and decisively dependent on it...(it is) home of innumerable nationalities, national minorities and ethnic groups belonging to different races, colours, religious persuasions and linguistic groups; all standing at visibly uneven levels of socio-economic development." Monirul Hussain, *Interrogating Development state, displacement and popular resistance in North East India*, Sage, New Delhi: 2008. P. 18.

¹¹ This sense of unevenness is also viewed in terms of (the region's) integration and identification with the pan Indian nationalism and the Indian nation state. Monirul Hussain, *Ibid.* P. 18.

¹² In Meghalaya *Sixth Schedule* applies to the the whole country: Garo Hills ADC, Jaintia Hills ADC, Khasi Hills ADC. The *Sixth Schedule* also applies to parts of Assam, Mizoram and Tripura namely; in Assam: Bodoland Territorial Council, Karbi Anglong Autonomous Council, Dima Hasao ADC; in Tripura: Tripura Tribal Areas ADC; in Mizoram: Chakma ADC, Lai ADC, Mara ADC. The Fifth Schedule applies to parts of Andhra Pradesh, Telangana ,Gujarat , Jharkhand, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan.

¹³ Sanjib Baruah, *Durable Disorder: Understanding the Politics of Northeast India*, Oxford Univ. Press, New Delhi: 2007.

¹⁴ Sanjib Baruah, *Beyond Counter-Insurgency: Breaking the Impasse in Northeast India*, Oxford University Press, New Delhi: 2011; Monirul Hussain, *Interrogating Development State, Displacement and Popular Resistance in Northeast India*, Sage Publications, New Delhi: 2008.

¹⁵ As part of its security threat perception and defence requirement, the post-colonial Indian state established new camps and cantonments to station the armed forces in various parts of the region in addition to those established by the colonial state in wake of the Second World War. It led to higher concentration of armed forces and para-military forces engaged in fighting (these forces)..." Monirul Hussain, *Interrogating Development state, displacement and popular resistance in North East India*, Sage, New Delhi: 2008. P. 26.

¹⁶ S. K. Chaube, *Hill Politics in Northeast India* Third Edition, Orient Black Swan, New Delhi: 2012; ; N. K. Das (ed.) *Exclusion, Discrimination and Stratification Tribes in Contemporary India*, Anthropological Survey of India, Rawat Publication, New Delhi : 2013; Sanjib Baruah *Op Cit.*; C. Joshua Thomas (ed.) *Polity and Economy Agenda fro Contemporary North East India*, Indian Council of Social Science Research – North Eastern Regional Centre, Shillong, Regency Publications, New Delhi : 2005.

traditional practices¹⁷. Another body of literature focuses upon the politics and instrumentality of the *Sixth Schedule* itself. A few indigenous scholars and British administrators offer interesting accounts into the history of Khasi Land and Khasi Law for the Khasi Hills of Meghalaya.¹⁸ There is also a series of works on the legal¹⁹ interpretations and political²⁰ implications of the constitutional²¹ provision.

However, there has so far been little focus on the changing politics of community land rights and their working under the *Sixth Schedule*. This might be ascribed to the following oversight, which in this study has been a critical entry point: insofar as the *Sixth Schedule* is a safeguard for the land rights of indigenous people in Meghalaya, it is essentially a constitutional contract between the state and indigenous social groups. Focus has been on the collective rather than at the individual level. It is imperative to also study the dynamics of the community's control over common lands in order to explore the extent to which the arrangement has also served individual justice with regard to land. This is a new perspective on the special provisions of the *Sixth Schedule*, focusing on how pre-existing community mechanisms respond to the forces of state-induced development and alter the politics over land. The study hopes thus to contribute to the debate around ex/inclusiveness of development in the Khasi Hills in Meghalaya.

The article explores the debate over community rights and individual land rights through the lens of current land politics amongst the people of the Khasi tribe under the Khasi Autonomous District Council, focusing on conflicts connected to a new township planned around the capital region of Shillong. An introduction to the context is followed by a discussion of the case studies and their implications for the larger narrative of state led land acquisitions and changing land relations in Meghalaya.

THE SIXTH SCHEDULE IN MEGHALAYA

In brief, with regard to tribal land the *Sixth Schedule* postulates: (a) community ownership of natural resources and land cannot be sold from 'tribals' to 'non tribals'. The state is regarded a 'non-tribal entity' except when land acquisition is towards 'community and/or

¹⁷ Eg. matrilineality, Jhum cultivation etc. Bengt G. Karlsson, *Unruly Hills Nature and Nation in India's Northeast*, Orient Black Swan, Social Science Press, New Delhi : 2011; N. K. Das (ed.) *Exclusion, Discrimination and Stratification Tribes in Contemporary India*, Anthropological Survey of India, Rawat Publication, New Delhi : 2013; Rekha Shangpliang, *Forests in the Life of Khasis* Concept Publishing, New Delhi: 2010; A. K. Nyongkynrih, *Development, Environment, and Broom Grass: A Sociological Perspective*, in Dev Nathan, Virginius Xaxa edited *Social Exclusion and Adverse Inclusion*, Oxford University Press, New Delhi: 2012

¹⁸ Monographs by J M Phira, *Administration of Land in Meghalaya*, J. M. Phira, 2010; Keith Cantlie, *Notes on Khasi Law*, Chapala Publishing House, Shillong : 2008-2009; PRT Gurdon, *The Khasis*, Akansha Publishing, New Delhi : 2012; N K Dev, *Tradition and Modernity in Khasi Society*, Spectrum Publications, Guwahati : 2004; Sujit Kumar Datta, *Functioning of Autonomous District Councils in Meghalaya*, Akansha Publishing, New Delhi: 2002.

¹⁹ Law Research Institute Eastern Region, Guwahati High Court's, *A Study of the Land System of Meghalaya*, Directed by J N Das, North Eastern Council, Shillong, Hemkosh Printers, Guwahati, 1984; Justice B. L. Hansaria, Third Edition, *Sixth Schedule to the Constitution*, Universal Law Publishing, New Delhi : 2011.

²⁰ L. S. Ghasa (ed.), *Autonomous District Councils*, Omson Publications and NEICSSR, New Delhi : 1997; L. S. Ghasa, M. N Karna and C J Thomas (eds.), *Power to the People of Meghalaya, Sixth Schedule and the 73rd Amendment*, Indian Council of Social Science Research – North Eastern Regional Centre, Shillong, Regency Publications, New Delhi : 1998.

²¹ Walter Frenandes and Melville Pereira, *Land relations and Ethnic Conflicts: The Case of North Eastern India*, North Eastern Social Research Centre, Guwahati : 2005; Walter Frenandes, Sanjay Barbora (eds.) *Land people and Politics Contest over Tribal Land in Northeast India*, North Eastern Social Research Centre and International Work Group for Indigenous Affairs, Guwahati : 2009; Justice B. L. Hansaria, Third Edition, *Sixth Schedule to the Constitution*, Universal Law Publishing, New Delhi : 2011;

tribal welfare'; and (b) the creation of Autonomous District Councils (ADCs) entrusted with land 'management' in the spirit of constitutional recognition of the tribal way of life. Meghalaya, as the only state in the federal union of India, is completely under the auspices of the *Sixth Schedule*.

Opposing concerns of assimilation versus integration for India's North East region clouded the Constituent Assembly debates. The colonial predecessors had interacted with the Far East hills of British India through the special provisions of the Government of India Act of 1935,²² re-enforcing an administrative 'gap' between mainland British India and the tribal areas of the state of Assam. This was clearly reflected in the concept of 'excluded and partially excluded areas'²³ assigned to them by the British administration. While the nationalist struggle for freedom strengthened a national identity for the peninsular Indian regions, the North Eastern Hills remained politically distant and culturally disembedded.

The Constituent Assembly created a special committee known as the North East Frontier (Assam) Tribal and Excluded Areas Sub-committee to discuss outstanding issues²⁴ for the Indian North Eastern region which, after much deliberation drafted a special constitutional provision known as the *Sixth Schedule*. It was a unique in attempting to reconcile the contrary concerns of assimilation and integration²⁵ and engaged with the conventional models of governance and land management in tribal communities. The Sixth Schedule created ADCs for some of the tribal majority areas in the region²⁶ of North Eastern Himalayas in order to help the tribal people to govern themselves according to their own traditions. Simply put, these were ethnically based political bodies which were given a special constitutional status providing differential treatment/ positive discrimination.

The state of Meghalaya has its entire territory under the *Sixth Schedule*. For the purpose of discussing land management, land in Meghalaya was traditionally managed under a tribal land management system where tribal individuals and communities owned most of the land. In order to constitutionally protect/support this order of ownership, the *Sixth*

²² It has been argued that after independence the Government of India Act 1935 continued to influence state policy and thinking towards the region.

²³ B.G. Varghese.

²⁴ As far as the political history of the Khasi Hill states and the Constituent Assembly's provisions are concerned, the committee fell short of representing the different political voices in the Khasi hills. While none of the members from the Khasi states or their Federation were party to the commission; Reverend Nicholas Roy albeit greatly revered, could not be presumed to represent the unanimous voice of the Khasis. In addition to the British territories of Khasi and Jaintia Hills, which formed only a small part of the entire region of what was to become the state of Meghalaya, there were 25 independent Khasi states, each with their own tribal chief called Siem who was chosen through the time-honoured practice of limited democracy in the Khasi society. These rulers of the Khasi States agreed after long deliberations to sign the Instrument of Accession. While 19 of the 25 states signed the Instrument of Accession on 15th Dec 1947, 6 states signed the Instrument of Accession by July 1948. Source : Constituent Assembly Debates.

However an anomaly in the history of the regional politics in Meghalaya continued since "the main reason for not signing the Merger (?) Agreement initially was that the rulers of the Khasi states were not Zamindars as they were not the owners of the land. They were merely elected heads but cannot claim any right of control over land". Source: Sujit Kumar Datta making a reference to R.S. Lyngdoh, Government and Politics in Meghalaya, New Delhi, Sanchar Publishing house, 1996, P.25.

Although the Khasi Hills states refused to sign the Instrument of Merger, they were put within Assam by an Act of State, namely, the promulgation of the Constitution of India as appeared in First Schedule to the Constitution of India. Source: S K Chaube, P. 84.

²⁵ David Stuligross, Autonomous Councils in North East India : Theory and Practice, Alternatives: Global,Local,Political, vol.24, No.4 (Oct.-Dec. 1999) Sage Publications, pp.497-525. <http://www.jstor.org/stable/40644976>.

²⁶ Tribes of what constitutes present day Meghalaya, Mizoram and parts of Nagaland.

Schedule restricted state ownership of land including forests so that the state owned only about 5%. This was of substantial importance as the region of eastern Himalayas is very rich in mineral and other natural resources and any extractive or development activity directly involves use or acquisition of tribal land.²⁷ Hence, the power of the ADCs to regulate and manage land relations with conventional tribal bodies is a direct test of a modern state engaging with tribal conventions to achieve just distributary outcomes. It enriches the general debate around the Sixth Schedule itself.

FORMALITY AND INFORMALITY IN LAND MANAGEMENT AND SOCIAL CHANGE IN THE KHASI HILLS

Arable land In India is important at many levels. “...(it) is the most valued form of property, for its economics as well as its political and symbolic importance. It is a productive, wealth creating, and livelihood-sustaining asset. Traditionally it has been the basis of political power and social status. For many, it provides a sense of identity and rootedness within the village; and often in people’s minds and has a durability and permanence which no other asset possesses.”²⁸

Land management and control in Meghalaya has historically been different than the rest of the country²⁹. Simply put, today most of land in Meghalaya belongs to the people and is owned by individuals, clans and communities. Land distribution and management is done according to the customary practices of each district and varies greatly. Despite the local variations and absence of land documents or *pattas*, land demarcations have generally been respected. Speaking about it, a scholar notes “... Because there is no particular document (about) how much land a person is holding and (therefore) a person cannot officially claim land; but by *good understanding* they manage land”.³⁰ This form of land management and regulation has found an intrinsic acceptance under the Sixth Schedule. As per the modern state laws, the Assam Land and Revenue Regulation 1886 has been adopted by the Meghalaya Governments Acts on Land and Revenue Regulation which have been more or less further adopted by the ADCs. These Acts and laws do little more than laying down the primary land control in the hands of the tribal groups. Land tenure system, management and regulations are extremely complex, varied and the land laws remain uncoded.³¹ Hence the social changes in the society have a unique relation with land and understanding(s) around it.

²⁷ Land Acquisition can be done by the state if it is for the purpose of development and tribal welfare.

²⁸ Bina Aggarwal, *A Field of One’s Own: Gender and Land Rights in South Asia*, Cambridge University Press, New Delhi: 2008. P.17.

²⁹ The British administration was acknowledged by the Khasi states through a grant of Sannad by the British administration to each Siem, which was a written acknowledgement of the supremacy of the British Govt. The Siems were allowed to run and administer their territories in accordance with their own traditions and customs. “It is interesting to note that both the Khasi Hills and the Jaintia Hills land never belong(ed) to the chiefs, Syiems or Rajas. Naturally the Jaintia Raja ... and the Syiems or other heads can not levy taxes on the Khasi people for the use of land” Pugh P.32 as quoted by Sujit Kumar Datta, p.2. “The British, never established in these hills (a) Land Revenue administration in the formal sense of the term, they acknowledged and accepted that the tax on land is unknown among the Khasis.” Phira, p.8.

³⁰ Rajendra Prasad Athparia, former Head of Office of Anthropological Survey of India (ASI), North Eastern Regional Centre, Shillong, Field Notes 2014.

³¹ Legislations that involve cadastral surveys or land records have not been undertaken to date.

Today commodification of land is directly affecting clan and community land relations. In the Khasi Hills for example, clan elites have been accused³² of selling community lands to private (albeit tribal) individual owners. It has been claimed that communal lands³³ (often on the outskirts of cities) have been sold without the knowledge, let alone approval, of other weaker/poorer community members, giving rise to a new phenomenon of ‘tribal absentee landlordism’.³⁴ This is believed to have eroded the sense of identity and rootedness with the tribal concept of land. While the symbol of power is evident in land relations, the durability and permanence of land is undergoing changes in the face of development and modern market-economy dynamics. This change in land relations has been linked to the ‘urban-centric’ development model adopted under the existing legal-institutional set up which has been causing alarm amongst some observers. “Socially and societally in the absence of very concrete legal norms, the concept of land alienation and livelihoods have potential to become very major issues in years to come³⁵.”

Some estimates suggest that private individuals now own as much as 60% of community land.³⁶ The landed tribal elite, it has been hypothesised, represents the ‘creamy layer’, an educated elite benefitting politically and economically from the special constitutional provisions of the Sixth Schedule³⁷. This argument indicates a polarization between traditional tribal authority and the new educated elite emerging from the opportunity structures of the modern state. Others believe that the poorest amongst the tribal communities are relatively ‘better off’ than their marginalized counterparts in the rest of India. This is largely owed to the tribal social security net which still continues to exist across the tribal communities of the North East. “In North East India starvation deaths

³² Through public debates, political controversies, newspaper reports and litigations.

³³ Aggarwal argues that the parallel forces of statization and privatization of community resources are primarily responsible for a quantitative and qualitative decline in the availability of communal land in South Asia. While the state policies “...typically acted to benefit selected groups over others: there has been legalisation of encroachment by farmers; auctioning of parts of commons to private contractors for commercial exploitation; and the distribution of VC land to individuals under various land reform and anti-poverty schemes ostensibly designed to benefit the landless but effectively endowing the already landed.” Bina Aggarwal, , *A Field of One’s Own: Gender and Land Rights in South Asia*, Cambridge University Press, New Delhi : 2008 (p.23).

While this process started early off for rest of India around the 19th century when the British established State monopoly over forests, the Special treatment of North East Hills both under the British administration’s’ excluded and partially excluded areas policy and the constitutional provisions of sixth schedule delayed the onset of this in the Khasi Hills of Meghalaya. As early as 1972 Rymbai Report mentions the threats from privatisation of communal lands by the elite. **Thus, while Statization may have been restricted or delayed by the Sixth schedule the privatisation of communal land by the tribal elite has continued rampantly.** The state policies such as anti- poverty programs including promotion of cash crops, promotion of settled cultivation (to discourage Jhum cultivation) , provision of bank loans and other agro help policies give an impetus to these forces (for details see Nyongkinrih A. K. Nyongkynrih, *Development, Environment, and Broom Grass: A Sociological Perspective*, in Dev Nathan, Virginius Xaxa edited *Social Exclusion and Adverse Inclusion*, OUP, New Delhi: 2012 and Bengt G Karlsson, *Op. Cit.* and Bina Aggarwal *A Field of One’s Own: Gender and Land Rights in South Asia*, Cambridge University Press, New Delhi : 2008.)

³⁴ Patricia Mukhim, editor of The Shillong Times, Field Notes, 2013.

³⁵ Doubts have been raised not merely about land grabbing by the powerful, but also about the growing trend of land selling amongst the poor in rural areas resulting in rising migration of people to the cities only to find meager livelihood options there. The social problems, such as growing substance abuse and growing crime rates, can be traced back to the development paradigm and changing land relations in the state. Views expressed by Sanjib Kakoty, Professor, Indian institute of Management, Shillong, Field Interviews 2013, 2014; and, R G Lyngdoh ,Former Home Minister of Meghalaya and current Vice Chancellor of the Martin Luther Christian University (MLCU), Shillong. Field Notes 2013, 2014.

³⁶ Rajesh Dev, Professor Political Science, University of Delhi, Interview, March 2013....

³⁷ Apoorva Baruah, Field Notes 2013 and Tribal traditions and crises of governance in North East India, with special reference to Meghalaya, Crisis State Working Paper, London School of Economics, <http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/Publications/wpPhase1/wp22.aspx>
Manorama Sharma, Critically Assessing Traditions: The Case of Meghalaya, Crisis State Working Paper, London School of Economics, <http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/Publications/wpPhase1/wp52.aspx>

(relative to rest of the country) are very rare because it is inconceivable for somebody having food on their table and others not having it...as ruleone does not find beggars because a beggar would be someone's relative and they would be ashamed (of it)".³⁸ This trajectory of inclusion – exclusion in the development debate is intrinsically connected with the changes observed in the conventional practices of community welfare. The changing land dynamics in the Khasi hills reflects these overlaps and their exchanges closely.

It may be simplistic to look at the power struggles over land in terms of modern law versus tribal conventions. The history of formal state engagements with the region has been complex. The Bordoloi Report³⁹ has been noted for the skill with which it sought to reconcile the 'hill-man's demand for political autonomy with the Assam government's drive to integrate them with the plains.'⁴⁰ The Bordoloi Commission fell short of representing the divergent political voices in the Khasi hills.⁴¹ The ADCs⁴² were intended to replace the tribal councils and conferences by adding a territorial dimension to the tribal identity of the hill tribes⁴³. The ADCs in Meghalaya, armed with their own set of legislative, executive and judicial organs, were set to resemble a 'mini state government.'⁴⁴ However in practice, their autonomy was less substantial.⁴⁵

Another significant weakness in the formal governing institutions concerned the conventional socio-political structures of tribal hierarchy. These instruments of socio-political organization were time-established instruments of direct and indirect, limited democracy.⁴⁶ Although these tribal institutional hierarchies evoked strong tribal clan-based loyalties from the people, the ADCs were not advised to establish any working every day governance relationship with the either the village level or the bloc level unit of community institutions in existence (except and in a very restrictive way in the case of the election of top unit of tribal chiefs who in case of Khasi Hills are called the *Siems*). Even now, this gap in the institutional set up creates political frictions in the governance processes of the ADCs.⁴⁷ This study found the land governance processes and relations deeply reflecting the same.

³⁸ Sanjeeb Kakoty, Field Notes 2014.

³⁹ The Constituent Assembly's sub committee the North East Frontier (Assam) Tribal and Excluded Areas Subcommittee is popularly called the Bordoloi Committee after its chairperson Gopinath Bordoloi, then chief minister of Assam.

⁴⁰ S K Chaube, Hill Politics in North East India, p.91.

⁴¹ The British territories of Khasi and Jaintial Hills formed a small part of the entire region of what was to become the state of Meghalaya.

⁴² The constitution of India came into force on in 1950, and (for the parts of what was to later become the state of Meghalaya in 1972) the ADCs of Khasi and Jaintia Hills and Garo Hills were created in 1952.

⁴³ N K Dev, *Op. Cit.*

⁴⁴ N K Dev, p12.

⁴⁵ An easy reference can be made to the different provisions in the draft constitution and the final document. In the Draft constitution the assent of the Governor to a legislation passed by the District Councils was not provided. However through the introduction of Clause 3 by the Constituent Assembly to the final document, Governor's assent was made mandatory to an extent that all legislation would be invalid until it finds assent with the Governor. Source: V.V.Rao, century of Tribal Politics in North East India, 1874-1974, P.30.

⁴⁶ The existing traditional tribal grass roots bodies such as Dorbar Shnongs in the Khasi Hills are neither constitutionally protected nor truly democratic (these bodies are not based on universal adult franchise since these bodies are tribal and have only male membership).

⁴⁷ There have been few efforts made to bridge the gap towards empowering the grass root bodies. It is not mandatory to establish Village Councils (grass-root democratic bodies known as Panchayats under the 73rd and the 74th amendments) in the Sixth Schedule areas. The tribal grass root bodies lack direct federal funding despite their local engagements with state and municipalities in every day governance and development functions. Source: Fabian

The multiple poles of authority and governance in Meghalaya: federal and state governments, the ADCs and the tribal hierarchies spin a web of laws and conventions around land. Resultant confusion and competition around community landholdings seem to water down the cause of community welfare, which is core to the idea of communal land holdings. Though there have been some efforts made towards democratizing and stream-lining the traditional grass root institutions by the Khasi Hills ADC, deep running political controversies and complex local power interests have so far failed concrete attempts towards legislations⁴⁸.

Land management in the Khasi Hills is hence embroiled in significant socio-economic and political changes that cross cut through clans and communities. Contrary to the expectations of the Sixth Schedule, the tribal idea of communal land - the safety net for the poorest – is changing, indicated by the increasing monetization of land and marginalization of the vulnerable amongst the constitutionally protected tribal population. The case studies undertaken of displaced families from the planned New Shillong Township area, highlight some of these issues and indicate that neither the protective nature of the constitution nor tribal communal land conventions have been able to prevent the socio-economic exclusion of these families.

LAND SYSTEM IN THE KHASI HILLS

HISTORICAL BACKGROUND TO LAND ADMINISTRATION IN KHASI AND JAINTIA HILLS

There are a few accounts that discuss the history of land ownership and management practices in the hills of Meghalaya. A Khasi scholar suggests that no such direct or known record exists for the Khasis and the Jaintias of the districts of Khasi and Jaintia Hills. Whatever stray accounts exist are accredited to the chronicles of the rulers of the neighboring kingdoms of Koches and Ahoms of the Assam valley. The contact with the British administration, beginning around 1826, resulted in some minor alterations by the British administrators to the existing land control system. Some minor *Syiems* (chiefs) allowed the conversion of their territory into British territory. During this process, large chunks of land were bought/leased by the British from the Khasi chiefs (eg. in Shillong from the *Syiem* of Myllem). These territories were further leased out by the administration to its subsidiary administrative units, but also to (private) businesses. It is noted by the same source that this act by the British administration was "... mandated

Lyngdoh, Strengthening grass-roots institutions in Meghalaya, Shillong Times, 13th March, 2013. Championing the cause of decentralization, The Commission to Review the Working of the Indian constitution states : "It is, therefore, to be considered whether an intermediary tier be placed under the existing Autonomous District Councils (which can be called by another name, if so desired, be divided). This tier could be representative of existing village councils and traditional systems as the First Tier of self-government where such institutions are functional and strong. This may be called the Dorbar in the Khasi Hills and by the local nomenclature elsewhere and may comprise elected members of each village from the community/traditional systems." Commission to Review the Working of the Indian Constitution, Consultation Paper on Empowering and Strengthening of Panchayati Raj Institutions/Autonomous District Councils/Traditional Tribal Governing Institutions in North East India, Dec.21st, 2001.

⁴⁸ The Khasi Hills Autonomous District Council's Village Administration Bill, 2012, has been hailed by some as a first constructive step towards real devolution of powers to the village bodies bringing them at par with the Panchayati Raj Institutions. The supporters of the Bill have argued that this would "...enable the introduction of positive democratic elements in the tribal institutions if they want to avail the opportunities provided by the 73rd and the 74th Constitutional amendments. Source: Fabian Lyngdoh, Strengthening grass-roots institutions in Meghalaya, Shillong Times, 13th March, 2013.

since Shillong was made the administrative capital of Assam⁴⁹. The significance of exclusive and differential land management carried out by the British administration is clearly highlighted by the fact that unlike the rest of its Indian territories, no land tax was collected by the British in the Khasi regions and in the Jaintia Hills, except for the Jaintia plains. "The British, never established in these hills Land Revenue administration in the formal sense of the term, they acknowledged and accepted that the tax on land is unknown among the Khasis."⁵⁰ The British administration was acknowledged by the Khasi states through a grant of *sannad* by the British administration to each *Syiem* which was a written acknowledgement of the supremacy of the British Govt. The *Syiems* were allowed to run and administer their territories in accordance with their own traditions and customs. "It is interesting to note that both the Khasi Hills and the Jaintia Hills land never belong(ed) to the chiefs, *Syiems* or *Rajas*. Naturally the Jaintia *Raja* could not impose any tax on the land of the Pnars, and the *Syiems* or other heads can not levy taxes on the Khasi people for the use of land."⁵¹

After the independence, the ADCs were the administrative authority over the territory of the state of Greater Assam. The Assam Land and Revenue Regulation 1886 was adopted by the state of Meghalaya (which came into existence in 1972) as the Meghalaya Government's Acts on Land and Revenue Regulation.

The state government of Meghalaya (formed in 1972) established a Commission on all matters relating to the occupation or use and management of land in 1973. This commission chaired by R T Rymbai submitted its Report in 1974. The Commission acknowledged two main categories of land in Meghalaya: *Ri Raid* and *Ri Kynti*. *Ri Raid* is land set apart for the community over which no persons have proprietary, heritable or transferable rights except the right of use and occupancy. Such rights revert to the community when a person ceases to occupy or use the land for a period of three years consecutively (the period can vary slightly from region to region). Heritable and transferable rights over *Raid* land apply when the occupant has made permanent improvements to the land. But these rights lapse if the occupant completely abandons the land over such a period as the *Raid Dorbar* deems enough.⁵² *Ri Kynti* is private land which can be broadly speaking either clan land (*Ri Kur*) or individual land.

INSTITUTIONAL SET UP: CO-EXISTENCE OF MODERN AND CONVENTIONAL LAND MANAGEMENT

As per the *Sixth Schedule*, land management and control is constitutionally assigned to the Autonomous District Councils. The ADCs are single-handedly empowered with the task of development and administration of the tribal people according their own genius. As per the tribal structures for the Khasi Hills, three layers of hierarchical institutions co-exist; the office of the *Syiem* (the chief), the *Raid* (intermediary level) and the *Dorbar* (local level) in the areas under the jurisdiction of the Khasi ADC. The tribal institutions administer their

⁴⁹ J.M. Phira, Administration of Land in Meghalaya. He further notes that while some parts of Khasi hills were made British territories which numbered thirty four ; the entire Jaintai Hills was made a British territory. A new office of Doloi was introduced in the Jaintia Hills who was a minor officer.

⁵⁰ J M Phira, *Op. Cit.*, p.8.

⁵¹ Pugh P.32as quoted by Sujit Kr Datta, p.2

⁵² R T Rymbai (ed.) Report of the Land Reforms Commission for Khasi Hills, Government Press, Shillong: 1975.

own local affairs under the formal administrative framework of local self-government⁵³. The symbiosis of local governance between the ADCs, state bodies and tribal bodies has been significant for land management and regulation purposes especially and perhaps more significantly in terms of land conflict.⁵⁴ The National Commission to Review the Working of the Indian Constitution (2001), although concerned with the cause of self-governance,⁵⁵ restrains from using the word 'land' from its recommended list of functions for the village level bodies. It does mention that the problem of 'property alienation and divisions should be entrusted to the village level community organizations while the "... larger issues and subjects can go to the second tier - i.e., the amended District Councils. The state legislature in this case is the third tier of governance..."⁵⁶

The overlapping jurisdictions and web of legal and para-legal conventions, tribal practices and law has created a situation where the *Syiems* enjoy control, allegiance and loyalty from tribal territories of *Raids* and *Dorbars*; while as per constitutional law, land management is a shared subject between state administration and the district council. The Khasi Hills ADC has tried to legislate on land regulation, management and setting apart of land through a bill passed in 2005 titled *The Khasi Hills Autonomous District (Allotment, Occupation or Use or Setting Apart of Land) Regulation Bill*, which still awaits the Governor's assent. On the other hand as per federal law, the state administration has the sole responsibility to acquire land under the Federal *Land Acquisition Act* (1894). Under this system, various anomalies have emerged in land management, regulation and control in the Khasi Hills some of which have been highlighted by our case studies conducted in the New Shillong Township.

THE CASE STUDIES FROM THE NEW SHILLONG TOWNSHIP (NST) PROJECT

The case of Meghalaya's capital city Shillong is unique since only a minor part land revenue management is under the mandate of the state administration while the remaining part rests with the Khasi Hills Autonomous District Council (henceforth

⁵³ An example from Shillong Municipality region : "The Dorbar Shnong Mission Compound falls under the purview of the Shillong Municipal Board and any matter related to civic amenities must be routed through the Shillong Municipal Board. The monitoring and implementation of ALL construction work of civic amenities is done by the board while the execution of the work is undertaken by the Dorbar Shnong. Thus the bills of civic works executed in the locality will not be passed by the Board unless the Rangbah Shnong certifies that the work is complete. Source: Charles Reuben Lyngdoh, *Khasi Democracy at Crossroads*, P.11.

⁵⁴ The case studies section shall deal more concretely with this. At time of conflict amongst/across tribal hierarchies, the state administration has to rely upon land titling evidence from local tribal offices, which if contested may require settlement in courts of law which again in absence of formal land records may revert back to tribal offices for evidence.

⁵⁵ The commission speaks of undoing the historic neglect as "...inclusion of the traditional systems of governance and reversing the years of marginalization and allotting specific roles and opportunities to these institutions". Source : National Commission to Review the Working of the Indian Constitution, 2001, Consultation Paper on Empowering and strengthening of Panchayati Raj institutions/autonomous district councils/traditional tribal governing institutions in north east India, <http://lawmin.nic.in/ncrwc/finalreport/v2b2-9.htm>

⁵⁶ National Commission to Review the Working of the Indian Constitution, 2001, Consultation Paper on Empowering and strengthening of Panchayati Raj institutions/autonomous district councils/traditional tribal governing institutions in North East India, <http://lawmin.nic.in/ncrwc/finalreport/v2b2-9.htm>

KHADC).⁵⁷ The state administration is only responsible for land revenue and management of a small portion of land in the heart of the capital, known as the European Ward.⁵⁸

Under the project for creating the New Shillong Township,⁵⁹ the state government acquired land under the *Land Acquisition Act*. The first part of the acquisition, in the early 1990s concerned largely private land and caused little confrontation,⁶⁰ unlike the more recent phase. The main reason for this is said to be the acquisition of communal land for the township. As the *Sixth Schedule* is the constitutional contract between communities and the state over communal land, land acquisition by the state raked up a myriad of dynamics involving legal intricacies, tribal protocols and social tensions. The debate is not merely about who has the right to sell the community land but also who owns the community land and whether community land can be sold in the first place.

The following segment is a case study from the village Mowlang Mowtari, which has come under the shroud of controversies during the second phase of land acquisitions for the New Shillong Township.

THE CASE OF MOWTARI MOWLANG VILLAGE

In the case of Mowtari Mowlang village, a controversy emerged between the overlapping jurisdictions of the *Raid Nongkrem* and *Dorbar Shnong* of Mawpdang – both of these tribal hierarchical institutions under the jurisdiction of *Hima Khyrim*. *Dorbar Shnong* is a hierarchical tribal representative body of a cluster of few villages, while *Raid* is a tribal institution composed of representative members from different *Dorbar Shnongs*. *Hima* is the tribal council above the *Raids* with a tribal chief (*Syiem*) at the top.

The case studies from Mowtari Mowlang village involve families negatively affected by the New Shillong Township project. These were instances where land acquisitions brought forth controversies over the ownership of plots of land. It seems that the ownership of land became an issue when state acquisition started. There was a controversy around tribal protocols and conventions as to the proper communal land allotments, and tribal hierarchical institutions were at loggerheads, presumably due to the difference in their interpretations of tribal conventions and practices. This is illustrated by the story offered by Saddah K Blah, a local politician:

Generations back a particular group of people had migrated to this part of the region and were recognised as owners of the village lands by the then *Syiem* after the process of *skud* (claiming of the land by the inhabitants). This process, it is claimed, had converted what was communal land into private land for the benefit of the residents. Since then these families continued to not merely reside but actively engage in agricultural and other livelihood activities on this land. Hence, in accordance with customary law, the land continued to be the property of the actual inhabitants of these villages. This according to

⁵⁷ Interview with the District Collector of the city at the time of field study in 2014, Mr Sanjay Goyal.

⁵⁸ Interview with the DC, Shillong Shri D. C. Jain, May 2014. Under the British, the Khasi Hills were not under a land revenue system but large chunks of land were bought/leased by the British from the Khasi chiefs (*Siem* of Myllem) which was then leased out to various administrative and business interests mandated since Shillong was made the administrative capital of Assam. J.M. Phira, Administration of Land in Meghalaya.

⁵⁹ NST has come to be surrounded with many controversies which at their base encapsulate the problems and challenges of land management and inclusive development in Meghalaya

⁶⁰ An observation and opinion that Angela Rangnad ... holds (incomplete)

the claims of some of the people in the village was a fact not only accepted but also ratified by the *Syiem* of Khyrim. Thus affected families have been claiming the particular land as theirs while a group of families and clans from the *Raid* (that had granted this land) have claimed it to be their own clan property or communal land which then is under their claim to be disposed off in a manner they deem fit. In this case offer it for sale to the state. (Field notes, 2014)

There have been allegations about land mismanagement and wrongful sale of communal land holdings to private individuals, but also about sale to individuals who are neither directly attached through clan ties to the concerned land plot(s) nor economically eligible for communal land allocations.⁶¹ Some vulnerable families reportedly became landless and homeless due to inability to establish or prove their ownership over the land. The conflicts are complicated by political pulls and identity struggles across a multi-layered tribal socio political hierarchy and a multi- tiered federal state.

STATE ACQUISITION OF LAND FOR THE NEW SHILLONG TOWNSHIP PROJECT

The residents of Mowlang Mowtari claim to have rejected the idea of selling their land plots under the land acquisition for the New Shillong Township Project. Land surveying is a pre requisite before an Intent Notice can be issued under the *Land Acquisition Act*. Residents of the village were advised by their *Dorbar Shnong*, the immediate local tribal body to refuse grant permission to the Land Survey team when it arrived in their village. It was claimed by some residents that the Survey was undertaken in the wee hours of another day without the cooperation or knowledge of most of the villagers. Hence, when the land records were published in the intent notification for the acquisition, their individual pieces and plots of land were not mentioned, but a large chunk of land was claimed as belonging to another individual.

Land surveying is an important step in state led acquisitions. A land survey team is a joint team of land acquisition officers from District Commissioner's office and the Land Survey officers, and seek cooperation from the local communities (generally the land owners) in establishing boundaries and ownership. The intent notification for the Land Acquisition is issued in the local newspapers. Joint inspections and local participation should clearly be important elements at this stage.

This case exposes problems from both ends. Local villagers refrained from cooperating with the survey team on the advice of their *Dorbar Shnong*. The local administration failed to take additional steps to garner support and cooperation for the land survey. There seems to be an overreliance on the 'opportunities to object' rather than on adequate confidence-building measures that stress the 'opportunities to participate'. It should be noted that the previous *Land Acquisition Act* (1893) under which these acquisitions took place did not have a clause mandating consent for acquisitions. In an interview the District

⁶¹ The economic criterion is relevant when an individual or family depend on land holding for residence or economic survival. According to Soddah K Blah, the fact that the individual owner claimed a very big plot of land as their own, in itself proof of land mismanagement since communal land allotments for survival and private use could never be given as very big plots of land to single community members or families.

Collector observed that although participation and cooperation is not always achievable, nonetheless “...enough opportunities to object are given to people”.⁶²

The case study highlights the issue of people’s resistance against and lack of trust in state-run cadastral surveys. Cadastral surveys are popularly believed to bring forth state-led land acquisitions and taxations, and are often perceived to challenge to the tribal philosophy of land belonging to the people. This may also be a reason why debates about such causes as the *Land Ceiling Act*, which are prevalent in the rest of the country, have been largely absent in the KHADC, as well as in Meghalaya’s elected political bodies.⁶³ Speaking about the controversies surrounding the New Shillong Township, the Urban Affairs minister noted that the “Suspensions over government owning land continue to exist due to such factors as the opposition lobby, (the role of) Non-Governmental Organisations that continue to create insecurity and the intra-clan family conflicts.” She further opined that the “New Shillong Township is not (really) based on the *Land Acquisition Act* per se, this is all optional offer free buying and selling, complications arise due to complicated patterns of ownership, this is not a case of land grabbing (by the state)... compensation is based on buying and selling of (any) commodity...”⁶⁴

The interface between the traditional tribal and the modern legal systems of land management (or mismanagement) is symbiotically connected with rise of intra community conflicts over land and increasing privatisation of communal land. As long as the two systems are separate, the complexities and conflicts such as those evident from the New Shillong Township controversy will continue.

INTRA-GROUP LAND ALIENATIONS

Mrs. Thyrit Lyngdoh is a resident of Mowland Mowtari village. According to her, in the year 1983 her late husband Mr. Lyngdoh had registered their plot of land in the village with the State Revenue Department in order to raise collateral for a loan from a cooperative society. Mrs Thyrit Lyngdoh claims that the loan was paid down and family ownership regained over this *khynti* land. Under the New Shillong Township Project, the survey by the administration team showed the family Lyngdoh’s land as a part of a bigger land plot owned by one Mrs. Kharkongor, resident of the Laitamukhra *Dorbar* area in Shillong, miles away from the village. The land was subsequently bought by the state administration from Mrs Kharkongor. By the time this fieldwork was done, Mrs Lyngdoh and her family (a young unmarried daughter, a son and his wife with a little child) had

⁶² DC Jain: These multiple opportunities to object present themselves at various stages such as when intention notification is published 2.finalize the objections that have been cleared 3.second declaration before going for award. Interview, May 2014.

⁶³ “The land holding pattern among the Khasis (and I include here every group from Khyntiam, Pnar, Bhoi, War etc) is the weakest link in our societal relationships. One fails to understand why only certain clans can own hectares and hectares of land in a society that has innumerable clans. How can a society that calls itself egalitarian also have such a term as “zamindar,” which is what the Kharkongor clan likes to call itself within the Hima Myllem?” Patricia Mukhim, Editor Shillong Times “Meghalaya- Heading Towards a Revolution”, 13th July, 2013. www.theshillongtimes.com/2012/07/13/meghalaya-heading-towards-a-revolution/#ruGGbpcip0DCdJRP.99

⁶⁴ Mazel Ampareen Lyngdoh, Minister of Urban Affairs, Minister of Labour and Minister of Municipal Affairs, MLA from East Shillong constituency. Field Notes 2013.

been declared squatters and their houses bulldozed twice by the MUDA (Meghalaya Urban Development Authority).⁶⁵

This example shows an intra-community conflict in this tribal community, indicative of an inherent 'disharmony between the legalities of a tribal system and a super-imposed modern state system'. In the present state of affairs there appear but a few 'miniscule efforts to integrate the two'⁶⁶.

Some of the main indications of these tensions are discussed below:

1. Community (*Raid*) land has been at the centre of contention during the recent phase of land acquisitions under the New Shillong Township Project. While the distinction between legal and social recognition over land is important; the distinction between recognition and enforcement is equally critical. "It is sometimes assumed incorrectly that legal ownership carries with it the right of control..."⁶⁷ The first case study suggests land rights had social recognition till the time the land acquired superior commercial value due to the Project.
2. Disputes over tribal norms regulating land (social recognition) cropped up and created disputes over the legal recognition of the land claims. In the second case study, communal lands also puts legal claims over land in dispute once the tribal norms from which the legal rights sprang up were disputed. According to Mrs Lyngdoh, her plot had been registered earlier, but was 'de-recognised' when communal land was sold to a private individual.
3. The cases expose the underlying intra-community conflicts in land management and control in the region.⁶⁸ There is also a mismatch between the *Land Acquisition Act (1894)* and the *Sixth Schedule*. Community land is not recognised in the *Land Acquisition Act*, but it is indirectly/intrinsically accepted through the *Sixth Schedule*. There has been no legislation from the statutory body (KHADC) regarding framing of customary land practice and management system under the modern legal set up.

⁶⁵ The story about the influential Kharkongor family and their land assets in the village under the NST acquisition found themselves described in the popular English daily Shillong Times in the following lines: "Earlier, the farmers from the area claimed that the land in possession of the Government at Mawdiangdiang was sold without their knowledge and consent by one Unikey Kharkongor of Laitumkhrak. Immediately, the Department put on hold the allocation of the controversial portion of the land to the NST project..."<http://www.theshillongtimes.com/2012/07/17/nst-land-acquisition-process-to-continue/#YGRhEyMucM17beRE.99>

⁶⁶ Fernandes, Walter and Gita Bharali. 2009. "Customary Law-Formal Law Interface: Impact on tribal culture" In T.B. Subba, Joseph Puthenpurakal and Shaji Joseph Puykunnel (eds) Christianity and Change in North East India. New Delhi: Concept Publishing Company. Pp. 93-108.

⁶⁷ Bina Aggarwal speaking of women's rights over land opines that while women's ownership may remain merely legal while the claim may not be socially recognised. P. 17.

⁶⁸ For instance in Assam, it has been argued that since Land Acquisition Act did not recognise the rights of the communities over shared land, the powerful within the communities sought to privatise land as soon as they knew that land was being planned for acquisition. Fernandes, Walter and Gita Bharali. 2009. "Customary Law-Formal Law Interface: Impact on tribal culture" In T.B. Subba, Joseph Puthenpurakal and Shaji Joseph Puykunnel (eds) Christianity and Change in North East India. New Delhi: Concept Publishing Company. Pp. 93-108.

4. Communities are faced with conflicting interpretations over the right to ownership. Lack of codification of tribal land practices gives wide room for regional/local variations and favouritism, further marginalizing the vulnerable.
5. The controversies surrounding the project also bring to fore the conflicts and tensions between the different levels of customary institutions. Contesting claims to land ownership between different *Raids* and different *Dorbars* and the alleged favouritism or neutrality from the *Syiem* of the Hima has created further intra communal tensions⁶⁹.
6. It is well – documented in numerous studies discussing Khasi land management traditions that no *Raid* land can be claimed as *Kynti* land unless the occupant has made permanent improvements upon the land. However any such rights terminate if the person concerned abandons the holding (such as a house or a field) over such a period of time, as the *Raid* councils deems long enough. That the ‘notified’ owners apparently sold the land in this area to the state as *Ri Kynti*, while they were neither living there nor had made any ‘permanent improvements’, is thus questionable. A further doubt is raised about the substantial size of the land claimed to be owned by one family/individual given the local knowledge that land in these villages were indeed converted into *Ri Kynti* by *skud*. “...it is not possible in the spirit that *Ri Kynti* can be so big. Even *Syiem* would not allow so much land going to one person through *skud*.”⁷⁰ This thus seems to be an example of increasing privatisation of communal land where more educated and powerful members of the community and clan have converted *Raid* land into private land without the knowledge of the poor and uneducated in the community. The Meghalaya State’s first Land Reform Commission, led by Shri R T Rymbai, warned against this trend as early as 1974. “A great deal of trouble and confusion has arisen of late from the indiscriminate and unauthorised issue of leases or pattas by village headmen or *sirdar* of *Raid*, or *Syiem*...both to Khasis and non Khasis. We call it unauthorised because they have not the sanction of customs nor of any duly enacted law.”⁷¹ Some local academicians and activists claim that this privatisation of *Raid* land has reached high numbers, especially in commercially viable regions in the Khasi Hills District (because of their proximity to the capital city of Shillong) and in Ri Bhoi district (because of its proximity to Assam). The loss of communal land has been a cause of concern in these districts and the attempts at controlled interventions by international agencies, such as IFAD rural livelihood programmes, have incorporated such features as Land Bank programmes in order to turn the

⁶⁹ Blah in an interview in May 2014 claimed that the *Syiem* has so far not stepped in hence rendering silent support to one group over another. The case has been well reported in the local newspapers, some of the reports voice the conflicting claims of customary institutional bodies. “Thus while both tribal institutions of Mawpdang *Dorbar Shnong* and *Raid* Nongkrem fall under the common *Hima Khyrim*, both have conflicting claims to the *Raid* Land and subsequently its acquisition under Land Acquisition Act for the New Shillong Township. While the Mawpdang *Dorbar Shnong* claimed that the *Hima Khyrim* had given the green signal for acquisition of over 1,800 acres of land despite the areas being earmarked as “village forest”; the Nongkrem *Raid* under the same *Hima Khyrim*, however, had expressed strong opposition to the proposed acquisition of this land by the government”⁶⁹.

⁷⁰ Interview with Sadon K Blah (May 2014)

⁷¹ The Government of Meghalaya, report of the Land Reforms Commission for Khasi Hills, 1974.

tide back to a communal appreciation of collective ownership of land, among other in Ri Bhoi district.⁷²

7. The case is also a reminder of potential dangers of intra-communal displacement and pauperization, caused by the near absence of land records and record of rights by statutory bodies in the state. According to the District Collector of Shillong:

“Neither the state authorities that engage in the process of land acquisitions have land records nor the Sixths Schedule institutions of ADCs hold any substantial records; any semblance of records, if at all, is kept either by individual owners or *Raid* or *Hima* executive bodies... general public meetings (and) joint inspection and surveys are done...(in) 99% of cases there are no issues, only in 1% of the cases there are problems where people do not themselves know or (because of) overlapping boundaries.... and ultimately people know in the field whose land is whose and where it is demarcated It is difficult for state authorities to ensure authenticity in record of rights...except for public hearings and public meetings... Also if educated have privatised land (it is because) no land ceiling act (is applicable here)...if there is a sensitivity to this fact ...there is some semblance of documents ratified by (either the) community or the *Hima* or (at the) *sirdar* level and if no one is objecting it is taken to be authentic enough...99% is clear 1% can be fudged which then falls under the court’s jurisdictions and (this)can happen in rest of the country as well. (District Collector Jain, Interview, May 2014.)

Given the possibilities for internal politicization, corruption and favouritism amongst the customary institutions, the result is severe erosion of the tribal values of communal land and communal safety for their most vulnerable members. While the *Sixth Schedule* itself has an appreciation for the tribal way of life at its core, these examples of land displacements call for a more comprehensive look at the internal dynamics, which were not foreseen at the time when the *Sixth Schedule* was written.

8. The case study of the Mowland Mowtari village shows displacement and pauperization of people in the interface between customary practices and formal law. More critically, the case illustrates a situation where – due to the dynamics discussed above - just and due compensation as guaranteed under the *Land Acquisition Act* have completely eroded.

THE POLITICAL DISCOURSE ON LAND ISSUES IN THE KHASI HILLS

The Khasi Hills Autonomous District Council has been embroiled in various controversies with the state government and with the tribal bodies reflecting the changing land relations and politics around land. And political maneuvering directly influences the KHADC’s responses to the township controversy.⁷³ The KHADC has in the past tried to

⁷² IFAD Rural Livelihoods Program

⁷³ The Meghalaya State minister Ampariin in an interview to the writer noted the ambivalence of District Council’s role and lack of accountability and non management of the tribal councils as reasons for the redundancy of the District Council. Field Notes 2014.

legislate land regulation and management of land. In 2005 it passed a *Bill on Allotment, Occupation, Use and Setting Apart of Land*, which, if enacted, would initiate a process of land records and regulation in Meghalaya. Unfortunately, the Bill was deeply embroiled in political controversies and never saw the Governor's assent.

The recent civil society engagement with the township controversy highlights some of the conflicting issues in the land management for the region. The representatives from district administration as well as state leadership⁷⁴ were very vocal about the under-performance of the KHADC on the land regulation issue. The council also came under political pressure from the The Grand Council of Chiefs of Meghalaya which blamed it for non-performance: "It is ironic to note that even after 61 (1952) years of existence of District Council and after 41(1972) years of Statehood we are today in 2013 still faced with conflicts and doubts over ownership of land in Khasi and Jaintia Hills."⁷⁵

This failure also highlights an inherent Centre-State controversy in the principle of autonomy of the District Councils vis-à-vis the powers of the Governor. The discretionary role of the Governor (as a representative office of the federal state) in the *Sixth Schedule* areas has been much debated in this context⁷⁶. The Governor of Meghalaya is required to act on the aid and advice of the Council of Ministers of article 163 of the Constitution on all matters,⁷⁷ (unlike in the states of Tripura, Mizoram and Assam, which have special legislative provisions).⁷⁸ The Commission to review the constitution takes a strong note of this and calls for progressive legislation to strengthen the *Sixth Schedule*⁷⁹. It has been argued that this feature of the *Sixth Schedule* was a cause of the District Council's inability to legislate land issues. Financial restrictions,⁸⁰ and the constitutional clause 12(a) granting superseding powers to the state body over any legislation passed by the ADCs in Meghalaya, are other factors critically restricting the scope for initiative and action by the ADCs. Compared to the Panchayat institutions in the rest of the country, these *Sixth*

⁷⁴ Both the DC Shillong and the Urban Affairs Minister were openly critical of the non-performance of the KHADC in initiating any comprehensive policy towards records of rights. Interviews with DC LC Jain and Minister Ampariin in May 2014.

⁷⁵ John F Kharshing, chairman, The Grand Council of Chiefs of Meghalaya (GCCM), quoted in a report in The Shillong Times, November, 2013.

⁷⁶ There has been a politically strong controversy surrounding the discretionary role of the governor in the Sixth Schedule areas. On the issue of exercise of discretionary powers of the Governor, while the states of Tripura, Mizoram and Assam have special legislative provisions⁷⁶, in the state of Meghalaya, there is no special provision and the Governor is required to act on the aid and advice of the Council of Ministers of article 163 of the Constitution on all matters, except for the limited purpose of settling dispute between ADC and State Govt. in the matter of share of royalties as provided in paragraph 9(2) Justice B L Hansaria, Sixth Schedule to the Constitution, p. 151.

⁷⁷ Except for the limited purpose of settling dispute between ADC and State Govt. in the matter of share of royalties as provided in paragraph 9(2) Justice B L Hansaria, Sixth Schedule to the Constitution, p. 151).

⁷⁸ Paragraph 20BB and Paragraph 20BA were inserted by the Sixth Schedule to the Constitution Amendment Act 1998 and 1995 respectively and provide specifically for Governors of Tripura, Mizoram and Assam to exercise their powers under the various provisions of the Sixth schedule mentioned in these paragraphs "as he considers necessary in his discretion". For further details see: Justice B L Hansaria, Sixth Schedule to the Constitution.

⁷⁹The following suggestion on the role of governor in Meghalaya: "The role of the Governor needs to be examined, especially as he has powers to hold up legislation passed by the District Councils. It should be made mandatory for the Governor to pass legislation proposed by the Council, if he does not respond within six months. There have been cases in Meghalaya where proposals by a Council have been held up for more than 10 years." Commission to Review the Working of the Indian Constitution, Consultation Paper on Empowering and Strengthening of Panchayati Raj Institutions/Autonomous District Councils/Traditional Tribal Governing Institutions in North East India, Dec.21st, 2001.

⁸⁰ The Autonomous District Councils face financial restrictions and have several times questioned the purpose of the central government funds for Autonomous District Councils being routed through the state government. I came across instances where several lower level administration clerks etc. mentioned about the non-payment of their salaries for many months during the course of my field works in 2013 and 2014.

Schedule bodies appear more deeply entrenched into the dynamics of state (provincial-federal) hierarchies. The political dynamics between state authorities; the tribal institutions; and the ADCs create a complicated web of contesting interests, eroding the efficiency and performance of the *Sixth Schedule* mechanisms. At the same time there is an alternative political discourse that questions the significance of the ADCs since Meghalaya's status of gaining full statehood in 1972.⁸¹ It is not within the purview of this work to discuss the issue in detail, but the range and polarity of reasons offered in public and political discourse to illustrate the ADCs 'ineffectiveness' in governance, provide an insight into the complexity of land management in the Khasi Hills today.

At the time of the last fieldwork for this study, in 2014, the new KHADC, elected in the same year had (in the wake of the township controversy) assumed an active position in asserting the importance of obtaining a No Objection Certificate before an acquisition of land could take place. The acquisitions under the New Shillong Township project have underlined the contending positions in matters concerning tribal land between the state administration backed by the *Land Acquisition Act* and the jurisdiction of the ADC under the *Sixth Schedule*. The Chief Executive Member (CEM) of the District Council of the Khasi Hills, Ardent Miller Basaiawmoit expressed his concern over the manner in which the State Government was acquiring land under the jurisdiction of the Council. "It is sad that the Government never bothers to take the Council into confidence while acquiring land under its jurisdiction.... The CEM assured the House that (he) would take all possible steps to ensure that the Council has full knowledge of any future acquisition of land within its jurisdiction".⁸² It remains to be seen how this situation would develop in the future.

SOME CONCLUDING OBSERVATIONS

Having received a special recognition under the Constitution of India, the situation of tribal communities - in this case, those of Khasi Hills in Meghalaya - is puzzling. While community land management and regulation is popularly opined to be a safeguard against land alienation, this is taking place in part through the very mechanisms set up to protect against it. This is illustrated through the case study of the New Shillong Township project, showing intra-community displacement and alienation. While this at one level can be categorised as a case of land alienation stemming from development initiatives of the state; there is a parallel process of intra-community land alienation threatening the livelihood, security and social identity of the people who in theory are protected by the *Sixth Schedule*.

The case studies illustrate how the poorest and most vulnerable can fall in between the constitutional and traditional institutions. The overlaps between the legal and tribal jurisdictions have not prevented a crisis in land management and control in the Khasi Hills. Legal confusions around land registration in Meghalaya in general and the surrounding areas of Shillong in particular seem to have fuelled a wave of commodification of land (including communal land) in the area. The state administrative practices, such as is some

⁸¹ Toki Blah, Interview notes, 2014.

⁸² Plans to stop land acquisition by Govt. or private parties without NOC from Council, Shillong Times, March 27th, 2014. at <http://www.theshillongtimes.com/2014/03/27/khadc-mulls-tough-law-to-thwart-land-acquisitions/#B85jWa7ZS8Xqg0T1.99>

cases honouring a land document from a *Raid* level tribal body to establish land claims is indicative of an ad hoc relationship between tribal and state law. The efficacy of ensuring justice and social exclusion is not ensured through this. In fact, as observed earlier, increasing monetization of land is a common practice amongst the dominant clans, which are known to exert pressure on the existing tribal mechanisms to convert community lands into private lands. This is perceived as a widespread phenomenon in and around urban areas, but also in rural regions of Khasi Hills of Meghalaya. The rise of a landed elite seems to have changed the role of communal land in tribal identity, and the lacunae in the ADC mechanisms and the politics surrounding their functioning, seem to have added to this.

The provision of the *Sixth Schedule* sought to engage with tribal communities, which were in the past considered to be unique from the rest of the scheduled tribes in India. It is thus relevant to consider whether these communities (continue to) share homogeneous values in their ideas about land. The township project has brought to the surface contesting views between the older and younger generations, elite and the commoners, rural and urban, educated and uneducated. Such cleavages are common in most societies and may indicate that also these tribal communities are more divided in their collective imagination and idea of development for the region and for themselves that commonly presumed.

Tensions between the parallel formal and traditional land governance systems increasingly give rise to court cases. And given the ambiguities over (communal) land, the formal legal system is increasingly engaging in the task of re-inventing as well as re-enforcing land norms and practices.⁸³ As a result, courts and legal interpretations are acquiring a new significance in shaping the communities and individuals' discourses about the development trajectory for the region.

Some civil society voices single out federal actors, interpretations and legislations, such as the Land Acquisition Act, for diluting a system that protects the commons.⁸⁴ However, in Meghalaya, where the political space is largely occupied by tribal elites, the importance of internal dynamics where influential actors in the community are largely responsible for choosing a particular model of development cannot be dismissed. From the examples discussed above, the landed elite (traditionally dominant clans) appears to favour a modern-market understanding of land, and the educated service elite was in an advantageous position to acquire (privatize/individualise) land due greater abilities to exploit ambiguities of land ownership, and easier access to the opportunities provided by the modern state structure. The poor, uneducated, non-city dwellers from the case study are examples of a vulnerable segments of the community who are too poor to establish their property rights or make informed choices about selling their land plots to the state.

The case studies from the New Shillong Township illustrate the threat of land alienation closing in on this marginalized segment from both the formal and the conventional land management structures. The lack of public support for cadastral surveys for communal

⁸³ This is a curious result of increasing number of intra community land conflicts being taken to local courts (District and Sessions courts as well as the High Court). The courts of law in absence of legal codification and land records rely upon District Administration or Tribal office's evidence while deciding ownership rights for contested property.

⁸⁴ Angela Rangnad, during her Interview in May 2014 further elaborates that the state needs to realize and accord due importance to collective ownership as a developmental aim in itself.

(Raid) lands, despite growing number of land conflicts in the Khasi Hills today, also illustrates this lacuna in the political space over land politics. At the same time, with the increasing monetization of the economy and of land, there also seems to be significant changes in the discourses over land and development trajectories, engaging both tribal and non-tribal identities.⁸⁵ Not least in the landed elite the significance of land for tribal identity appears to be changing.

⁸⁵ For details see: Kavita Soreide ,Tribal Marginalization in India: Social Exclusion and Protective Law, <https://www.cmi.no/publications/5024-tribal-marginalization-in-india>

In India, the Schedule Tribes have remained on the fringes of growth, but less so in the majority tribal areas of the North East. This has increased the interest in the Sixth Schedule, the special constitutional provision relating to these areas, recognising the tribal communities' rights of ownership and control over their land and natural resources. These communities have the advantage of protective provisions against 'external threats' from the state or private actors, compared to their tribal counterparts in other areas. This article presents a case study of the socio-political dynamics of community ownership and control of land in the Khasi Hills of Meghalaya. It shows how land loss and marginalisation of families occurred in relation with a state-led township project around the capital Shillong, bringing interesting perspectives to the debates on land management in this Sixth Schedule region. The study indicates, firstly: that land alienation, displacement and socio-economic marginalisation affects vulnerable people in the tribal communities, despite the constitutional protection. Community land control does not in itself ensure protection for individuals against land alienation and marginalisation. Secondly: Land alienation and marginalisation can gain impetus through "external threats", including development initiatives by the state. However, displacements are also driven by intra-community land alienations. Thirdly: The Sixth Schedule aimed to protect and preserve the tribal communities' way of life and was primarily a 'settlement' between the Indian state and particular social groups. Individual social justice would presumably flow from protection and preservation of the communities' own social justice mechanisms. Communal land holdings are one such tribal social security convention that has been assumed to serve the cause of social justice. However, with time, and the influences of modern communications and the market economy, the communities are becoming more heterogeneous, which also challenges the 'tribal ethics' of land relations.

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