INTERFACE BETWEEN CUSTOMARY AND FORMAL LAND MANAGEMENT SYSTEMS: MIZORAM, INDIA

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Paper prepared for presentation at the
“2017 WORLD BANK CONFERENCE ON LAND AND POVERTY”
Abstract

This paper analyzes the interface between formal and customary forms of land management, in the Indian state of Mizoram. Mizoram is inhabited by a tribal population, which traditionally followed a communal-based village-centric form of land management aligned with their unique form of shifting cultivation. Traditionally, land was held communally at the village level with individual rights being limited to temporary usufruct rights. Since India got independence from British rule in 1947, Mizoram has enacted various legislations to formalize their landholding systems. These laws attempt to reconcile the reality of Mizoram’s traditional systems with the requirements of a modern land administration. However, the process of convergence of such protected areas with modern state-oriented land management and administrative structures has not been smooth and raises many questions. This paper analyzes the gaps that are arising in the process of formalizing and privatizing traditional communal land rights. This analysis specially looks at these rights in the context of land acquisition. Mizoram faces a severe infrastructural deficit, dealing with which requires vast tracts of land on an urgent basis. This is inevitably creating a flashpoint for potential disenfranchisement of traditional landholders in Mizoram, which necessitates such an analysis.

Key Words: Customary; formalizing; indigenous people; land management; land acquisition
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1. Introduction and Context

In this paper, we explore the land management systems of Mizoram to analyse the interplay between the traditional forms of local community-based land management and the modern system based on state-oriented individualized forms of land rights. Mizoram provides a unique subject for such an analysis. Traditional and customary systems of land management are deeply entrenched in Mizo society and a vast part of the state is governed by customary norms. Since independence, Mizoram has enacted various land legislations which have sought to formalize the traditional systems. Thus, Mizoram provides the perfect subject for the analysis of this conflict.

Mizoram is located in the north-eastern part of India. Nearly 79.2% of Mizoram’s geographical area is covered by forests (North Eastern Council Secretariat, 2015). Traditionally, agriculture was the mainstay of the local population in Mizoram, with jhum or shifting cultivation being the primary form of agriculture. 94.4% of Mizoram’s population total comprises Scheduled Tribes, which are indigenous groups accorded special constitutional status and protection.

This paper covers the land ownership pattern and land administration systems of Mizoram. For this, we use the term ‘land management’ as it better encompasses the traditional systems of land allotment, such as the institution of Chief-ship, customary land laws, temporary settlements etc. (Fourie, van der Molen, Groot, 2002).

The paper is structured to highlight the process of evolution of the systems of land management in Mizoram. In Chapter 2, we begin by looking at the land system under the traditional Village Chiefs and the changes which came about with British rule. This is followed by Chapter 3, where we look at the evolution of the legal regime governing formal land management systems after India became independent from British rule in 1947. In Chapter 4, we analyse the current legal regime governing land management and land allotment. This is primarily shaped by the new Mizoram Land Revenue Act, 2013, which has collated a variety of parallel and overlapping legislations on the subject. In Chapters 6 and 7 we analyse the key flashpoints in the interface between the customary and formal systems of land management. Chapter 6 specifically looks at how holders of different types of temporary passes are affected. Chapter 7 focuses on this conflict in the context of land acquisition. This chapter analyses the legal framework of land acquisition, including the newly enacted Mizoram (Land Acquisition, Rehabilitation and Resettlement) Act, 2016 as well as various court judgments which have dealt with these traditional rights.
2. Traditional Land Management: Village Chiefs in British India

The indigenous population of Mizoram, the Mizos, were formerly known as the Lushais and are believed to have entered the state during the 17th century AD from Myanmar. The Mizos were independent tribes till they were annexed by the British and proclaimed as a part of the British-India in 1895.

The traditional system of land management in Mizoram was centred around the village and based on the principle of communal land management. The Village Chief was traditionally regarded as the absolute proprietor of all lands within his territorial jurisdiction and he was responsible for allocation and management of land within the village. The commonly practiced form of agriculture in Mizoram was shifting cultivation, which was locally called jhum. Shifting cultivation involves clearance of forest, drying and burning debris, followed by the cultivation process. After harvest, the land is left fallow for vegetative regeneration and cultivators repeat the process in a new plot designated for the year for jhum cultivation. In jhum cultivation, there is neither a permanent plot for cultivation nor any absolute ownership right over land by an individual household. The cultivators have ‘usufruct rights’ on land, without any right of inheritance or transfer. This right ceases as soon as cultivation stops. The Chief, upon advice of the ramhauls, experts on land matters, would allot land for jhum or shifting cultivation. These plots were allotted on a first-come-first-serve basis. In return, the villagers paid a tribute or fathang to the Chief. (Parry, 1927).

In 1893, the British enacted the Inner Line Regulation Act, which restricted the entry of outsiders into territory beyond the prescribed line in tribal areas. In Mizoram (then the Lushai Hills), this contributed to the safeguarding of the traditional land management system.

In 1898, the British merged the North and South Lushai Hills Districts to form one single district, the Lushai Hills District and placed it under the administration of the Chief Commissioner of Assam. In 1898, Col. J. Shakespeare, the then Superintendent of the Lushai Hills District, formulated a Land Settlement policy. Under this policy, each Chief was given a certain area to administer and Chief-ship was made hereditary. The chief-ship was legitimized by issuing a land record document called ‘Ramrilekha’ to define the assigned territory. In this way, settlement stabilized village boundaries. In Mizoram, the British retained the pre-existing authority structures and did not disturb the Chief-ship system as far as land administration was concerned. The attempt was to impose as few (legal) enactments as possible, and to rely on customary codes and practices. (Hassan, 2006).
In 1921, Lushai Hills District was declared a ‘Backward Tract’ pursuant to the provisions of Section 52A of the Government of India Act, 1919. This meant that this area was excluded from the jurisdiction of the Legislative Councils and only the Governor-General in Council was empowered to regulate on matters affecting the area. The Lushai Hills were declared an ‘Excluded Area’ under the Government of India Act 1935. This meant that no federal or provincial legislation automatically applied to the Area. British rule, therefore, established a precedent of giving special protection to hill regions like Mizoram, while preserving their traditional land management systems – a precedent, which continued after India got independence from British rule.

3. Evolution of Land Management Systems after Independence

In 1947 when India received independence from British rule, Mizoram (then the Lushai Hills District) was part of the state of Assam. In order to protect the traditional customs and interests of indigenous groups, certain areas were demarcated under the Sixth Schedule of the Indian Constitution. The Sixth Schedule in 1952 provided for the creation of an Autonomous District Council in the Lushai Hills District.

In this period, there was a strong movement against the traditional system of Village Chiefs in Mizoram, led by the Mizo Union. As a consequence, the Assam Lushai Hills District (Acquisition of Chiefs’ Rights) Act, 1954 was enacted, which abolished the traditional institution of Chief-ship. The rights of the village Chiefs were taken by the government under the provisions of this Act. Abolition of Chief-ship meant that land became the property of the state and Chiefs’ privileges no longer existed.

With the abolition of Chief-ship, Village Councils were established to take over the administration of the village and carry out the functions of the erstwhile Chiefs. These democratic institutions were introduced under the Lushai Hills District (Village Council) Act, 1953, and the Pawi-Lakher Autonomous Region (Village Councils) Act, 1954 to cover the entire state. The elected Village Councils started functioning from 1954. These newly constituted Village Council’s functions and powers were limited to administrative, judicial and land-related issues. The Village Councils were empowered to allot land for jhum cultivation within their village boundaries every year (Section 8, Lushai Hills District (Village Council) Act, 1953).

In the 1950s, various revenue laws were passed, which laid out the foundations of the formal land management system in Mizoram. Unlike other land reform regulations in the country, Chief-ship abolition in Mizoram did not mean that ownership automatically passed on to rights-holders under the
former Chiefs. All allotments given by the chiefs were cancelled and landholders had to seek fresh allotments or get their land recorded and registered with the Deputy Commissioner or District Council.

The Lushai Hills District (House sites) Act, 1953 empowered the Village Council to allot sites for non-agricultural or residential purposes within its jurisdiction by the issuance of a patta. The authority of the Village Councils did not extend to the towns of Aizawl, Lunglei, Demagiri, Sairang, Kolasib, Champhai and Vanlaiphai (Section 3).

With regard agriculture, traditionally, shifting cultivation or jhum was the primary form of cultivation. The allotment of land for jhum cultivation was regulated by Lushai Hills District (Jhumming) Regulation, 1954 (amended in 1984). Under this Act, the Village Council was empowered to allot lands for jhum cultivation from among previously demarcated jhum lands by a draw of lots every year.

The Mizo District (Agricultural Land) Act was enacted in 1963 to regulate the allotment of all agricultural land outside the notified town areas by the Administrator. This allotment could be permanent through the issuance of a ‘Patta’ or temporary, by the issuance of a ‘Periodic Patta.’ The Patta would confer heritable and transferable rights on the land. A Periodic Patta would have to be renewed upon the completion of its term and could be converted into a Patta upon making an application.

Meanwhile, in the 1960s, Mizoram saw a period of protests and insurgency, with the Mizo National Front seeking to establish a sovereign Mizo state. In 1972, Mizoram was accorded the status of a Union Territory in India. The struggle continued till the signing of the Mizoram Accord between the Mizoram National Front and the Government of India, as a consequence of which the separate state of Mizoram was created in 1986.

Pursuant to the Memorandum of Settlement, in 1986 the Constitution of India was amended and Article 371G was incorporated with special reference to Mizoram.

Article 371G: Special provision with respect to the State of Mizoram

Notwithstanding anything in this Constitution

(a) no Act of President in respect of
   (i) religious or social practices of the Mizos,
   (ii) Mizo customary law and procedure,
(iii) administration of civil and criminal justice involving decisions according to Mizo customary law,
(iv) ownership and transfer of land,
shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides:

Provided that nothing in this clause shall apply to any Central Act in force in the union territory of Mizoram immediately before the commencement of the Constitution (Fifty third Amendment) Act, 1986

(b) the Legislative Assembly of the State of Mizoram shall consist of not less than forty members

Thus, Mizoram received special constitutional protection to administer its affairs in respect of ownership and transfer of land.

In 1984, the then state government adopted the New Land Use Policy (NLUP) to promote settled cultivation and discourage traditional jhum cultivation, which was perceived as wasteful. The Policy was revived during 1993-1998 on a larger scale. The NLUP attempts to wean away farming families away from the traditional jhum cultivation by providing them a sustainable income. The Policy involves encouraging settled farming. Under the NLUP, the local administration department of the state government allots one to two hectares of land (patta) to families practicing shifting cultivation on long lease basis, for carrying out settled agriculture, horticulture, dairy farming, pig farming, raising of plantation crops etc.


Through the process of massive political, social and economic transition between the 1950s and 1970s, Mizoram continued with the laws it inherited from its days as the Mizo District. Since Mizoram was elevated to a Union Territory and to statehood, no new land laws were enacted and the various coexisting land laws were not reconciled very well leading to much repetitive content, which often created situations of ambiguity. To make up for this lacuna in the legal framework, in 2013, the state of Mizoram enacted the new Mizoram (Land Revenue) Act, 2013 and the Mizoram (Land Revenue) Rules, 2013. This Code repealed all previous legislations governing land allotment, management and land revenue (Section 131).
The new Act makes clear that revenue land in Mizoram is of two types - agricultural and non-agricultural land. Agricultural land is allotted only by the Revenue Department in the state (Sections 41 and 43, Mizoram Land Revenue Act, 2013). Non-agricultural land in villages may be allotted by the Village Councils within the village perimeter (Section 21, Mizoram Land Revenue Act, 2013).

The urban – rural demarcation in Mizoram is effected through demarcation of areas as ‘town’ and ‘sub-town’ areas. Land in town and sub-town areas, as notified, is not allotted for agricultural purposes (Section 34, Mizoram Land Revenue Act, 2013) and comes under the purview of Directorate of Land Revenue and Settlement. Cadastral survey was restricted to town and sub-town areas, which come under the purview of the Directorate of Land Revenue and Settlement. Mizoram Currently 78 towns and sub-town areas in six districts - Aizawl, Champhai, Kolasib, Lunglei, Mamit, and Serchhip - have been notified by the Government of Mizoram.

Thus, there are two types of land systems that coexist in Mizoram – those administered by the Revenue Department and those administered by the Village Councils. Land allotment is done by the government on the review and sanction of the Site Allotment Advisory Board (SAAB).

The Village Council, in villages where jhum is practiced is now only empowered to allot land for any special economic programme, as an alternative to jhum for a period of one year at the first instance or as may be required, in accordance with the guidelines earmarked by the government (Section 14, Mizoram Land Revenue Act, 2013).

The current land ownership system in Mizoram formally recognizes four kinds of land ownership. These four classes of land-holders are explained in the Mizoram Land Revenue Act, 2013 as follows:

1. **Land Settlement Certificate holder** is a person to whom land has been permanently settled for agricultural purposes such as, growing particular crops or for mixed farming, or for non-agricultural purposes such as, construction of a house (Section 21). Thus, an LSC can be issued for both, agricultural and non-agricultural purposes. An LSC holder is deemed to be the ‘owner’ of such land (Section 22), having a permanent, heritable and transferable right, title, interest and peaceful possession in the land (Section 23).

2. **Periodic Patta holder** is a person to whom land has been leased out for a fixed or limited period for specific purpose such as, commercial plantation, horticulture and the like (Section 21). The Periodic Patta holder is in the nature of a temporary licensed cultivator (Section 24), having a temporary right, title, interest and possession in the land. Importantly, the Periodic Patta holder
does not have the right of transfer or inheritance beyond the period of issuance of the document. A Period Patta is valid for a period of five years and expires thereafter (Section 25).

3. **Pass holder** is a person to whom a specific permission is given by the Government only for construction of a house, shop, stall inside and outside town area. In places where survey and settlement operation has not been done, the Village Council is given authority to issue such Pass inside a village perimeter as may be notified by the Government from time to time (Section 21). A Pass holder only has rights of use and occupancy and no right of transfer, inheritance or sub-letting (Section 27).

4. **Lease holder** is a person who is given a lease of specified tenure to occupy certain parcel of land for specific purpose like industry, educational institution, etc. (Section 21).

Thus, it is clarified that only Only lands held under the Land Settlement Certificate (LSC) can be transferred. Other kinds of landholding reflect usufruct rights on community land and cannot be transferred. This has changed the position from the 1963 Act under which heritable and transferable rights were also available to Patta holders. The category of Patta holders has now been removed and replaced either with a Periodic Patta holder or a Land Settlement Certificate holder.

Under the new Act, like in earlier legislations, the purpose for which a piece of land is used is strictly regulated. The Revenue Authority has the power to cancel the allotment if the land is used for any purpose other than that for which the allotment was made (Section 33). Similarly, in urban and notified town areas, house-sites and plots are allotted under a Land Settlement Certificate on the condition that a house is to be constructed on the plot within a period of ten years. Further, sale of such plot is prohibited for a period of ten years (Section 36).

The new Act also clarifies the question of mortgaging land. The mortgage of land by land-holders of both, agricultural and non-agricultural land is permitted. A Land Settlement Certificate provides a clearly mortgage-able title. The new Act now also allows for mortgage by a Periodic Patta-holder or a Pass-holder or a Lease-holder only upon permission from the written government (Section 30).

5. **Interface between Formal and Traditional System – Key Issues**

One of the key features of the process of formalizing land management systems in Mizoram has been the undermining of customary communal ways of holding land. Community land is typically set aside
for use by all its members without the right of private ownership. Community land is managed in a way by which different areas are demarcated for residential purposes, agriculture, creating buffer zones and, in the case of Mizoram, for shifting or jhum cultivation as well. This type of communal land management is typical of customary laws, especially in the north-east in India. The modern, formal systems of land allotment and ownership, however, are based on the principle of individual ownership.

Nongkynrih in Fernandes, Barbora (2008) discusses the process of ‘privatization’ of communal lands in the north-east in India. He notes that communal land allows all members of the community to access land, while maintaining solidarity and collective control over the land. The process of ‘privatization’ can lead to inequality and social differentiation and loosen solidarity. The process of privatization is spurred on by the effects of the market economy, exploiting the resources of land as well as state policies. State policies, in particular, have taken away the traditional rights of the tribes and subsumed them within the state, which is now the de jure owner of land. This has affected how the tribes administered their affairs themselves. The state also influences access to development programs, finance and trade. These demand formal private land ownership documents, which further incentivizes the move away from traditional communal patterns of land ownership. The process of privatization is also hastened by land acquisition for developmental projects. Privatization thus, creates issues of legitimacy between traditional political bodies and modern bureaucratic state organizations. In Mizoram, the coexistence of traditional as well as formal forms of landholding has created various contradictions, some of which are explored below.

5.1 Rights of temporary patta holders - Periodic Patta

The Periodic Patta holder has temporary rights on agricultural land. These rights are not heritable or transferable. Under the Mizoram (Land Revenue) Act, 2013 the validity of a Periodic Patta is five years, after which it expires, unless renewed or converted to an LSC.

Under the New Land Use Policy as well, the state has taken up a policy of promoting settled cultivation through the allotment of agricultural land plots on a Periodic Patta basis. Over the years there has been a steady increase in the number of Periodic Pattas which have been issued by the Revenue Department. In a sample survey conducted by Singh, Arora and Singhi (2012), there is a definite upward trend in the number of passes being issued. See Table 1 below:
A Period Patta is valid for a period of five years and expires thereafter. It is incumbent upon the pass-holder to seek a renewal. If the Patta holder does not renew his document in time, the same expires. However, Singh et al’s (2012) study showed, awareness on this count is low, with over 50% of the respondents not being aware that the Periodic Patta is to be renewed every five years. In the same survey, 45% of the respondents did not know that the Patta-holder has to obtain the renewal himself.

For renewal of the Patta, the holder needs to visit the District Revenue office at the district headquarters. The District Revenue office is the lowest revenue unit. There are no revenue offices at the sub-divisional, block or village level. Thus, it is difficult, time-consuming and expensive for many villagers to visit these offices, especially given the hilly terrain and poor transportation in Mizoram. In the survey of 192 respondents across four districts conducted by Singh et al (2012) nearly 40% of the respondents said that they had to travel a distance of 21-40 km to reach their nearest District Revenue office.

Table 1: Periodic Patta – Year of Issuance among Sample Respondents. Cited from Singh, Arora and Singhi, 2012

<table>
<thead>
<tr>
<th>Year</th>
<th>Series1</th>
</tr>
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<tbody>
<tr>
<td>1970-79</td>
<td>8</td>
</tr>
<tr>
<td>1980-89</td>
<td>10</td>
</tr>
<tr>
<td>1990-99</td>
<td>16</td>
</tr>
<tr>
<td>2000-09</td>
<td>26</td>
</tr>
<tr>
<td>Do not know / Can’t remember</td>
<td>2</td>
</tr>
</tbody>
</table>

Table 2: Distance of Respondents from nearest District Revenue Office. Cited from Singh, Arora and Singhi, 2012

- Less than 1 km: 7%
- 1 – 20 km: 17%
- 21 – 40 km: 39%
- 41 – 60 km: 28%
- 61 – 100 km: 3%
- Do not know: 6%
Thus, Periodic Patta holders face a variety of systemic obstacles in asserting their rights. This affects their ability to access a variety of related facilities such as credit and markets. Further, this has obvious implications for the Periodic Patta holder if their land is acquired. In the case of Thanzauva v State of Mizoram (RFA No. 36 of 2011 before the Hon’ble Guwahati High Court, Aizawl Bench), the claim of an aggrieved party for compensation on the basis of a Periodic Patta was not upheld as his Patta had expired and the same had not been renewed.

5.2 Rights of Pass holders

A Pass holder is a person to whom a specific permission is given by the Government only for construction of a house, shop, stall inside and outside town area. In places where survey and settlement operation has not been done, the Village Council is given authority to issue such Pass inside a village perimeter as may be notified by the Government from time to time (Section 21). A Pass holder only has rights of use and occupancy and no right of transfer, inheritance or sub-letting (Section 27). This kind of Pass is commonly known as a House Pass or House Site Pass. It may sometimes be called a Shop Pass or Stall Pass depending on the purpose for which it is allotted.

Prior to the Mizoram Land Revenue Act, 2013, allotment of house sites was regulated by the Lushai Hills District (House Sites) Act, 1953, which empowered a Village Council to allot sites within its jurisdiction for residential and other non-agricultural purposes. A House-Site Pass provided only a ‘usufruct’ right with the Pass being valid for only a year. After this, the holder could apply to convert the site into a Land Settlement and obtain a Land Settlement Certificate, which represented permanent, inheritable and transferable ownership. In a survey of 206 households across four districts by Singh et al (2012), the distribution of the ownership pattern of house sites showed that 37% of the house site passes were allotted by Village Councils and 13% were in the form of LSCs which were allotted by the Revenue Department. 16% of the passes were issued by the Revenue Department. See Table below:

<table>
<thead>
<tr>
<th>Ownership Pattern of House Sites</th>
</tr>
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<tbody>
<tr>
<td>House site allotted by Village Council</td>
</tr>
<tr>
<td>LSC (by Revenue Department)</td>
</tr>
<tr>
<td>Pass (by Revenue Department)</td>
</tr>
<tr>
<td>Purchased</td>
</tr>
<tr>
<td>1%</td>
</tr>
<tr>
<td>1%</td>
</tr>
</tbody>
</table>

*Table 3: Ownership Pattern of House Sites, Cited from Singh, Arora and Singhi, 2012*
5.3 Rights of ‘Garden Pass’ holders

Village Councils have the statutory authority to issue passes for houses and non-agricultural purposes within the village perimeter according to specifications determined by the Government. However, Village Councils, in practice, often issue passes for agricultural purposes as well. These ‘Garden Passes’ are a relic of the traditional system wherein the Chiefs had the authority to allot land within the village for cultivation, including for *jhum* or shifting cultivation. The Village Councils also had the authority to allot *jhum* land. However, that authority has now been taken away with the repeal of the Lushai Hills District (Jhumming) Regulation, 1954 in the 2013 Act. In practice, however, many Village Councils continue to issue ‘Garden Passes’ for agricultural purposes.

Recently there have been some news reports of a High Court judgment from Aizawl which has held that ‘Garden Passes’, a commonly issued document by the Village Council for agricultural land does not have any legal backing and therefore, holders of these Passes would not be entitled to compensation for their land (Halliday A., in Indian Express, 2015). This judgment would require further analysis, but it points towards the fault-line between customary forms of landholding and the formal system of managing land allotment. Although many Village Councils in practice, issue Garden Passes to willing and needy cultivators, the lack of formal sanction precludes them from claiming rights on the land. This puts holders of such passes at a particular disadvantage when it comes to claiming compensation if their land is acquired.

6. Land Acquisition

There is a severe deficit of physical infrastructure of connectivity, power and telecommunications in the north-east region of India, and this has been a focus area of the Indian and state governments in recent years. According to information provided by the Minister for Development of North Eastern Region (NoNER) in the Rajya Sabha on August 11, 2016, there are a total of 197 ongoing road development projects in the north-east and 20 major railway projects. A Comprehensive Telecom Development Plan for North-Eastern Region at a cost of Rs.5336.18 crore is under implementation (Press Information Bureau, 2016). Funding for infrastructure is also coming in from various international and multilateral donors including the World Bank, Asian Development Bank etc.

Land is a key requirement for such infrastructure development activities and would involve the displacement of a large number of people. Land acquisition in the state of Mizoram was governed by
the colonial era Land Acquisition Act, 1894, till 2013 when it was repealed. Under the 1894 Act, “person interested” included all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land; (Section 3(b)). “Land” was defined to include “benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.” (Section 3(a)).

In 2013 this Act was repealed and in 2016, Mizoram enacted the Mizoram (Land Acquisition, Rehabilitation and Resettlement) Act for the state. On account of constitutional protection granted to the state under Article 361G, the state was empowered to enact its own land acquisition law. While the new Act has been drafted with specific reference to Mizoram’s local land allotment systems, many of the gaps with traditional forms of land rights remain in the new Act as well.

Community land and land held under customary laws are a challenge. Those people owning land under the Land Settlement Certificate (LSC) are able to get compensation for their lands as they are statutorily recognized as having ‘ownership’ rights. However, the situation has not been so clear for those holding ‘Passes’ and ‘Pattas’ and those dependent on jhum or communal lands. These types of land rights have their roots in communal lands which were allotted by Village Councils on a temporary basis. These Passes and Pattas were also recognized as temporary rights on the land by the land laws passed in the 1950s and 1960s in the state. (Singh et al, 2012). This situation has serious implications for traditional rights-holders, who may not get compensation for their lands, would be displaced and not rehabilitated properly, thereby losing not only their lands but also their livelihoods.

To illustrate, we looked at the type of documents held by Project Affected Persons for agricultural land in an ongoing World Bank funded state roads project in Mizoram. Out of 252 PAPs on the alignment from Chumkhum village to Chawngte, only 3% had a Land Settlement Certificate or a clear ‘ownership’ document. The overwhelming majority had ‘VC Passes’ (56%) or Periodic Pattas (41%). This statistic, however, clearly shows that allotment of agricultural lands by Village Councils is widespread. However, Periodic Pattas and VC Passes confer ‘usufruct’ rights on the land, a reasoning, which is commonly used to deny compensation for land in these cases.
This question was settled by the Hon’ble Guwahati High Court in the State of Mizoram & Ors v Lalbiakthanga. The judgment was upheld by the Hon’ble Supreme Court (Civil Appeal No.2731 of 2012) and the position was also reiterated in the case of Power Grid Corporation of India v Kawlbaia (Civil Appeal No.(s) 8792/2013) by the Hon’ble Supreme Court. The Court held that

“In the present case the respondent is holding a Periodic Patta since 1976 continuously till the acquisition of the land. Therefore, the contention advanced by the appellants that the respondent being a Periodic Patta holder is not entitled to any compensation is without any substance and is hereby rejected. In any case, the crucial expression appearing in Section 18 of the Act is “person interested”. Any “person interested” can invoke the provision of Section 18 of the Act. The expression “person interested” is defined in Section 3(b) of the Act. As per the said definition, the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.”

Thus, it is now settled position that Periodic Patta holders are ‘persons interested’ as per Section 3(b) and entitled to compensation for the land.

Under the new 2016 land acquisition statute enacted by the state of Mizoram, it is specified that “in case of acquisition of land covered by any valid temporary allotment whereby the land holder has no permanent transferable right under any existing law, compensation may be paid for the land so
acquired along with the properties attached thereon, as per assessment made by the Collector of the District concerned provided that the validity of the tenure of the said land holding has not expired.” (Section 28). As per the 2013 Mizoram Land Revenue Act, the validity of a Periodic Patta expires after five years unless renewed (Section 27) and it is incumbent upon the pass-holder to seek a renewal. As discussed above, awareness to obtain such renewal is low and there are various structural impediments to villagers being able to renew their Pattas. In the case of Thanzauva v State of Mizoram (RFA No. 36 of 2011 before the Hon’ble Guwahati High Court, Aizawl Bench), the claim of an aggrieved party for compensation on the basis of a Periodic Patta was not upheld as his Patta had expired and the same had not been renewed.

Holders of Village Council Passes also found their claims for compensation for land were not recognized. These passes were issued by the Village Councils to allot sites within their jurisdiction for residential and other non-agricultural purpose under the provisions of the Lushai Hills District (House Sites) Act, 1953. The Act also provided for circumstances in which such pass-holders could be ‘evicted’ from their plot. When their lands were acquired, VC pass holders are typically compensated just for the crops or houses on the land. The Aizawl High Court has now held in various cases,

The Aizawl High Court in Phirthanga and ors v District Collector and ors (L.A Case No.4/2013) held that although the 1894 Act is silent on acquisition of partial interest, Village Council Passes did not have any clause restricting the rights thereunder and the pass-holders had paid taxes regularly. Thus, they would be entitled to compensation for land.

It appears, however, that Court rulings notwithstanding, compensation for land is not widely given when land is acquired. In the study conducted by Singh et al (2012), in a survey across four districts, 50 respondents whose lands had been acquired unanimously said that they received no compensation for their lands which were acquired. Singh et al (2012) report that some major development projects, such as the Serlui B Hydel Project in Kolasib district, Lengpui Airport in Aizawl district and Sainik School in Serchhip district have displaced many tribal families. For the Serlui Hydel project, families having LSC plots were compensated land for land; those who had periodic patta were compensated for standing crops only; and those who were dependent on community land were provided house plots but no compensation was given to them in lieu of community land. After displacement, these families faced serious livelihood problem as they did not have any alternate source of livelihood.

This new Mizoram (Land Acquisition, Rehabilitation and Resettlement) Act, 2016 is purported to be better aligned with the unique land management systems in the state. Section 2(w), acknowledges a variety of rights over the land, and specifically includes as “persons interested” all persons
(a) who are in possession of landed property under valid LSCs, House Pass, Shop Pass, Stall Pass, Periodic Patta and Land Lease issued by the Government under the Mizoram (Land Revenue) Acts, 2013 and the Rules made thereunder;

(b) who are in possession of house passes issued by the Village Council within the perimeter of the village which is not notified as ‘town’ or ‘sub-town’ or ‘station area.’

Further, it is specified that “the perimeter of a village shall mean the area of human habitation surrounded by the safety reserve or by boundaries notified by the Government as the perimeter of that village, and only the House Pass issued within such village perimeter and its genuineness confirmed from the original records of the Village Council concerned shall be entertained.”

This highlights that the Village Council is only empowered to issue house site passes within the Village perimeter. Thus, any pass issued by a Village Council for agricultural purposes is not recognized by formal laws or for the purposes of compensation in case of acquisition of land. This provision disregards the common practice of the Village Council issuing passes for purposes other than house sites, and represents a shift from the traditional system where it was the Village Chief who had the authority to allot land plots for agriculture, including for jhum cultivation.

However, while the Act acknowledges a variety of rights on the land, it implicitly institutionalizes a hierarchy by which some of the traditional forms of land allotment are disadvantaged vis-à-vis those having formal recognition. This is reflected in the First Schedule, which lays out three categories of holdings of land for computation of solatium. The slabs are notable particularly since the central land acquisition statute of 2013 Act provides for a 100% solatium in all cases.

<table>
<thead>
<tr>
<th>Category</th>
<th>Description of rights</th>
<th>Amount of solatium</th>
</tr>
</thead>
<tbody>
<tr>
<td>I (a)</td>
<td>Land, assets or building inherited from the forefather by the present owner or occupants legally for not less than thirty years in which the building or land or assets is the main source of livelihood for the occupants or owner</td>
<td>70 – 100%</td>
</tr>
<tr>
<td>I (b)</td>
<td>Land, assets or building inherited from the forefather by the present owner or occupants legally for not less than thirty years in</td>
<td>50 – 70%</td>
</tr>
</tbody>
</table>
which the building or land or assets is not the main source of livelihood for the occupants or owner

<table>
<thead>
<tr>
<th>II (a)</th>
<th>Land, assets or building which is not inherited from the forefather but acquired legally by the present owner or occupants and main source of livelihood or income for the occupants or owner for more than twenty years</th>
<th>40 – 50%</th>
</tr>
</thead>
<tbody>
<tr>
<td>II (b)</td>
<td>Land, assets or building which is not inherited from the forefather but acquired legally by the present owner or occupants and not the main source of livelihood or income for the occupants or owner for more than twenty years</td>
<td>30 – 40%</td>
</tr>
<tr>
<td>III (a)</td>
<td>Land, assets or building acquired legally by the present owner or occupants and used for dwelling and main source of livelihood or income for the occupants or owner for more than ten years</td>
<td>20 – 30%</td>
</tr>
<tr>
<td>III (b)</td>
<td>Land, assets or building acquired legally by the present owner or occupants not for dwelling but for main source of livelihood or income for the occupants or owner for more than ten years.</td>
<td>10 – 20%</td>
</tr>
<tr>
<td>III (c)</td>
<td>Land, assets or building acquired legally by the present owner or occupants not for dwelling and not for main source of livelihood or income for the occupants or owner for not more than ten years</td>
<td>10% or less</td>
</tr>
</tbody>
</table>

Since heritable and transferable rights are only provided under a Land Settlement Certificate, this means that only those having an LSC are eligible for a 70-100% solatium. Further, documentation demonstrating thirty years of rights is seldom available. Thus, this provision puts virtually all holders of land at a disadvantage, including most holders of LSCs (Category I (a)).

To illustrate, during preparation studies for a potential World Bank roads project in Mizoram, 84 affected persons were surveyed along the proposed alignment in a village Hmunnuam in Lawngtlai district. Of these only 38 had an LSC. Interestingly, however, 30 of these were LSCs dated 2015. There was only one LSC dating back to 2004 and none, of course, which reflected thirty years of occupation.
All other forms of non-heritable land rights (Categories II and III), which include Periodic Pattas and Passes, fall under lower slabs and are, only eligible for 50% solatium, at best.

It is also to be noted that there is no slab for land which is solely for residential purposes. This automatically excludes house site passes which are solely for residential purposes. The only way in which house site pass holders can claim even 20-30% solatium is if that land is also the main source of livelihood for them (Category III (a)).

Further, the formal status of passes issued by the Village Council for agricultural purposes is not clear. Holders of such passes may therefore be ineligible for compensation under the Act. The land acquisition process, therefore, severely disadvantages holders of more traditional forms of land rights.

7. Conclusion

This paper is an attempt to understand the different types of traditional, community-based local land management systems in Mizoram. With the rising trend towards state-oriented, individual and private land holdings, the question of how these customary forms are incorporated within the formal system is key. This question has gained more importance in light of the requirements for infrastructural development in the region, which would involve land acquisition. Without addressing this question, we
face the risk of disenfranchising many land holders from receiving compensation, since they hold land in ways which are unrecognized by the modern regime.

This study is a preliminary step in identifying the significance of these issues. Further studies into the different types of land rights, the motivations and factors behind the various trends in land ownership and the implications of the gaps between the traditional and the modern would be required. It is hoped that this analysis would inform policy as well as specific project-level interventions in the state. Some of the themes emerging from the study would also provide useful points to study the trends among other indigenous communities having community based landholding systems.
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