

# “Fragmented Sovereignty” over Property Institutions: Developmental Impacts on the Chin Hills Communities

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In a regime in transition with a legacy of civil war, institutions that govern a society are often destabilized as a host of state and non-state authorities vie for legitimacy in order to gain or maintain power. In such a context, the control over land and the institutions that govern it often become central to such power struggles. The idea of “fragmented sovereignty” helps to explain the conflicts over land control between the state and non-state actors (Lund 2011: 887-9). Sovereignty is generally understood “as unlimited and indivisible rule by a state over a territory and the people in it” (Agnew 2008: 437) and where “governments generally claim legal sovereignty [...] in the name of the state” (Lund 2011: 887).<sup>1</sup>

The dynamics of land control and access in Myanmar will be used to demonstrate this concept. This country has faced

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<sup>1</sup>In this study, part of the state is conceptualized in the Weberian tradition, as “a set of administrative, policing and military organizations headed, and more or less well coordinated by an executive authority” (Skocpol 1979: 29). However, the acknowledgement of these structures does not mean that the state should be “taken as a free-standing entity [...] located apart from and opposed to another entity called society” (Mitchell 1996: 94-5). Instead, state structures are more accurately described as a “structural effect” or an “entity [that] comes to seem something much more than the sum of the everyday activities that constitute it, appearing as a structure containing and giving order and meaning to people’s lives” (Mitchell 1996: 94-5).

challenges to state unification since its independence, as demonstrated by six-decades of civil war between the Bamar-dominant state and multiple ethnic groups fighting to gain greater autonomy. These conflicts arose after independence in 1948, but heightened after the 1962 military coup that toppled the nascent civilian government.<sup>2</sup> In an attempt to put an end to decades of civil war, the Thein Sein Government prioritized a national cease-fire, starting in 2011, raising the profile of ethnic politics.

Nevertheless, the long-standing conflicts in Myanmar did not only start off with ethnic-based claims. In fact, in the early decades, Myanmar's armed conflicts included sizeable insurrections from the Communist Party of Burma, whose members wanted to seize power from the Anti-Fascist People's Freedom League (AFPFL), the main political party from 1945 to 1964 (Smith 2007: 10-12).<sup>3</sup> But after so many decades of entrenched fighting between the military government and various armed ethnic groups, some like David Keen (2001:8 in Smith 2007: 10) even argue that this "conflict generate[d] ethnicity." This means to say that over time, conflicts over socio-political issues took increasingly became framed as ethnic in nature—so much so that many people now understand the armed conflicts in Myanmar primarily as ethnic ones. This has led long-term Myanmar political analyst Robert Taylor to argue that "ethnic politics is the obverse of the politics of national unity" (1982: 7) —highlighting the role of ethnicity as the main obstacle to a unified nation-state.

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<sup>2</sup>On 2 March 1962, Ne Win staged a coup d'état and reclaimed power. After his Burma Socialist Programme Party (BSPP) government collapsed in 1988, and the State Law and Order Restoration Council (SLORC) came to power, another wave of armed ethnic groups proliferated.

<sup>3</sup>The CPB was also involved with the struggles of ethnic armed groups until the 1990s.

Against this backdrop, land reform was initiated in 2012 with the passing of two new laws—the Farmland Law and the Vacant, Fallow, Virgin (VfV) Land Law—which essentially introduced titling-based tenure reforms to create a land market, in large part to support central government’s drive to increase land-based investments. Since the reform started, the contest for land control has become a priority in the country, and is a key issue for ethnic minority groups who continue to compete with the central state for control over resources. Thus, an analysis of the land question in Myanmar and its impact on rural poverty is incomplete without addressing the way ethnic politics challenges sovereignty through the institutions that govern land access and control.<sup>4</sup>

The first section of this paper will discuss the interaction of state sovereignty, ethnic politics and land control in a regime in transition by elaborating on a) the basis of the ethnic challenge to state sovereignty; b) why property rights is central to state-building in a regime transition; and c) how counter-claims further structures sovereignty. The second section takes an empirical look at how these dynamics play out in the uplands of Chin State by a) describing the evolution of the customary land institutions; b) exploring the way state laws that promote private property impact on social relations and poverty; and c) investigating the emergence of counter-claims to state laws. The article concludes with a discussion of implications for understanding land control and access in dynamic contexts such as this one.

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<sup>4</sup>Institutions are often defined as patterns of formal and informal rules and relations (e.g. North 1990, Steinmo and Thelen 1992), but this study is partial to Lund’s (2011: 886) definition, which sees formal and informal rules: (1) as “*manifestations of structures*; of power relations which, in the course of (some) time, establish a structure of entitlement and exclusion”; (2) as the configurations of *actors* acting to define and enforce collectively binding decisions and rules; and (3) as “an *arena* where competing social actors struggle to influence the way decisions are made.”

## **State Sovereignty, Ethnic Politics and Land in a Transition Regime**

### *Basis of Ethnic Challenge to Sovereignty*

Property indicates that there are relations among social actors (individuals or groups) with regard to the land that “exist at the level of laws and regulations, cultural norms and social values” that are “sanctioned” by “the state or some other form of politico-legal authority” (Sikor and Lund 2009: 4; see MacPherson 1978). This does not only refer to legal-Western forms of property, but also customary forms that are sanctioned by non-state authorities. Like citizen rights, property rights are political in the sense that they influence who gets what resources. Both, “in their broadest sense exist only to the extent that they are produced, endorsed, and sanctioned by some form of legitimate authority,” but since legitimacy must be “continuously (re)-established through conflict and negotiation” (ibid: 8), a central question over property in the context of state-building is: Who has the authority to sanction the rights that determine access and control to land, and what is this authority based on?

Answering this question requires a conceptualization of the state as a “site of contestation” (Jessop 2007: 37) when the post-independence Myanmar state was formed. Martin Smith pointed out in his book, *Burma: Insurgency and the Politics of Ethnicity*, “it was more on the basis of city-states than of a nation that any political structure was to develop” (1991: 32). Towards the end of British rule, groups like the Shan, the Karen, and the Chin, aspired to return to the levels of autonomy they enjoyed prior to the colonial rule. One of the Chin leaders, Kio Mang, ex-chief of Hakha, who signed the Panglong Agreement on behalf of the Chin people on 12 February 1947 said, “We want to rule our country by ourselves according to our own political systems” (Sakhong 2003: 212). Partly for reasons of faulty translation and misunderstanding

of the term “federation” (Sakhong 2003: 213-5) and partly for reasons of economic dependence on Burma Proper (Smith 1999: 80), ultimately, Chinland became a Special Division under Burma Proper.

These groups saw themselves as distinct nation-states that opted to create a multi-national state called the Union of Burma by signing the Panglong Agreement in 1947.<sup>5</sup> “A nation is a cultural entity, a body of people bound together by a shared cultural heritage.” Cultural bonds include “a common language, religion, traditions and historical consciousness,” which often go hand in hand with the demand for self-government (Heywood 2004: 98-101). Self-determination is at the heart of these political demands. This could be defined as “the right to freely determine their political status and freely pursue their economic, social and cultural development ... [and]... the rights to possess their natural wealth and natural resources in their own respective homelands” (Sakhong 2004).

While Aung San might have held out promises of autonomy, the Myanmar state soon came to be dominated by the Bamar, especially after the military coup of 1962. To this day, the extension of the Myanmar state is seen by many ethnic minority groups as an extension of the interests of the Bamar through the structures of the state.

#### *State’s Guarantee of Property Rights in a Transition Regime*

A state’s need to strengthen sovereignty tends to be heightened after a regime transition whose central reason is to shed an old, ineffective regime and to adopt a new one that can increase the state’s chances to strengthen and perpetuate its rule. On 7 November 2010, as part of the seven-step “roadmap to democracy” proposed in 2003 by the State Peace and Devel-

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<sup>5</sup> Karen, Karenni, Mon and Arakan States could be said to have signed up to these principles when the first version of the 1947 Constitution was drafted (Sakhong 2004).

opment Council (SPDC),<sup>6</sup> the first general election in twenty years was held in Myanmar in accordance with the constitution (approved in a referendum in May 2008).<sup>7</sup> This military-initiated regime transition “represents change within continuity, the reorganization or restructuring of [...] an institution, rather than its abolition or replacement” (Heywood 2002: 215). Even though the state is relying relatively less on outright force to rule, as demonstrated by a relatively greater use of political rather than military means to address the “ethnic problem” (Keenan 2012), the Bamar-dominant state still seeks to extend its indivisible rule through the extension of its legal authority. However, this does not mean that the state does away with coercion, as the legitimacy of law must always be backed up by force (Heywood 2002). In this way, the state can claim to abide by the “rule of law,” and justify its use of force if the “rule of law” is transgressed.

Extension of its legal authority involves the introduction of a private property model embodied in the two new land laws passed in 2012. Through attempts to shape property institutions that will grant, administer, and guarantee rights, these laws exemplify an approach to state-formation that is particular to this period in Myanmar’s history. The enforcement of a single property regime throughout the territory is central to state-building and has to do with a “recursive constitution of

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<sup>6</sup>The military government changed its names since the 1962 coup when General Ne Win and the 24-member socialist Union Revolutionary Council took power. The Burma Socialist Programme Party (BSPP) lasted from 1964 until its demise in the popular student-led uprising of 1988. After that, the military government was headed by the State Law and Order Restoration Council (SLORC), which in 1997 became the State Peace and Development Council (SPDC).

<sup>7</sup>The first was in 1990, which the National League for Democracy won by a landslide, but the military government refused to transfer power to Aung San Suu Kyi and her party. The second was in 2010, but it was largely considered not free and fair. The most recent elections was held in November 2015 which brought the NLD another landslide victory.

property and institutional authority” (Sikor and Lund 2009: 2). If the state has the ability to secure property for people, the state would be able to constitute citizens’ relationship to public authority (Lund 2011: 887-9) or in a larger sense, between state and citizen (Sikor and Lund 2009: 8). Particularly after a regime transition, such as in Myanmar, the state likely wants its political subjects to know and accept that it is a force with which people must contend and the primary institutional actor that guarantees rights. This should be the case even if subjects do not necessarily approve of this arrangement, particularly in conflict-affected areas.

Private property institutions could provide tenure security to lowland farmers who are more accustomed to a private property model, but this model can also increase the vulnerability and poverty of communities who have practiced customary largely communal tenure and who have farmed largely for subsistence.<sup>8</sup> This includes the hill communities in Chin State, spilling into Rakhine State, and in the forested uplands of Karen, Kayah, Kachin, and Shan States. The Farmland Law of 2012 provides no protection to largely communal customary land systems. In some areas, communities’ claims to customary land have become even more tenuous after the flooding in August 2015, which forced communities to resettle to and cultivate new areas. In addition, the Farmland Law specifically states that the practice of shifting cultivation, a form of uplands agro-forestry cultivation, should be eradicated. As a result, land that does not fit the definitions of the Government of Myanmar laws is considered “empty” and unoccupied, falling under the jurisdiction of the VFV Land Law—which allows the state to transfer up to 50,000

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<sup>8</sup>In the lowlands, the need to rationalize the rice and taxes to be extracted from local farmers motivated the British to introduce a system to assess individual land holdings and to introduce the idea of an “individual landholder’s right” (Furnivall 1991 [1939]: 116-31).

acres of land to an investor for up to 30 years. A recent development that may offer an opening to revise these laws is the National Land Use Policy adopted by the government in January 2016. Significantly, the Policy says that “customary land use tenure systems shall be recognized in the National land law in order to ensure awareness, compliance and application of traditional land use practices of ethnic nationalities, formal recognition of customary land use rights, protection of these rights and application of readily available impartial dispute resolution mechanism” (Part VIII).

Given the gaps in the laws, many hill communities fear that their claim to land will be left in a legislative vacuum, which currently makes them highly vulnerable to land dispossession in the wake of Myanmar’s return to the global economy. Since 1991, when the military government started to promote a market economy, much of these land concessions have disproportionately been allocated from ethnic minority states. According to 2012 data from the Government of Myanmar’s Department of Agricultural Planning, 70% of 3.4 million acres is located in the conflict-affected Kachin State and Thaningtharyi Region.<sup>9</sup> This has led many ethnic minority groups to interpret the current land reform as the central government’s efforts to use extra-coercive means to gain control of the territory that they have been defending for the last six decades, sometimes described as “ceasefire capitalism” (Woods 2011).

#### *How Counter-Claims Interact with Sovereignty*

That being said, even if the state wants to have its authority unchallenged by its subjects, it may not always fulfil its contract to protect the same rights for all citizens—as it assigns

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<sup>9</sup>Public data from the Department of Agricultural Planning, Government of Myanmar 2012. This is the last year that the DAP included state-owned agribusiness concessions into its publicly available Agriculture in Brief.

different rights to different groups depending on identity markers such as ethnicity, race, or political affiliations, leading to an "uneven democratization" (Yashar 2005). This was experienced as incomplete political settlements by Myanmar's ethnic minorities in the first round of ceasefires which started in 1989. This breaking of the state-citizen contract can, in turn, reinforce the counter-claims of non-state institutional actors competing with the state over control of land. Thus, the state's attempts to strengthen sovereignty, particularly after a regime transition, "may be successful and consolidate just as they may be challenged and undone." This is therefore not a straightforward or predictable process. Ultimately, if the state wants to secure its sovereignty in a divisive multi-ethnic country, it will likely have to compromise over who gets to define institutions that govern land access and how these institutions will look—an issue prioritized by ethnic armed groups in the political dialogue that follows the signing of the National Ceasefire Agreement.

This article demonstrates that challenges to the state's institutions tend to vary with the political interaction between a particular ethnic minority group and the central government. While the Karen National Union (KNU) has been able to mount a strong challenge to the Government of Myanmar, the response in Chin State has been more moderate. As opposed to the KNU's much better armed and centralized authority—which has presented a formidable challenge to the Government of Myanmar for the last six decades—the significantly smaller armed group the Chin National Front (CNF) and a history of clan-based political structures have prevented it from unifying as a solid political force. In addition, resource-poor Chin State has come to rely on the Bamar state for material support.<sup>10</sup>

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<sup>10</sup> Author interview with township level administrators in Mindat Township, Chin State in February 2013.

Chin State is currently the largest recipient of a poverty alleviation grant from the central government.

While this paper does not seek to compare the way the KNU and the CNF challenge the Government of Myanmar's land administration, it is worth noting that the KNU already has a land policy that is used to administrate areas that have not been administered by the Government of Myanmar given the history of civil war there. Despite the fact that the CNF never had the resources or as wide a mandate to administrate territory in Chin State, some of the members of the CNF's central executive committee are taking a lead in the national-level negotiations over the protection of ethnic minorities' customary land.

### **How the Contest Plays Out: The Case of Chin State**

Bordering India in Myanmar's northwest, Chin State sits on a steep mountain range—popularly known as “the Chin Hills.” Among the hill communities of Myanmar, the Chin socio-economic systems have until now been relatively less disrupted by armed conflict, population increase, and the country's opening to the market economy.<sup>11</sup> Thus, they have largely maintained traditional property institutions that have strong communal elements.

Chin State is considered to be the poorest in Myanmar, as demonstrated by the Integrated Household Living Conditions Assessment (IHLCA 2011) conducted by the United Nations, which found that 73% of its population of 478,690 people is estimated to live below the poverty line.<sup>12</sup> However, because this tool measures expenditure levels for food and non-food items, this estimation may not be the most accurate—since an

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<sup>11</sup>Its growth has been moderated by the simultaneous migration of Chins out of the state into other countries, notably the United States.

<sup>12</sup>Per the 2014 Provisional Results of the 2014 Myanmar Population and Housing Census.

economy that primarily produces for consumption rather than market exchange is likely to measure low on consumption expenditures.<sup>13</sup> This self-provisioning and the fact that there are few labor markets in Chin State likely explain why employment is only 54%.

Here, the clash between customary communal property institutions and private property institutions becomes quite apparent in terms of its impacts on local communities and their risks for greater poverty. This clash is already showing negative impacts on communities' social and material wellbeing, as the market threatens to undermine the customary property systems and strong "moral economy" (Thompson 1971, Scott 1976) or economic relations rooted in reciprocity and exchange.

This tension between the institutions has provoked a number of nascent counter-claims from a number of Chin political entities, including the CNF, political parties and civil society organizations. This response plays on ethnic politics and could significantly change the state-subject relationship between the Chins and the Bamar state, which has historically been distant.

#### *From Tribal Past to Nation-State*

In *The Art of Not Being Governed*, James Scott (2009: ix) argues that "the hill peoples of *Zomia* are best understood as runaway, fugitive, maroon communities who have, over the course of two millennia, been fleeing the oppressions of state-making projects in the valleys—slavery, conscription, taxes, corvée labor, epidemics, and warfare."<sup>14</sup>

<sup>13</sup> Chin State does indicate other indicators of poverty, such as child malnutrition-including a 58% prevalence for stunting (low height for age), which is created by chronic malnutrition. Accessed 10 September 2014 <[http://www.unicef.org/myanmar/Chin\\_State\\_Profile\\_Final.pdf](http://www.unicef.org/myanmar/Chin_State_Profile_Final.pdf)>

<sup>14</sup> *Zomia* is a geographical term covering the uplands of seven nation states in South East Asia and coined in 2002 by Dutch historian Willem van Schendel and popularized by Scott in his book *The Art of Not Being Governed* (2009).

But instead of the oppressors being the Bamar, several historians argued that it was indeed the Shan from whom the Chin fled when the former expanded their control to the Kale Valley with the construction of Kalemyo in 1395 (Luce 1959: 26-7; Carey and Tuck 1896).

Chin society was tribal and ruled by traditional chiefs. Some scholars say that there are six major tribal groups identified as 1) Asho with 6 sub-tribes; 2) Cho or Sho with 8 sub-tribes; 3) Khuami or M'ro with 7 sub-tribes; 4) Laimi with 17 sub-tribes; 5) Mizo or Lushai with 12 sub-tribes; and 6) Zomi or Kuki with 13 sub-tribes (Vumson 1986: 40). Though this is currently under debate, some sources count as many as 63 sub-tribes in total. A tribal group "is a group of the same people whose ancestors made their settlement in a certain place together, after their common original homeland in the Chindwin Valley was destroyed" (Sakhong 2003: 18). For example, the descendants of the settlers in the area called Lailung (central area) are called the Laimi tribe while the descendants of the settlers in the northern part of Chinram are called Zomi. As populations grew, the tribal groups broke up into smaller settlements and relocated. Divided by geography, the tribal groups further differentiated into sub-tribes, each with their own dialects and customs. Though the tribes followed a similar pattern of worship of the Khua-hrum or guardian guard of a community, this was not sufficient to unite the Chin. As a result, "people's identification with each other was tribally exclusive and their common national identity remained elusive." (Sakhong 2003: xv).

Chin society was greatly changed by the British annexation in 1896 and the arrival of the Christian missionaries between 1899 to 1905 (Sakhong 2003: 106). Together with Christian conversion, the colonial legacy removed Chinland from its isolation and forced it on a path of de-tribalization (Sakhong 2003: xvi). When the new state borders of Burma, India and

Bangladesh were created, the eastern part became Chin State in Myanmar, the western part became Mizoram State in India and a small area integrated into Bangladesh (Sakhong 2003: xv). The departure of the British and the Chin peoples' negotiation with the interim government of Ministerial Burma created a significant opportunity to further unify the Chin as a single political entity.

Given the state's history, there are observable differences in land ownership patterns between Northern and Southern Chin. The north had more elaborate political organization, more permanent settlement, and higher levels of capital accumulation, resulting in the establishment of bigger towns (Lehman 1963). One tribal chief in the north explained that the Chin Hills Regulation of 1896 attempted to abolish concentration of lands in the hands of the tribal chiefs and to make land access more equal in a communal system.<sup>15</sup> In the south, which was less influenced by missionaries, many villages tended to be more traditional. There, chiefs and their descendants continue to claim ownership of large parcels of land. This is corroborated by a recent study on Chin customary land systems which found that certain clans around Mindat Township in the south claim historical ownership to large swathes of land, to which access is granted in exchange for rents (Ewers 2015).

In most parts of the state, where survival was a challenge and infrastructure was at a minimum, management of land and livelihoods via private property arrangements would have also led to a sub-optimal outcome for people.<sup>16</sup> This system would have driven the Chin to struggle in "a game against nature," instead of working with each other (Ostrom 1990: 12). To

<sup>15</sup> Interview with tribal chief by author on 7 May 2015.

<sup>16</sup> Here 'sub-optimal' borrows from the logic of the "prisoners' dilemma" from game theory in which lack of cooperation results in all players losing-- in this case through the collective destruction of nature commonly referred to as a "tragedy of the commons."

survive, the Chin developed a “safety-first maxim,” (Scott 1976: 29) in which “living is attained often at the cost of a loss of status and autonomy” (Scott 1976: 7). In this way, customary communal forms of property institutions in many parts of Chin State, evolving over centuries, gained legitimacy in the eyes of those who continue to abide by them. The customary land systems of Chin State were not only recognized as the property institutions by the Chin Hills Regulation of 1896, customary law was also recognized by the Panglong Agreement signed on 12 February 1947 between Chin leaders and General Aung San, with the involvement of the British. Chinland became a Special Division in Ministerial Burma in which it was allowed to follow its own customary laws—an entire set of legal institutions different from those of the central government. Even when the 1953 Land Nationalization Act was passed, which nationalized all land under the name of the state, the actual land tenure practices in Chin State were not affected. In summary, the colonial legacy, the appearance of the armed group the CNF in 1988, and the relatively low interest on the part of the central government to administrate this remote state helped to maintain a parallel system of property institutions up until the passage of the 2012 Farmland Law and VFV Land Law.

### *Chin Customary Land Systems*

In Chin society, land is a territory that symbolizes identity, spiritual value, and culture. These values have been consecrated in a number of nature worship practices that continue to this day—often practiced with the annual farming cycle, even though many Chin people have been converted to Christianity.<sup>17</sup> Based on these values, rules for the collective

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<sup>17</sup>There is a much higher ratio of Christians among Northern than Southern Chin. According to Sakhong (2000), in his book *Religion and Politics among the Chin People in Burma (1896-1949)*, although all the tribes and villages follow the same pattern of belief systems, it is still distinct enough between the tribes that *Khua-hrum* did not unite the entire Chin people under a single religion.

management of a common pool of resources were created. While rules varied from village to village and were unwritten, they defined the right-holders and their rights with regard to the land. Passed down through generations, these rules are supervised by a local chief (Food Security Working Group 2010) who is usually a descendant of the founder of a particular clan, and who acts on behalf of *Khua-hrum*—the guardian god considered the ultimate owner of land (Sakhong 2000). Traditionally, the chief theoretically owned this land on behalf of the *Khua-hrum*, and he and his council were vested with powers of rights enforcement, dispute resolution, land redistribution, or if necessary, changing the rules in consultation with the community to adapt to new circumstances.

For many upland ethnic groups, including the Chin, household and kinship networks are the foundation of social organization. Thus, rights are derived from the acceptance into a social network through birth, marriage, or various kinds of transactions. A common trait among these communities is that this village land is only meant to be used by those residing in the place, and in principle nobody is allowed to sell the land to anyone outside the community. Land has to be returned to the common pool when someone leaves the community, but land would also be allocated to someone joining kinship networks. Within these parameters, land use rights combine elements of both collective and individual. In other words, land plots can be hereditary, or they can be allocated through a lottery system on a yearly basis when the *lopils* (plots within the larger village lands) have to be divided (Food Security Working Group 2010). In addition, households can gift, loan, rent or even sell a plot to another cultivator residing in the community.

Each village *taungya* (hilly uplands) area is divided into *lopils*, with 1 cultivated by the village each year on a rotational basis. With varying degrees of cooperation, village members

work together to create a path to the chosen *lopil*, a temporary settlement, and to fell and burn trees, after which individual households would cultivate sub-plots. Each household typically has access to a sub-plot each year, the size often determined by the number of members and working adults in each household. This is reminiscent of Chayanov's labor-consumer ratio or the ratio between the number of working adults and the consumers (adults, children and elderly) (Food Security Working Group 2010; Van der Ploeg 2013).<sup>18</sup>

Demonstrating an intimate relationship with their land, traditionally, hill communities set limitations on land use to maintain ecological balance. In the past, land that was used for five years was left to fallow for up to forty years, while plots used for one year were left to fallow for up to nine years (Lehman 1963: 56). According to a recent study by the local NGO POINT, on the shifting cultivation practices in two villages Khayaing and Lone Ein Nu in Kanpalet Township in Southern Chin State, after one year of cultivation, the land is left for a fallow period of between eight to nine years (2015). Another reason that the fallow period has been preserved is out-migration from the villages to Kanpetlet, followed by migration abroad. In addition, communities maintain other environmentally sustainable practices. For example, villages replant trees; leave trees around streams to protect the watershed; around the roads to prevent erosion; and make firebreaks when clearing forests with fire. These findings were also echoed by the GRET study of shifting cultivation systems in Northern Chin State (2012). Thus, in contrast to the discourse often employed by state planners that this slash and burn farming is environmentally harmful, these actual practices of the hill

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<sup>18</sup>Despite a principle of access to all community households, there is variation between villages in how land is accessed: while land plots can be allocated through a lottery system on a yearly basis when plots within the larger village lands have to be divided, other plots can be hereditary.

communities—along with studies on shifting cultivation world-wide—show that it has the potential to be environmentally sustainable (see for example Vien et al. 2006).

However, in other areas, it is possible that population growth, climate change and natural disasters can put stress on such a production system and on the environment. Villages with rising populations—generally ones close to town settlements such as Falam Township—have reduced the fallow period to five years, reducing land fertility (GRET 2012: 27-30).<sup>19</sup> This presents a challenge to self-provisioning, which could explain why the state produces about 70% of the grain it needs and hunger is common in poor households for several months each year (IHLCA 2011). This is also the reason that the Chin State 5-year Comprehensive Development Plan (MIID 2014) recommends that new technologies and intensified cropping practices, alongside diversified livelihoods, be introduced to mitigate these problems.

*Impact of Private Property Institutions on Poverty and Social Relations*

Before the passing of 2 land laws in 2012, the government attempted to change the customary land systems of upland communities several times. In 2002 the government introduced the Upland Farm Mechanization Project. Implemented by the Department of Agricultural Mechanization, its objective was to transform shifting cultivation to permanent farming through field terracing and irrigation (GRET 2012). A state fund provided farmers with 12,000 kyat per acre to develop terra-

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<sup>19</sup> While population figures are hard to verify in the Chin State, in 2008, population in the whole Chin state was estimated to be 533,049, with no significant population growth (GRET 2012). In the same study—which compared the population trends of 16 villages over the last 50 years—it was found that the population of half of those villages remained stable, that of five villages increased slightly, and that of the remaining three villages actually declined.

cing for the 2002–2008 period. However, the Department of Agricultural Mechanization’s 2012 report shows that much of the 7,114 acres included in this project are not usable due to insufficient resources allocated to the transformation of the uplands into permanent terraces (*ibid*).<sup>20</sup> The Government of Myanmar also tried to strengthen Chin State’s participation in the market economy. To the alarm of many local communities, the government approved the development of a US\$486.7 million Mwe Taung nickel-mine by the Chinese-owned North Mining Investment Company, which began conducting surveys for the project in 2012.<sup>21</sup>

The transition to a market economy will not likely be quick and straightforward, as the norms that undergird a moral economy may play a role in resisting the rapid integration of the uplands communities into capitalist markets. Hill communities also created “an entire range of networks and institutions outside the immediate family which may, and often do, act as shock absorbers during economic crises in peasant life” (*ibid*: 27). Such networks take the form of inter-class reciprocity arrangements, i.e. between landlords and their tenant, as well as intra-class reciprocity, i.e. taking the form of communal cooperation. Intra-class reciprocity took the form of cooperative work groups that exist to this day, which take turns working on each family’s plot.<sup>22</sup> Inter-class reciprocity use to and still take the form of patron–client relationships that allow for a fluid system of support. For example, a landlord “is in principle required to allow his... followers to work plots on his land rent free” or “rents are nominal and do

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<sup>20</sup>From an interview conducted by U San Thein, author of the GRET report (August 2012) and U Swe Win, Director, Upland Farm Development Project for Chin State, Hakha Township, 25 February 2012.

<sup>21</sup>For more details, see: <http://www.irrawaddy.org/burma/chinese-backed-nickel-mining-project-draws-concerns-chin-state.html>

<sup>22</sup>This was verified in a field trip conducted by the author in February 2013 in the Mindat Township of the Southern Chin State.

not comprise a share in the crop” (Lehman 1963: 77). A Chin civil society leader whose family still owns land in Chin State confirmed that, “My grandmother used to own hundreds of acres near Falam. Landless neighbors would come in to use her land without needing to inform her in advance; there was an understanding that this was accepted and they would only honor her with a chicken or a pot of wine.”<sup>23</sup>

With the growing presence of market forces, the hill communities are increasingly facing threats to the production systems that have sustained them for generations. One case that exemplifies this threat to social welfare and livelihoods well is the aforementioned 486.7 million US dollar Mwe Taung copper mine project, which is 15 miles from Kalay town, at the eastern foot of the Chin Hills. The Chinese North Mining Investment Company owns 90% and Ministry of Mines owns 10%. The construction of this mine could negatively affect 15 to 17 villages. Many fear a repeat of the infamous Letpadaung mine in Monywa, Sagaing Region, in which villages were forced to move a violent crackdown on peaceful demonstrators in 2013. Many of these communities also do not see any other feasible means of survival beyond farming.

Under the leadership of Chin Natural Resources Watch, the Mwe Taung Development Association has also been formed for advocacy and monitoring of the project. Efforts included conducting an environmental social impact assessment, which was shared with state and union parliament; public consultations including communities, religious leaders, and political party members; and meeting with the company. Given the lack of response from the regional parliament and from political parties who tend to represent locally-based constituents, the group then met with Upper House Speaker U Shwe Mann in November 2013. He said that this development would be good

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<sup>23</sup> Author interview on 26 December 2013.

for Chin State. Similarly, the Chief Minister, who is from the Union Solidarity and Development Party (USDP), said that they need this money so that they can, in turn, get a larger budget allocation from central government. “They only follow what Naypidaw tells them,” said Chin Natural Resources Watch, indicating that these leaders are not challenging the legal authority of the central level.

Eventually, civil society managed to get the support of the regional Minister of Forests and Mines, who in turn convinced central-level Forest Department to advocate the Ministry of Mines to put a temporary halt on the project. CSOs also convinced Chin MPs to raise questions at the parliament in June 2014 about the lack of an environmental social impact assessment. While the project has been halted temporarily, villagers recognize the importance of securing legal recognition of their land and are applying for land use certificates known as Form 7. The communities also know that without statutory protection of their customary land systems, they face inevitable displacement.<sup>24</sup>

As more investments enter these remote regions, there are signs that a small number of large land-holders who have more information and political capital are choosing to respond to the “insurance” offered by the markets instead of that of the community (Popkin 1979). They are thus starting to apply for private land titles to secure the large swaths of land to which they lay claim.<sup>25</sup> Members of this small elite group have also joined the dominant ruling party (USDP), and promote the state’s property laws over customary land laws.<sup>26</sup> The thinking among these elite households is further facilitated by the migration of family members, which takes the form of

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<sup>24</sup> Author interview with Chin Natural Resources Watch on 12 February 2013.

<sup>25</sup> From an interview conducted by the author with a large land owner in the Mindat Township in the Southern Chin, who explained how he secured rights to several hundred acres of land in February 2013.

permanent movements out of the hill communities abroad rather than the seasonal migration that seeks additional income to maintain the household farm (for a discussion of this phenomenon see Van der Ploeg 2013: 81-2). This results in the return of significant levels of remittances, but not of people. Anecdotal evidence indicates that the remittances from this migration have freed these households from the need to work on the land as shifting cultivators.<sup>27</sup> They are more interested to secure their land holdings in order to sell or rent it out with the expectation that the rental market will become more developed.

In this evolving context, land as a form of social protection for the low-skilled, low-educated poor with few off-farm labor options faces increasing levels of vulnerability. In such a context, land becomes even more valuable because “in the absence of national welfare provisions, even a tiny patch of land is a crucial safety net” (Li 2011: 295). Since the Government of Myanmar’s efforts to convert shifting cultivation into permanent terraced farming have not met with much success, this kind of scenario is likely to increase the numbers of households that will fall into deeper poverty with less social insurance to turn to. This will create more out-migration of locals, who will join those who have already fled to urban centers or further afield for lack of job opportunities, many settling in neighboring countries such as Malaysia and the United States. Ongoing research is needed to track the actual changes in poverty levels over time.

<sup>26</sup>From the author’s discussion held with Chin members of the USDP party in the capital of Naypidaw in August 2013. The Union Solidarity and Development Party (USDP) was formed on 29 March 2010 by the military-headed State Law and Order Restoration Council to take part in the 2010 elections.

<sup>27</sup>From an interview conducted by author with a member of a Chin political party in June 2014, whose own family’s efforts to secure private titles for their land exemplify these changing relations to the land.

### **The Emergence of Counter-Claims Political Dialogue Creates an Opening**

Within the context of ethnic politics being played out, the outcome of these state-imposed property institutions is not going unchallenged. Since 2011, most of the cease-fires have been signed on a state-by-state basis, some of them more binding than others.<sup>28</sup> As of 15 October 2015, the government, the military, opposition parties, and eight major ethnic armed groups, including the CNF, have so far signed a comprehensive cease-fire agreement. The cease-fire is followed by a national political dialogue whose aim is to create a federal union through substantial amendments to the Constitution. In preparation for this, 19 thematic areas for discussion have been prioritized, among which is land—its control and administration.

The leaders of each ethnic group are now working on articulating their group's position to these issues. On 15 November 2013, the Chin National Conference (CNC) was held in Hakha with 571 delegates from the Chin State government, political parties, civil society organizations, and religious leaders.<sup>29</sup> Of relevance to the issue of customary land tenure are two points from the conference:

- (1) The CNC urges that the State government be allowed to play a more important role when it comes to rights and issues related to land and

<sup>28</sup>According to the website of the Pyidaungsu Institute, which was formed to “provide impartial and independent spaces for building common understanding, resources and assistance to communities in building the Pyidaungsu,” fourteen armed groups have signed a bi-lateral Ceasefire Agreement with the Union and State Governments since 2011. They include the: ABSDF, ALP, CNF, DKBA, KIO, KNPP, KNU, NSCN-K, NDAA, NMSP, Pao, RCSS, SSA-N and UWSA.

<sup>29</sup>For more details, see the article in The Chinland Guardian. Accessed 20 December 2013 <<http://chinlandguardian.com/index.php/chin-news/item/2029-statement-of-the-chin-national-conference>>

natural resources, that priority be given to the consent and involvement of the indigenous people...and that transparency and accountability be ensured when dealing with issues related to land and natural resources;

(2) The CNC agrees that Chin tribal customary laws be collected, documented, published, and amended as needed in accordance with current contexts and practices.

From these statements, it can be interpreted that different Chin political entities want more say in the governing of their land and natural resources, while integrating customary laws into the way these resources are governed. They also recognize that the customary laws under which the majority of their communities are living might need to be reconciled with those of statutory laws through a process of compromise with the government.<sup>30</sup>

#### *Emergence of “Indigenous Claims”*

Though the CNF is small in size, its executive committee members continue to play a central role in the peace process and potentially on land issues. In a speech made on 9 August 2015 at the second celebration of International Indigenous People’s Day in Myanmar, the secretary general of the CNF Dr. Sui Khar, and a member of the Asia Indigenous People’s Pact, said that provisions in the United Nations Declaration of Indigenous Peoples (UNDRIP) coincides with many of the ethnic armed groups demands. The UNDRIP elaborates on collective rights, including the right to self-determination; rights to lands, territories and resources; and cultural rights. Though Myanmar ratified the UNDRIP in 2007, the Government

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<sup>30</sup>This is an opinion of one of the organizing members of the Chin National Conference. Author interview on 20 June 2014.

of Myanmar has not enacted any substantial protections for indigenous peoples. The IP rights discourse remains relatively new in the country's political discourse, but it is slowly starting to enter into discourse of ethnic minority circles. Yet a number of concerns remain.

Many ethnic minorities are uncomfortable with using the term “indigenous” for several reasons. Many believe that the term conveys a sense of backwardness, and conjures up the oppressed native peoples of other countries. They prefer to emphasize ethnic minority states' claim to sovereignty as first envisioned in the Panglong Agreement. On the other hand, reference to the Panglong Agreement was rejected in the National Ceasefire Agreement negotiations, making it difficult to re-engage with the original argument of self-governing nation-states.

Besides the UNDRIP, Myanmar is left with few domestic legal instruments that can be used by ethnic minorities to back up their claims. The Constitution, the draft National Land Use Policy, and the recently passed Ethnic Nationalities Protection Law<sup>31</sup> either use the term “ethnic nationality” or “national races”—both translated as “taingyintha.” While this term was originally created by the Burmese majority to refer to the ethnic minority groups, in recent decades, the term has come to be used officially to also include the majority group. After the Government of Myanmar ratified the UNDRIP in 2007, the Government of Myanmar's position is either all are indigenous or none are indigenous—potentially weakening claims.

Finally, some ethnic minorities say that claims based on indigeneity could exclude many minorities who hail from a

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<sup>31</sup>The title of this law was misleading translated into English as the *Indigenous People's Protection Law*. There is only one place in Article 5 where the Ethnic Nationalities Protection Law refers to the term “taneh taingyintha,” where “taneh” refers to locale and thus has been suggested as a way to say “indigenous” in Burmese language, but this is not elaborated on in the text.

particularly group, but may not have been raised or live in the original locale. This could exclude possibly half the Chin population based outside the state. They say that if the focus is on a common ethnic nationality, it would be easier to forge alliances between members of an ethnic minority regardless of where they are actually located.

Last August 2014, members of the Nationality Brotherhood Federation (NBF) discussed the meaning of indigeneity and the need to find new terminology to advance ethnic minorities' claims to land and other rights. It is evident that efforts to use the indigenous rights discourse to protect ethnic minority rights will still require further development.

#### *Role of Civil Society*

While the CNF's role may be strategic, it may face challenges in representing the views of multiple Chin groups.<sup>32</sup> Civil society provides additional counter-claims to the state's way of administering land. With support from NGOs based in Yangon, a few villages have started to translate communal land tenure to approximate formal regulations.<sup>33</sup> The aim is to survey and register the boundaries of village land with the government. This process requires at least three steps, which have been piloted in villages in Chin State from mid-2013 to early 2014. These are: 1) using GIS mapping of village's communal lands, both the boundaries in relation to neighboring villages as well as ownership within each village;<sup>34</sup> 2) writing down of the

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<sup>32</sup> Interviews with an analyst who specializes in Myanmar's ethnic minority politics on 11 June 2014 and a tribal leader in Falam on 7 May 2015.

<sup>33</sup> This section summarizes the main steps from a series of three research papers on the formalization of land tenure in the Chin State conducted for the Land Core Group in 2013-14.

<sup>34</sup> Because the SLRD has not mapped their lands for a long time and most villages do not have exact information on land acreage or the formal land classification of different parcels of land, many villages continue to observe boundaries established during the British annexation of the Chin State.

village statutes, which define the governance structure of the village as an organization; and 3) writing down the internal rules for communal land management. In a few villages, the mapping exercise only makes clearer the inherent inequality in land ownership—legacies that cannot be easily solved. For the most part, mapping is an initial step in a more complicated process towards securing protection for customary land systems.

### **Conclusion**

This article attempts to demonstrate how the idea of “fragmented authority” helps us to explain the dynamics of the current contest over land access and control in Myanmar, a regime in transition affected by decades of armed conflict between the central government and multiple ethnic groups. It does this by looking at the tensions produced when state and customary property institutions interact with each other in the uplands of Chin State.

Customary laws that have governed property institutions in Chin State were formalized by the British in the Chin Hills Regulation of 1896 and the Panglong Agreement of 1947. These alternative property institutions were further solidified by the armed struggle started by the CNF since 1988. The passage of the 2012 Farmland and VFV Land Laws highlighted the contradiction between customary laws and state land laws, creating negative impacts in the lives and livelihoods of the Chin communities. Reflective of the dynamics of a regime in transition, the state’s property institutions are being challenged by a host of political entities, including the Chin National Front, Chin political parties, and civil society.

While the idea of “fragmented authority” may seem to imply that this phenomenon could further weaken the state’s sovereignty, the Chin case demonstrates that the nature of its counter-claims to the state might in fact help to cohere the

relationship between citizens to the state. Except a few attempts by the government to introduce terrace farming and its approval of large-scale extractive projects to enter the state, Chin State's customary land systems were largely left untouched by state law. It was only with the passage of the Farmland Law and the VFV Law in 2012, as well as the influx of more investments, that political entities in Chin State are starting to engage with the process of shaping the state's land laws. If it were not for the government's attempts to title land according to a mainstream private property model—thereby threatening the security of customary land systems—it is unlikely that local communities in Chin State would even be paying attention to the government's land laws or finding ways to secure their customary land through statutory means.

Returning to the idea of the co-constitution of authority and property, these initial findings in Chin State imply that the response from Chin political entities—to engage with the government on how state law could be used to protect customary land—could very well strengthen state-subject relations as these communities increasingly recognize that the state can create and sustain property rights. Indicative of this evolving dynamic, an executive member of the CNF recently said that one of the reasons it signed the National Ceasefire Agreement was to get more government support for the recovery of Chin State after the floods in July 2015, known among Chin people as the worse disaster in recent history. Thus, state-building in Myanmar, as well as in other countries where state sovereignty might be challenged by multiple institutional actors, the process of state-building is a fluid and evolving process that shapes the way the state and its citizens relate to one another.

In this period of rapid transition, institutions have been thrown into a state of flux as different state and non-state

authorities vie to gain or maintain legitimacy in order to continue exercising authority. The contest over property institutions will still be ongoing for some time. Since “property may bolster claims of belonging and citizenship” (Lund 2011: 889), one can infer that it would be in the interest of the government to extend its sovereignty by strengthening property security for the greatest numbers of ethnic minority populations. In the case of the hill communities of the Chin State, this may mean devising property institutions that can accommodate customary land systems.

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