

State Making and the Suspension of Law in India's Northeast

The Place of Exception in the Assam-Nagaland Border Dispute

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Introduction

Post 9/11, exceptionalism has won popularity to describe the variety of processes resulting from a new security discourse, the war on terror and the treatment of terrorism suspects (Huysmans, 2006). Indeed, the central case to argue and counter argue the usefulness of the concept of the state of exception, often in Schmittian (Schmitt, 2005) or Agambenesk (Agamben, 1998, 2005) terms – or both – is the “modern camp” in Guantanamo Bay (Gregory, 2004, Minca, 2005, for a critique see: Johns, 2005; Reid-Henry, 2007). Other key cases include the analysis of (illegal) migrants (Edkins & Pin-Fat, 2005; Salter, 2008) and, interrelated, of the securization of border regimes (Amoore, 2006; Basaran, 2008) where the discussion on the inside and the outside of the state and the sovereign power seems to be most profound. Little attention has however been awarded to exceptionalism away from this security and terrorism discourse.¹ What is more, most cases are only used to make a theoretical argument about the state of exception and the attention to a particular case seems to be little more than a corollary of a theoretical positioning. This has resulted in what I would call a search for and adherence to an ideal type state of exception, glossing over particularities, idiosyncrasies and eccentricities of informed case studies, and, in the end, loosing some of the dynamism and richness which could form a part of a careful study of states of exception in different parts of the world.

In this article I want to focus on a *place* of exception, and analyse *how* the exception takes place, *where* it takes place. I use the state of exception - “the suspension of rules and conventions creating a conceptual and ethical zero-point from where the law, the norms and the political order can be constituted” (Hansen and Stepputat, 2006: 301) - as a starting point. Rather than focussing on the theory of the exception (see among others Prozorov, 2005;

¹ Moreover, the ethnographic work that relates to Agamben has focussed almost exclusively on bio-politics - and Agamben's description of the Homo Sacer (Agamben, 1998) –, mostly as a supplement to or critique on Foucault's work (Das & Poole, 2004; Hansen, 2005).

Huysmans, 2008)², I want to understand how is in fact practiced in specific localities (see also Jones, 2009: 880).

In this paper I more specifically want to investigate how political order is being constituted in the place of exception - “where the state of exception can be located and the particular bodies, and specific actions, which trigger the decision on the exception can be understood” (Jones, 2009: 883) - and what the relation is between the removal of ‘normal law’ and state making – understood as an ongoing process, rather than a “mythic initial moment” (Steinmetz, 1999: 9). I indeed conclude that – in line with Agamben -, although law is often seen as central to the state, state making and the suspension of law are not mutually exclusive (Neocleous, 2006). As such, I am less interested in the detrimental aspects of the state of exception or its violent hold on bare life, but rather want to investigate how in a specific place of exception state making is supported. The suspension of rights does not have to result in a withdrawal of the state, or the imposition of a violent state. Concentrating on everyday practices - in line with Didier Bigo’s (2007: 25) discussion of “waiting zones” or Caroline Humphreys (2007: 420) work on “localized forms of sovereignty” – I will show how the absence of rights provides opportunities for local people (see the critique of Huysmans, 2008) as this absence forces the state to negotiate itself back in and as such a prime locus to look a state making.

I will draw on the specific case of the border dispute between Nagaland and Assam, two states located in Northeast India³. Although by default located at extremities, border regions can be at the heart of the “meaning of the nation” (Megoran, 2004; Jones, 2009). Political borders offer prime locales to look at the “tight linkages between the territory, the people and the state” (Jones, 2009: 882). People that are seemingly excluded or marginal can become of central importance to the state and state agents as they symbolize the inclusion of certain, disputed territory within a particular nation. This inversion of the relation between periphery and state can help people living under the exception to claim public goods, and conversely compels the competing authorities to grant exemptions and try to defuse the status quo – at least for ‘their’ population. The different potentialities in constructing a new political order in

² The work of Agamben (1998, 2005) is thus more an inspiration behind than the direct subject of this paper.

³ I do not, as Constantinou (2008) has done for Cyprus and to which Sanjib Baruah (2007: 12) hints when he heckles “the reliance on a permanent regime of exception by the state”, consider the whole region to be a place of exception, which risks to turn the exception in a panopticon, through which everything can be seen and understood.

the border – a process which has continued notwithstanding the perceived standstill – makes that “people [...] can enter into a negotiation of identity and political space that produces different political outcomes”. (Raeymaekers, 2009: 63).

The Disputed Area Belt (DAB) between Assam and Nagaland offers a prime locus to better understand the struggle to constitute a political order in a situation of “unsettled sovereignty” (Hansen and Stepputat, 2005: 27), where the link between sovereignty and territory is far from straightforward. In the 1970s the two state governments concluded interim agreements to control the border dispute – at the instigation of the central government. These agreements were meant to temporarily install a status quo until a solution, with the support of a centrally appointed arbitrator, could be reached. This should not only have stopped further encroachment into the DAB, but indeed made any change which could alter the balance between the two states subject to interstate negotiation and agreement. This should have frozen the data, in order to find a solution on the border conflict. Yet, in the absence of a definitive agreement over the delimitation of the border, the interim agreements have become permanent and so has the exceptional regime that they installed.

In effect, this border conflict has resulted in the suspension of ‘normal’ law and produced a status quo⁴, a “suspended temporality” (Vandekerckhove, 2009). Although, at first sight, this regime might seem detrimental, we will show that it also offers opportunities.

Especially, as in this case the imposition of the exception did not herald a complete break, but can only be understood within the context of the ongoing struggle to control populations within the DAB. The imagination of a historic distinction between plains people of Assam and the hill tribes of Nagaland (Baruah, 2002: 29, see also Scott, 2009) is central to understand the difficulties in negotiating a political solution for the border dispute and to the claims and counterclaims made in the DAB. Moreover, legally, no human population is allowed to reside in the DAB, as it is officially forest land. Yet the massive encroachments on the Reserved Forest land - which effectively transformed the DAB from a forest to an agricultural zone – help to support the claims made by both states in the border conflict. As such populations became a tool to claim territory.

⁴ This term came up in most of the interviews conducted (see e.g. the quote in the title of this article) in the DAB.

After the interim agreements this process did not stop, but transformed in a further transformation of all private matters into public ones, as any private action became a weapon for either one of the state to extend its claims. Notwithstanding the official policy of maintaining a status quo, both states thus continuously try to cement their identity claims on parts of the DABs territory. As a consequence, the divide between public and private goods has become blurred. Durable private goods (attached to populations), like houses, become indeed public as their presence helps to support the state making project of one or the other state.

Fieldwork in November-December 2008 in the Disputed Area Belt (DAB) of Golaghat district and in Nagaland, as well as government papers and reports, form the main basis for this article. The rest of the article will be organised as follows: (1) I will discuss the installation of the status quo under the interim agreements, under which ‘normal’ law was suspended, show that this suspension is rooted in a longer history (see the critique of Neocleous, 2006) of (2) exclusion between hills-plains populations, and (3) illegal, but government sponsored, encroachment into forest area, (4) show the contemporary interlinking of maintenance-contestation and public-private in the everyday negotiation in a place of exception, (5) reveal the opportunities for non-state contestation and highlight the possibility of this unregulated population to look for support beyond the state by looking at the role of the Naga underground in the DAB.

The Interim agreements and the suspension of ‘normal law’

In August 1971, the Indian Ministry of Home Affairs appointed K.V.K. Sundaram as adviser to the border dispute, as the two state governments could not agree to delimitation. Awaiting his report four *interim* agreements, of which the fourth refers to Doyang RF⁵, were signed 1972. These agreements were only meant to be temporal measures to maintain “peace and tranquillity”. As the Sundaram (1976) report was rejected by the Nagaland government, these exceptional and temporal agreements have been active till now. Moreover, an interstate meeting in 1979, called after a violent confrontation in Chungajan, cemented the place of exception in the Assam-Nagaland border. The interim agreements were meant to suspend and contain the DAB in time and space, until a solution could be reached. According to the agreements, everything that might affect the status-quo has to be decided upon by interstate

⁵ The other three RF in the Doyang-Dhansiri valley did at this time not fall under the agreements.

negotiation. The status quo became the prime locus to negotiate the “unsettled sovereignty” (Hansen and Stepputat, 2005: 27) over this former buffer area.

Interstate violence has regularly marred the system of continuous negotiation. The central case in this respect –albeit not the only one – is the Merapani incident of 4-6 June 1985, where Nagamese and Assamese armed Police clashed. Twenty-eight police officers and thirteen civilians died in the three-day violence (for an official overview, see Shastri, 1987). This incident would introduce the neutral force to Doyang RF – it had been already been deployed in Diphu, South Nambor and Rengma RF after the Chungajan incident in 1979. While both governments put the blame for the armed confrontation with each other (Government of Assam, 1985; Government of Nagaland, 1985), it must be clear that these incidents continuously re-enact the process which led to the installation of the regime of status quo, going around negotiating and toward confrontation. While political negotiation normally contains violence, violence and violent conflict has not been removed from the DAB. In the end, as a legal solution for the area has not been reached, the political opponents are sometimes forced to show muscle power to maintain their political influence in the DAB.

As a consequence of the Merapani incident, in 1985 it was agreed to put the maintenance of law and order in the whole DAB in the hands of the Central Reserve Police Force (CRPF) (and in lesser numbers: the Assam Rifles)⁶. They, as a ‘neutral force’, under the direction of both Assam and Nagaland, now became the guards of the place of exception, who should see to the maintenance of the status quo. Their contradictory role is most lucidly illustrated by an anonymous member of the force: “We man Border Outposts, mostly located on the big roads and more or less between the Assamese and the Naga. You know, Border Outposts are normally located at the border of our country, to defend our country from foreign aggression. Is this the border of India?” (interview with CRPF member).

While both states want to make sure their opponent does not infringe on the interim terms of the status quo, they also try to alter the relations of power in the DAB. The Nagaland government has for instance organised overlapping sub-divisions in the DAB. This is where the “unsettled sovereignty” (Hansen and Stepputat, 2005: 27) gets its complete form. In 1991 two subdivisions, Niuland and Kohobotu were established in Diphu RF (Sector A) and in

⁶ In 1979 the CRPF became arbitrator in most zones of the DAB, in 1985 (see further) the last zone, Doyang also came under the CRPF.

2006 two more subdivisions, Uriamghat and Hukai, were established in Rengma RF (Sector C) (Gohain, 2007: 3281-3282). Certainly Niuland and Kohobotu, which are administered as a part of Dimapur District, are well established, with an Additional Deputy Commissioner residing in Niuland. I will later elaborate further on the complicated and ambiguous nature of the states' positions as the states purport to maintain the status quo vis-à-vis each other and they contest it at the same time, using populations and goods to alter the status quo.

The failure of the central government to arbitrate in the matter and propose a settlement is critically visible in the disappointing results of the different commissions installed by the Home Ministry and the Supreme Court – Sundaram (1976), Shastri (1985), Pillai (1997) and currently Variava (since 2006) – to find a solution, or at least take the negotiations to a new level. The Sundaram report was rejected by Nagaland – as it also rejected most of Nagaland's claims to territory – and the Pillai report even by both states. Disillusion with the real commitment of Delhi to solve the border problem is also very common in the DAB itself: “They sit in Delhi and Gauhati and write their report. Maybe they will come here for one day, maybe two. How can they understand our problems. We have lived here for the last thirty years”. Many Nagamese civil society organisations did not even bother to send a memorandum to former Justice S.N. Variava – unlike their Assamese counterparts – to make their claims: “Assam will come with all the official documents. All I know is what my forefathers told me. Our Ancestral domain was up to Furkating [the railway junction near Golaghat town]. It is our land”⁷.

Hills-plains and colonial territoriality

The border dispute has to be understood in the context of the imagination of a distinction between hill (Naga) and plains (Assamese) populations (Baruah, 2002:21-43). The DAB and especially its section on Golaghat, forms a zone of contact or friction between these to ‘societies’. As such, it is also a zone where these self-evident distinctions are and were questioned. Not surprisingly, this clearly fits in with James Scott (2009) most recent monograph, in which he specifically investigates the creation of these distinctions in upland

⁷ According to another claim which was repeatedly made – but which is difficult to investigate – the Government of Nagaland had send all the documents, including a map, that proved their claims to the Government of Assam, who however lost/destroyed all the documents. So the sole copy of all the proof was stolen and could not be recovered. Strange enough, this is very reminiscent of stories about the loss of writing in Zomia (Scott, 2009: 220-237).

Southeast Asia, in which he also includes the northeast of India.⁸ Although we could quote extensively from Scott, of singular importance in understanding the DAB – witness is the final quote of the previous section – is his treatment of the colonial mapping of tribes and the territoriality involved: “The colonial ethnographers’ map said they were A, but they said they were B and had always been” (Scott, 2009: 242).

For the British colonizers, the current DAB, formed a threshold between their sovereignty and its borders. This threshold was formally delineated by the Inner Line Regulation. The line was drawn along the foothills, and “[b]eyond the line the tribes [were] left to manage their own affairs with only such interference on the part of the frontier officers in their *political* capacity as may be considered advisable with the view to establishing a *personal* influence for good among the chiefs and the tribes” (Mackenzie, 2007: 89-90, emphasis added). Making the British administration not extend to the areas beyond the Inner Line and relying on the “political” and “personal” influence of its officers located at the border, excepted the hills from becoming a part of the British empire in toto. Moreover Edward Gait, colonial administrator and historian of Assam, wrote in 1926 that “it was not always convenient to define the actual boundary of the British possessions, this line does not necessarily indicate the territorial frontier but only the *limits of the administered area*; It is known as the “Inner Line” and...it does *not* in any way *decide the sovereignty* of the territory beyond” (emphasis added) (Gait, 2008: 387). While the Inner Line did not limit the sovereignty of the British Empire over any territory, the people living in the territory in question did not fall under the British administration. Consequently, the Inner Line regulation exempted the “unadministered Naga Hills” from its laws.

As Sanjib Baruah has convincingly argued, the creation of the Inner Line in 1873 profoundly hardened the “boundaries between the hill “tribes” and the plains peoples of Assam” (Baruah, 2002: 29). He clearly shows that in the case of Assamese and the Naga, “substantial political, economic, and cultural relations” (Baruah, 2002: 31; see also: Kar, 2009) did exist, although after colonization the difference between the “modern” and the “primitive” was

⁸ Although he immediately starts to qualify this statement, by stating that “[h]ill societies are, as a rule, systematically different from valley societies” (Scott, 2009: 21), we have to be careful to let this understanding reproduce some of the state making techniques Scott is interested in. Certainly in those areas where the hills meet the plain, as in this case, we have to investigate the meaning of this distinction in these threshold regions. Indeed the DAB might be a place where the construction of this distinction can be best researched, as a zone of indistinction – whether it is the end of the plains or the end of the hills – where the distinction between hill tribes and valley people are made.

exacerbated. The hills were reserved for the unadministrable “savage tribes” (Allen et al, 2008: 469) and the plains for civilized rule. While the plains were subdued by law, “[t]he story of the early British relations with these tribes is one of perpetual conflict” (Allen et al, 2008:469). This strict depiction of the Naga as living in the hills is still very apparent in the post-colonial official writing on the border area. In an official report on the Assam-Nagaland border dispute, Sundaram (1976: 25) clearly states that “the plains area was at no time occupied or inhabited by any Naga tribe. It is well known that the Nagas built their villages on the top of the hill ranges and did their jhum [shifting] cultivation on the hills (sic) slopes”. A Naga occupying or inhabiting a plain seems to go against all common knowledge.

The delineation of administered and unadministered territories and districts changed over time as the pressure to put more land under cultivation – partly for rubber and tea plantations – pushed the internal boundary deeper into the foothills (see for a discussion on the foothills: Kikon, 2008). While Mackenzie (2007: 77), following Dalton’s *Ethnology of Bengal* in 1884 discussed the “Nagas to the east and those to the west of the Dhunsiri [Dhansari]” and “Nagas to the west of the Doyeng [Doyang]”, these areas west of both rivers are currently located in Assam. Indeed, it are exactly the areas west of the Doyang River, between the Doyang and the Dhansari that form the main bone of contention between Nagaland and Assam.

A comprehensive discussion of the different transfers of land in and outside the Naga areas falls largely outside of the scope of this article. The exact delimitations are far from an exact science, as the descriptions of the boundary are far from clear and comprehensive, while on the ground markers, like old boundary pillars, are not always easily retraced or available. However the comparison of three indicative maps (Fig. 1, 2 & 3), of the situation in 1874, in 1898, and the contemporary map of Assam-Nagaland reveals some trends⁹. The repeated transfer of land outside the Unadministered Naga Hills and into the Naga Hills District¹⁰ and certainly Sibsagar district and the consequent reterritorialisation of the Naga and Assamese

⁹ These maps are not to scale and only indicative. They are only meant as an illustration and although I have tried to reproduce them as accurately as possible, they are not detailed maps based on original survey maps. The outline of Assam is its current territory and not its historical one. I have used the contemporary outline for easy reference between the three periods.

¹⁰ We must still be careful to equate the name Naga Hills District, with Nagamese tribes, as they are considered now. Currently, what was the Naga Hills District has become Karbi Anglong district, with predominantly Karbi and Dimasas populations, although with a Naga presence.

areas, and between administration and unadministration lie very much at the heart of the dispute. The central crux is the notification of 1925, which consolidated the boundary changes since 1866 – the constitution of the Naga Hills district,- and gave permanence to the exclusion (from 1898), central to the current debate, from the Naga Hills District of the area between the Dhansiri and Doyang rivers, which is currently part of Golaghat District. While the Naga refer to the 1925 transfers as a colonial sham, for the Assamese, the 1925 notification the Naga “cannot claim any areas outside its boundary as morally, legally or constitutionally to it” (Bhattacharyya, 1995: 16).

The creation of the state of Nagaland, in 1963 did little to change the claims¹¹. Insurgent groups, fighting for an independent Nagaland, have been active in the Naga areas since Indian independence. Symbolically, some Naga leaders even declared Naga independence from the British – and consequently also from India – one day before Indian independence. In the 16-point agreement leading to the creation of this state, the moderate Naga leaders who supported the creation of the state reiterated the demand for “the consolidation of forest areas” and “the inclusion of the Reserve Forest and of contiguous areas inhabited by the Nagas”. This demand is important when considering the current situation of the DAB. Four RF (Doyang RF, Rengma RF, Nambor South RF and Diphu RF), agreeing to four sectors currently under the DAB (respectively D, C, B and A), are located alongside the current Nagaland border in Golaghat. This forest belt was installed as a buffer and a no-man’s land to protect both the inner line, and to keep the “wild tribes” (Mills, 2008: 387) in the hills. Forest law in India, both during British times and after independence, is very strict. RF is government property and until very recently¹² any use of the forest, not under Forest Department supervision, is strictly forbidden (Suykens, 2009; see also Jewitt, 1995). Yet the disputed nature of the forest tracks allowed breaking this restrictive regime.

Illegal encroachment and state making in the DAB

¹¹ From undivided Assam the new states of Arunachal Pradesh, Nagaland, Mizoram and Meghalaya were separated during the 1960-70s. Nagaland still falls outside the normal territory of India as Indian nationals still officially need an Inner Line permit to enter Nagaland, and foreign nationals need the very restrictive Protected Areas Permit. It is telling that the Nagaland Security Regulation, 1962 (no. 5 of 1962), giving wide prerogatives to the police and armed forces, was voted even before the State of Nagaland Act, 1962 (no. 22 of 1962).

¹² Now some things might start to change with the Tribal (Recognition of Forest Rights) Act, 2006.

“What can I do? You have seen it, there is no forest left. I cannot protect what is not there.” (Forest Official, Golaghat)

After independence encroachment took place on a massive scale in these forest areas, from the Assamese side in Doyang RF and from the Naga side in Diphu RF and from both sides in Rengma RF and Nambor South RF. This encroachment is related to two main post-colonial developments in the region: the pressure on land in Assam and the Naga insurgency. The lack of government control on these encroachments was not the result of state incapacity. Clearly, allowing for encroachment was instrumental to state politics in the border areas, as state making in the disputed area could be better supported by people than by trees.

Encroachment from the Assam side gathered steam in the 1960s after the Assam government settled some retired army personnel between Chungajan and Bokajan and issued patta (land rights) to them in 1962 (Kindo & Minj, 2008: 25). Landless peasants – or peasants from floodplains – from Lakhimpur, Bangladeshi migrants and refugees and ex-tea garden labourers or their children all encroached on the forest in search for fertile lands. Certainly around Merapani in Doyang RF (sector D), from 1911 designated as an official forest village, encroachment skyrocketed and currently, the whole of Doyang RF has disappeared. Many schools, both Assamese government as private schools have been opened since 1971. The principal of the first school to open in the Merapani area reminisced clearly that the demand had come from the state government to open an Assamese language school for the growing population. In this case the timing – 1971 – is important, one year before the interim agreements would be signed.

Encroachment from the Naga side also started in the 1960s. In the 1950s Diphu, Nambor and Rengma RF were often used as bases and as a safe passage to what is now Karbi Anglong. Indeed, the Assamese army personnel given patta in 1962 were exactly posted there as a deterrent for the Naga insurgents (Kindo & Minj, 2008: 25). After the 16-point agreement and the creation of the state of Nagaland in 1963 many Naga, mostly Sema, moved into the former base areas and started cultivation. The result has been the same as in Doyang RF: the forest has now disappeared. Mirroring the activities of the Assam state government, Nagaland has also started building Naga schools and making illegal occupations of forest land licit.

Notwithstanding the whole area has been brought under agriculture from both the Assam and Nagaland sides, the land remains officially forest land. No patta rights have been given, nor does any legal protection pertain to the lands in the area¹³. However, while the practice of encroachment itself is illegal, it was at the same time tacitly allowed and even encouraged by the state governments in a growing struggle to maintain the territorial rights over this disputed land. Official government support for the encroachers and unofficial government encouragement to new settlers has been common. For both state governments the numbers game, allowing as many of 'its own kind' to live illegally in the wasteland, supported their claims to a particular territory. These encroachments were not the result of state demise, as the state also used their capacity to destroy houses and evict people 'from the other side' in the disputed area (see Bhattacharyya, 1995:23) to cement their claims.

From being at the fringes of the colonial and postcolonial Assam, the encroachers became central for both states to assert their territorial stakes. Both governments wanted to prove that this area had been part of the Ahomiya (Assamese)¹⁴ or Nagamese (Rengma, Lotha and Sema) ancestral domain. Although the encroachers were living in illegality, they became the cornerstone of their community. Much of these discussions are of course reminiscent of Gupta and Ferguson's (1992: 11-12) well-known discussion of the politicized "imagination of places" and Liisa Malkki's (1992: 24) assessment of the "territorialization of national identity". In this case allowing people to move into illegality – or in other words making encroachment licit – formed a central part of the territorial state making of both Assam and Nagaland.

The interim agreements tried to freeze the illegal encroachment in the DAB, but also removed the option of regularisation. The forest land as an opportunity for landless peasants, transformed; while earlier encroachment was tacitly allowed, now each state tried to put a halt to each others infringements. Consequently, the open encroachments stopped and the suspension of 'normal' law installed a new regime in the area. Yet, while this exceptional measure at first sight might have indeed stopped further encroachments, after the interim agreement, this process would continue. While people had earlier migrated into the "wasteland" in search for scarce land, became encroachers, but were encouraged by the state

¹³ For a discussion of the land problem in one part of the DAB, Nambor RF, see Saikia, 2008.

¹⁴ For an interesting discussion on the re-imagination of the Ahom nation, see Saikia, 2004.

governments (e.g. by services like schools) after 1979 they were no longer illegal. The status of people living in the border zone has become undecided and outside normal law. The strategies employed in the border area changed. People were still able to move and settled inside the DAB, although their tactics and those of both state governments changed.

Private-Public goods and the interstate maintenance-contestation of the exception

The maintenance of the status quo necessitates a permanent negotiation, as any change in the DAB is officially the subject of an agreement by both states. Yet simultaneously both states try to secure privileges for ‘their’ population. Not only are public goods used by both states to maintain and support their claims on a particular area, private goods are also rendered public. In fact, every life in the DAB has a clear public function. As such the dichotomy between private/public does not hold in this place of exception¹⁵.

First, the role of public goods in forming state claims is the most clear. In an effort to inhibit the competing government to use infrastructure as a weapon to secure their hold – in line with the rationale of the status quo –, the road grit has suffered most as no new roads can be laid out. On the other hand, by recognising schools - or for that matter churches and temples - that have been set up “by local people with their own efforts without Government help” (from the records of a 1981 meeting between Assam and Nagaland in Kohima), both states have been able to extend their networks of power, inducing private persons to start such public services (e.g. the first, 1971 school) with the promise to recognize them as soon as they are established, certainly diffusing the public-private divide. Another example of these public goods¹⁶ are the Nagaland State Transport bus services, which form a kind of moving infrastructure to highlight Nagaland’s presence. Using the DAB roads is not only quicker than reaching Wokha and Mokokchung from Dimapur through hilly Nagaland. The service, with very regular stops along the way, is almost exclusively used by Naga living in the DAB and is clearly perceived by Naga interviewees as a direct link to Nagaland and in fact the proof that they form intrinsic part of Nagaland.

¹⁵ It is useful here to remind ourselves of Agamben’s description of the *Flamen Diale* and the *Führer* at the end of *Homo Sacer*. For the *Flamen Diale* private sphere and public function have become identical, while the *Führer* “can certainly have a private life, but...his existence as such has an immediately political character” (Agamben, 1998: 183-184). For a more general discussion on public-private, see: Weintraub and Kumar, 1997.

¹⁶ There are many more, like post offices, veterinary services etc.

Secondly, private housing forms one of the main stumbling blocks for people living in the DAB. Not only do new families emigrate to the area, established families also expand and need more room for their family. Notwithstanding, quite a few hardware shops sell building materials in Merapani, in the heart of Sector D. As putting new houses up is not allowed according to the interstate agreements, most of these illegal buildings are locally described as “renovations”. The CRPF is not known to have demolished too many buildings, certainly not from the Assamese majority population in Doyang or the Naga majority population in Diphu RF. Anil Barua, an Assamese schoolteacher, for instance, built his entirely new ‘renovation’ only a few years ago. Initially the CRPF had threatened to remove the structure, but he had been able to prove it was only a renovation, albeit of a small garden shed of his neighbour’s house. Some CRPF members also quite readily and quite unofficially admitted that, although the interim agreements stipulate that they have to demolish all new structures, under political pressure they allow for the licit “renovations” and only destroy excessive “illegal” structures. For people like Anil the current status quo offers some protection, as his house, located inside a Reserved Forest his house is of course illegal. He did not consider this to be a major problem as him – a proud Ahomiya – living there supported the claims of Assam, a state he was certain would win the struggle over the DAB and would regularise his situation.

For both states, private infrastructure clearly serves a public function, as indication of one of the state’s domination over a specific population in a specific territory. Property rights are removed from the legal and personal to the public realm and the externalities of the private goods render the division between private and public goods meaningless. Indeed, the popular maxim ‘possession in nine-tenths of law’ does not hold true in the disputed border zone. The maintenance of possession has clearly been removed from the legal terrain. It has moved towards a threshold where agents, like the CRPF-commanders or their relations in the administration, by virtue of their role in maintaining the status quo – as the prime local agents of the exception – grant the temporary suspension of the status quo. However, as the final decision, which territory belongs to whom, and which rights will be granted by which state, remains the subject of political negotiation, people are granted only what we could call ‘interim rights’, which only hold as long as the current politically negotiated situation persists.

Land ownership is also a matter where private rights and public ownership become confused. Patta, land documents, have not been issued in the DAB, initially because of its nature as reserved forest land. These patta rights form an important grudge of people in the DAB

against the government (Saikia, 2008). Given the interim agreements, granting patta rights remains however very precarious¹⁷. As administrative sanction has not been secured, direct intergroup negotiation at the local level is used to solve disputes. Yet the outcome of this negotiations often get a complicated semi-official status. To maintain “cordial relations” a Peace Committee, with members both from Nagaland and Assam, is active in a particular part of Doyang RF. They negotiate between the two communities, if and when a land problem has to be settled¹⁸. Their activities were by often derogatorily described in interviews as “purely political”. This description illustrates perfectly the everyday reality of life in the border zone. As ownership rights can not be referred back to the state, the delimitation of these rights, and consequently disputes about them, have to be settled by direct negotiation between farmers and their leaders (often goanburas or village heads). The negotiations within the peace committee take place in the “neutral” CRPF camp. This venue indeed gives a legal gloss to the outcome of the negotiations. While the CRPF admitted that the outcome of these negotiations – the minutes of the meetings of which a copy also is kept by the CRPF – has no validity in any court, the decisions acquire a complex juridical-political status in the border zone and seem to open up a space between the legal and the illegal. As the alternative for these informal accords is a complex interstate discussion, local settlement has clear advantages (both for the parties and the CRPF), although the enforcement of these decisions only holds as long as a political settlement between the Assam and Naga states holds.

An Assam Police Officer was quite blunt in giving his assessment of the complicated nature of society-state relations in the DAB: “The interim agreements force people to bribe the administration and the CRPF. As a status-quo is impossible to maintain, we have to bribe them. It is an official system of bribes”. Some friend of Anil were indeed quite certain that, with the proofs of the garden shed’s existence some money had changed hands. “But that is to be expected”. Quite a lot of research in and on India has focussed on bureaucratic corruption and the use of public office for private gains (Gupta, 1995; Das, 2004). In the DAB this bureaucratic corruption has a very ambiguous meaning. While most commonly bribes are used to make the illegal legal, bending the law in such way is a fiction in the DAB. What is done in effect is momentarily suspending, case by case, the status quo and to give semblance

¹⁷ On regular intervals different government ministers have proposed to give patta rights to the people living in the DAB, which seems almost impossible to negotiate between the two states (interview with former Assamese Minister of Agriculture).

¹⁸ They also negotiate in other intergroup difficulties, but their main focus is on land.

to a legal reality, where in fact there is none. These bribes can only hold as long as the border remains under dispute, creating a regime of “suspended temporality” (Vandekerckhove, 2009). As every fact recorded in the administrative files of the border administration is open for renegotiation – when and if a solution on the DAB would be reached -, the “renovations”, whether or not officialised through bribes, remain in the end prone to destruction. At the same time, administrators in the DAB who accept private gains – bribes - to help securing private benefits for their clients are not simply undermining the state. The administrations help securing infringements on the status quo – mostly by using their relations with the CRPF - actually supports the process of state making for their ‘side’. One could argue that by choosing who to bribe, people living under the exception are not only trying to secure private benefits, they are also supporting the state making project of one of the contenders for sovereignty over the area, they are providing legitimacy to Assam or Nagaland.

The Naga underground: Protecting Nagalim

Voicing a local concern, the national newspaper The Hindu (26 December 2006) placed the responsibility for Naga encroachments in the DAB with Assamese politicians and administrators. Although the responsibility for progress on the official level lies indeed with Assam and Nagaland, their influence and governance over the DAB is far from complete. The different factions of the National Socialist Council of Nagaland (NSCN), Naga nationalist insurgents fighting for an independent Nagalim (see Fig. 4), are very active in the DAB clearly defying the authority of the Assamese government in the Naga controlled areas of the DAB. Assamese state officials do not enter the southern part of the DAB without a large CRPF support, out of fear of getting ambushed by the NSCN operatives. Although the NSCN factions have entered into a peace agreement with the Indian state and are officially not allowed to enter the DAB armed, the insurgents feel it is their duty to protect all Naga living in the ancestral domain. As such, securing the DAB is considered a first step in securing the whole of Nagalim, the unification of all Naga inhabited areas.

Moreover, many Naga leaders consider the NSCN members as “national workers”, and their administrative structures – the Government of the People’s Republic of Nagalim – as a legitimate and powerful authority. As a result, these insurgents levy taxes on both the Naga and non-Naga living in the DAB. In one telling instance the aforementioned Peace Committee negotiated directly with the NSCN to stop taxing the non-Naga in their area, as these harassed the Naga repeatedly over this taxation. In return for these taxes, the insurgents support the claims to include the DAB in a Greater Nagaland and protect Naga from harassment by Assamese state officials. While Anil Barua had to proof his ‘renovation’, one of his Nagamese counterparts, Neheto Sema, resident of Niuland subdivision, did not have any fears about his house being demolished. By giving tax to the NSCN (Unification) he secured their support against harassment by the CRPF or the Assamese state. Neheto did not consider this to be protection money, but considered the NSCN (Unification) to be best able to include the DAB in Nagaland. In the Naga dominated sectors the CRPF – with the covert cooperation of the Assam Police – has tried and failed to curb this insurgent taxation. A high CRPF commandant admitted the difficulty – near impossibility – to control the Naga areas away from the large roads.

Although a complete discussion of the Naga conflict falls outside the scope of this article, the NSCN clearly wants to extend its control over the DAB. It tries to install a new regime in the

border area, unrestricted by interim agreements and openly defying the status quo. As they are not bound by these agreements, they have a comparative advantage to the Naga state in protecting the Naga encroachments. Although interviewees on the Assamese side did not so clearly distinguish between the Nagaland state and the Naga underground, and while the Naga state and insurgent operators often pursue the same goals, the NSCN is as much an alternative to both states' politics in the DAB. By trying to impose an alternative system of authority, the NSCN defies the commissarial status quo – the status quo to protect the constitution (Schmitt, 1921) – between Assam and Nagaland. By disallowing Assamese officials to visit the area, the NSCN at the same time increases the authority of the Nagamese state as the official enforcer of the state, but, in the practice of authority (instead of law, or the official position of the state of Nagaland) uses the DAB as an opportunity to impose their political frame. This dual process makes the aforementioned “juridical-political status” of those living in the DAB even more “undecidable” (Vaughan-Williams, 2008: 333).

Conclusion

What is intriguing is the veritable banality for the exceptional measures taken in this case. Not a civil war, nor an insurgency (of which the area abounds) or violent acts of terrorism lie at the heart of the prolonged state of exceptionalism. Although I have argued that the genealogy of the exception dates back to British policies regarding the Inner Line and Forest Reserves, after 1960 the exception gained its true form. Encroachers, looking for land, voluntarily entered into the ‘wasteland’. With the creation of Nagaland in 1963 and the start of the border dispute, these people became trapped in a place of exception, partly because their presence demanded a decision on their status. The continuous re-affirmation of a “unity between place and people” (Gupta & Ferguson, 1992: 17) made a formal delimitation of the Assamese and Naga “ancestral domains” heavily contested. The decision to maintain a populated place as an imagined wasteland space, as an area where only nature dwells, negated the necessity to bring law to the encroached area and turned it into a place of exception, with the exception as status-quo. While British territoriality had mostly tried to divide territories, the status quo lifted the territory under dispute out of the normal legal order. Moreover, banal as it is, the creation of a place of exception on the Assam-Nagaland border indeed is the result of “extreme peril, a danger to the existence of the state” (Schmitt, 2005: 6). Forest lands and the Inner Line were put up to protect the civilized state in the plains from raids and encroachment from the ungoverned Naga areas, inhabited by “savages”. Furthermore, an

open armed conflict between two states of the Union is clearly a case threatening the hold of the state in the already fragile north-east.

Consequently, as I hope to have argued, something as apparently mundane as an interstate boundary dispute can make a place of exception, a place where not law, but sovereign negotiation has to decide on everyday life, or more precisely, where one moves from law (e.g. forest law) to politics and where politics is phrased in the semblance of law. Where the continuous decisions on exceptions are made a corollary of the illegal encroachment of the people DAB. Much like the commissarial dictatorship, the dictatorship to protect the law (Schmitt, 1921; for discussion see Agamben, 2005: 6-10), both states have installed a commissarial exception, as the exceptional measures are equally meant to protect the law or, more precisely, a legal settlement of the border dispute (in contrast to a violent one).

Yet, by allowing for encroachment, support the provision of public/private goods and recognize illicit constructions and services, both states and rebel group engage in state making activities. The unsettled sovereignty forces the states to use populations and public/private goods to sustain and further their state making in the disputed territory. Consequently, and what I finally have tried to show is that the state of exception where it takes place is not an absolute object, but is subject to contestation, even by those who have installed it in the first place. We can better understand actual regimes of exceptionalism by taking into account the everyday transgression of the status-quo by both states as a tool for state making. The fiction of maintaining a status-quo, a standstill not only of law (Agamben, 2005: 41) but of life itself, has clearly been shown. In the transgression we see the exception in its true force as threshold: neither internal nor external to the juridical order, but also made and transgressed by the same parties. Consequently, exceptionalism indeed takes place in a quagmire of decisions, maintenance activities and contestations. It is a dynamic and layered project, with both forces inside and outside taking part in its actual functioning. By using the state of exception – and the work of Benjamin, Schmitt and Agamben – as a lens and heuristic tool, I hope, not only to have shown the working of a localized place of exception, but also to have made the DAB as a place of exception more intelligible. The DAB is a place where the legal has been sacrificed to the political decisionism – in negotiation and conflict. Removing the DAB from its threshold and letting law regain its place in the disputed area, will also give life on the threshold a new lease.

REFERENCES

- Abraham, I. & Van Schendel, W. (2005) Introduction: The making of illicitness. in: W. Van Schendel & I. Abraham (eds.) *Illicit flows and criminal things : states, borders, and the other side of globalization* (pp.1-37). Bloomington: Indiana University Press.
- Agamben, G. (1998) *Homo Sacer: Sovereign power and bare life*. Stanford: Stanford University Press.
- Agamben, G. (2005) *State of exception*. Chicago: Chicago University Press.
- Allen, BC., Gait, E.A., Howard, H.F. & Allen, C.G.H. (2008 [1905]) *Gazetteer of Bengal and North-East India*. New Delhi: Mittal Publications.
- Amoore, L. (2006) Biometric borders: Governing mobilities in the war on terror. *Political Geography*, 25(3), 336-351.
- Arendt, H. (1976) *Eichmann in Jerusalem: A report on the banality of evil*. Harmondsworth: Penguin Books.
- Baruah, S. (2002) *India against itself: Assam and the politics of nationality*. New Delhi: Oxford University Press.
- Baruah, S. (2005) *Durable disorder: Understanding the politics of Northeast India*. New Delhi: Oxford University Press.
- Baruah, S. (2007) *Postfrontier blues: Towards a new policy framework for Northeast India (Policy studies #33)*. Washington: East-West Center.
- Basaran, T. (2008) Borders, territory, law. *International Political Sociology*, 2(4), 322-338.
- Benjamin, W. (2004 [1921]) Critique of violence. in M.W. Jennings (ed.), *Walter Benjamin, Selected writings: volume 1, 1913-1926* (pp.236-252). Cambridge (MA) and London: The Belknap Press of Harvard University Press.
- Bhattacharyya, B. (1995) *The troubled border: Some facts about boundary disputes between Assam-Nagaland, Assam-Arunachal Pradesh, Assam-Meghalaya and Assam-Mizoram*. Guwahati: Lawyer's Book Stall.
- Bigo, D. (2007) Detention of foreigners, states of exception and the social practices of control in the banopticon. in: P.K. Rajaram & C. Grundy-Warr (eds.), *Borderscapes: Hidden geographies and politics at territory's edge* (pp. 3-33). Minneapolis & London: University of Minnesota Press.
- Chakravorty, B.C. (1981) *British relations with the hill tribes of Assam*. Kolkata: Firma KLM Private.
- Constantinou, C.M. (2008) On the Cypriot state of exception. *International Political Sociology*, 2(2), 145-164.

- Das, S.K. (2001) *Public office, private interest: Bureaucracy and corruption in India*. New Delhi: Oxford University Press.
- Das, V. & Poole, D. (2004) State and its margins: Comparative ethnographies. In V. Das & D. Poole (eds.), *Anthropology in the margins of the state* (pp. 3-34). Santa Fe & Oxford: School of American Research Press & James Currey.
- Das, V. (2004) The signature of the state: The paradox of illegibility. In V. Das & D. Poole (eds.), *Anthropology in the margins of the state* (pp. 225-252). Santa Fe & Oxford: School of American Research Press & James Currey.
- Edkins, J. & Pin-Fat, V. (2005) Through the wire: Relations of power and relations of violence. *Millennium: Journal of International Studies*, 34(1), 1-24.
- Franke, M. (2009) *War and Nationalism in South Asia: The Indian state and the Nagas*. London and New York: Routledge.
- Gait, E. (2008 [1926]) *A history of Assam* (Guwahati: Bina Library).
- Gohain, H. (2007) Violent borders: Killings in Nagaland-Assam. *Economic and Political Weekly*, 42(32), 3280-3283.
- Government of Assam (1985) *Facts about the Assam-Nagaland border*. Guwahati: GoA.
- Government of Nagaland (1985) "*Untold Story about Merapani*". Kohima: GoN.
- Gupta, A. & Ferguson, J. (1992) Beyond "Culture": Space, identity, and the politics of difference. *Cultural Anthropology*, 7(1), 6-23.
- Gupta, A. (1995) Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State. *American Ethnologist*, 22(2), 375-402.
- Hansen, T.B. & Stepputat, F. (2005) Introduction. In T.B. Hansen & F. Stepputat (eds.), *Sovereign bodies: Citizens, migrants and states in the postcolonial world* (pp. 1-36). Princeton & Oxford: Princeton University Press.
- Hansen, T.B. & Stepputat, F. (2006) Sovereignty revisited. *Annual Review of Anthropology*, 35, 295-315.
- Hansen, T.B. (2000) Governance and myths of state in Mumbai. in C.J. Fuller & V. Bénéï (eds.), *The everyday state and society in modern India* (pp.31-67). New Delhi: Social Science Press.
- Hansen, T.B. (2001) *Wages of violence: Naming and identity in postcolonial Bombay*. Princeton: Princeton University Press.
- Hansen, T.B. (2005) Sovereigns beyond the state: On legality and authority in urban India. In T.B. Hansen & F. Stepputat (eds.), *Sovereign bodies: Citizens, migrants and states in the postcolonial world* (pp. 169-191). Princeton & Oxford: Princeton University Press.

- Human Rights Watch (2008) *Getting away with murder: 50 years of the Armed Forces (Special Powers) Act*. New York: HRW.
- Humphreys, C. (2007) Sovereignty. In D. Nugent & J. Vincent (eds.), *A companion to the anthropology of politics* (pp.418-436). Malden, Oxford & Carlton: Blackwell Publishing.
- Humphreys, S. (2006) Legalizing lawlessness: On Giorgio Agamben's state of exception. *The European Journal of International Law*, 17(3), 677-687.
- Huysmans, J. (2006) International politics of exception: Competing visions of international political order between law and politics. *Alternatives: Global, Local, Political*, 31(2), 135-165.
- Huysmans, J. (2008) The jargon of the exception: On Schmitt, Agamben and the absence of political society. *International Political Sociology*, 2(2), 165-183.
- Johns, F. (2005) Guantánamo Bay and the annihilation of the exception. *The European Journal of International Law*, 16(4), 613-635.
- Jones, R. (2009) Agents of exception: Border security and the marginalization of Muslims in India. *Environment and Planning D: Society and Space*, 27(5), 879-897.
- Kar, B. (2009) When was the postcolonial? A history of policing impossible lines. In S. Baruah (ed.), *Beyond counter-insurgency: Breaking the impasse in Northeast India* (pp. 49-77). New Delhi: Oxford University Press.
- Kikon, D. (2008) Borders, bazaars and bazaar: Locating the foothills along the Naga Hills in Northeast India: An essay. *Biblio: A review of books*, 8(5-6), 21-23.
- Kindo, C. and Minj, D. (2008) Impact of Assam-Nagaland territorial dispute in the district of Golaghat, Assam. In L. Jeyaseelan (ed.), *Conflict mapping and peace processes in Northeast India* (pp.8-53). Guwahati: North Eastern Social Research Centre.
- Kinghen, N. (1985) *Facts about the Nagaland-Assam boundary affairs*. Wokha: Lotha Hoho.
- Mackenzie, A. (2007 [1884]) *The North-East frontier of India*. New Delhi: Mittal Publications.
- Malkki, L. (1992) National geographic: The rooting of peoples and the territorialization of national identity among scholars and refugees. *Cultural Anthropology*, 7(1), 24-44.
- Megoran, N. The critical geopolitics of the Uzbekistan-Kyrgyzstan Ferghana valley boundary dispute, 1999-2000. *Political Geography*, 23(6), 731-764.
- Minca, C. (2005) The return of the Camp. *Progress in Human Geography*, 29(4), 405-412.
- Neocleous, M. (2006) The problem with normality: Taking exception to "Permanent emergency". *Alternatives: Global, Local, Political*, 31(2), 191-213.

- Prozorov, S. (2005) X/Xs: Towards a general theory of the exception. *Alternatives: Global, Local, Political*, 30(1), 81-112.
- Raeymaekers, T. (2009) The silent encroachment of the frontier: A politics of transborder trade in the Semliki valley (Congo-Uganda). *Political Geography*, 28(1), 55-65.
- Ramadan, A. (2009) Destroying Nahr el-Bared: Sovereignty and urbicide in the space of exception. *Political Geography* 28(3), 153-163.
- Reid-Henry, S. (2007) Exceptional sovereignty? Guantanamo Bay and the re-colonial present. *Antipode* 39(4), 627-648.
- Roitman, J. (2001) New sovereigns: Regulatory authority in the Chad Basin. In T.M. Callaghy, R. Kassimir & R. Latham (eds.), *Intervention and Transnationalism in Africa: Global-Local Networks of Power* (pp. 240-263). Cambridge: Cambridge University Press.
- Roitman, J. (2005) The garrison-entrepôt: A mode of governing in the Chad Basin. In A. Ong & S.J. Collier (eds.) *Global assemblages: Technology, politics and ethics as anthropological problems* (pp. 417-436). Malden, Oxford & Victoria: Blackwell Publishing.
- Saikia, A. (2008) Forest land and peasant struggles in Assam, 2002-2007. *Journal of Peasant Studies*, 35(1), 39-59.
- Saikia, Y. (2004) *Fragmented memories: Struggling to be Tai-Ahom in India*. Durham & London: Duke University Press.
- Salter, M.B. (2006) The global visa regime and the political technologies of the International self: Borders, bodies, biopolitics. *Alternatives: Global, Local, Political*, 31(2), 167-189.
- Salter, M.B. (2008) When the exception becomes the rule: Borders, sovereignty, and citizenship. *Citizenship Studies*, 12(4), 365-380.
- Schmitt, C. (1921) *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf*. Munchen: Duncker und Humblot.
- Schmitt, C. (2005 [1934]) *Political Theology: Four chapters on the concept of sovereignty*. Chicago: The University of Chicago Press.
- Schmitt, C. (2007 [1932]) *The concept of the political*. Chicago: Chicago University Press.
- Shashtri, R.K. (1987) *Report of the commission of inquiry on the incidents relating to the Assam-Nagaland border conflict (April-June 1985)*. New Delhi: GoI, Ministry of Home Affairs.
- Steinmetz, G. Introduction: Culture and the state. In G. Steinmetz (ed.), *State/Culture: State-formation after the cultural turn* (pp. 1-49). Ithaca and London: Cornell University Press.
- Sundaram, K.V.K. (1976) *Report of the Advisor K.V.K. Sundaram on the Assam-Nagaland boundary*. New Delhi: GoI, Ministry of Home Affairs.

- Suykens, B. (2009) The Tribal as encroaching naturalist: The tribal-forest nexus in law and society in India. *Critical Asian Studies*, 41(3), 381-402.
- Vajpeyi, A. (2007) *Prolegomena to the study of people and places in violent India (Perspectives #26)*. New Delhi: Women in Security Conflict Management and Peace.
- Vajpeyi, A. (2009) Resenting the Indian state: For a new political practice in the Northeast. In S. Baruah (ed.), *Beyond counter-insurgency: Breaking the impasse in Northeast India* (pp. 25-48). New Delhi: Oxford University Press.
- Vandekerckhove, N. (2009) "Only ghosts are ruling the forest": The state, land tenure and occupation patterns in Kachugaon Reserved Forest, Assam (India). (*draft*).
- Vaughan-Williams, N. (2008) Borders, territory, Law. *International Political Sociology*, 2(4), 322-338.
- Weintraub, J. and Kumar, K. (eds.) (1997) *Public and private in thought and action: Perspectives on a grand dichotomy*. Chicago: University of Chicago Press.

APPENDICES

Fig. 1: Assam-Nagaland border circa 1878

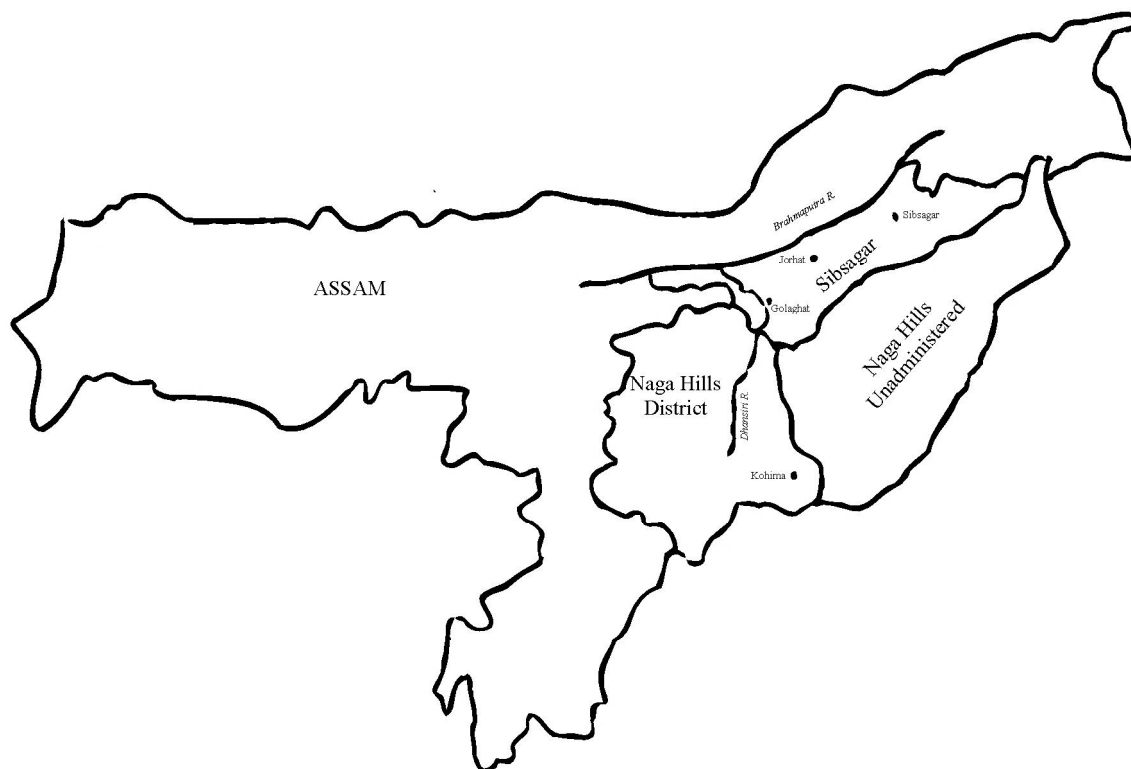


Fig. 2: Assam-Nagaland border circa 1898



Fig. 3: Assam-Nagaland border circa 2009



Fig. 4: Proposed Naga ancestral domain (Nagalim)

