Geoforum xxx (2017) xxx–xxx

Contents lists available at ScienceDirect

Geoforum

journal homepage: www.elsevier.com/locate/geoforum

Scaling struggles over land and law: Autonomy, investment, and interlegality in Myanmar's borderlands

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ARTICLE INFO

Article history:
Received 26 March 2016
Received in revised form 2 January 2017
Accepted 20 January 2017
Available online xxxx

Keywords:
Legal geography
Land
Investment
The state
Scale
Legal pluralism

ABSTRACT

This article explores the relevance of spatial global legal pluralism—an emerging field at the interstices of geography, anthropology, and socio-legal studies—for research on the global land rush, and the study of land law and investment in particular. I argue that a focus on the spatial dimensions of law—coupled with attention to the interlegality, scalar politics, and spatio-temporalities of semi-autonomous law—offers important insights into the dynamic forces, actors, and stakes in the global land rush. In Myanmar, the prospects for peace—however tenuous—have led to an acceleration of land law development including the creation of 'semi-autonomous land law' by ethnic armed groups and activists in its borderlands. I discuss the ways in which such policies not only anticipate peace but seek to shape its political-economy over multiple spatio-temporalities. By recognizing both international human rights law and customary law, such 'non-state' laws bring these two scales into an intermediary legal jurisdiction, contributing to the sedimentation of *Kawthoolei* and Kachinland as political scales in their own right.

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1. Introduction

> *"Thus the scale of struggle and the struggle over scale are two sides of the same coin."– Neil Smith (1992: 74)*

On the outskirts of Loikaw, a small provincial capital in Eastern Myanmar, an unusual group of people gathers in a one-room tin-roof building. On the perimeter of the Karenni Cultural Center grounds, a formation of ornate wooden poles reach towards the sky; carved from the Eugenia tree, they represent the first living beings in Karenni creation. Inside the building hangs a royal blue banner that reads—in Burmese and Karenni—'Customary Land Law Conference.' A string of Karenni flags of different sizes graces the top of the banner; the lone Burmese flag—I later hear—was removed via a shaky ladder during the previous night's drinking session. Tables are arranged in a massive horseshoe shape, flanked by a hundred participants in green plastic chairs. Trying to tell activists apart from farmers is a difficult task; the heavy sun has taken its toll on some more than others, but here, farmers too, pair activist t-shirts with ethnic *longyis*.

The conference organizers, an alliance called the Ethnic Communities Development Forum, has invited farmers, activists, and members of land-grab affected communities, representing 55 community-based organizations (CBOs) from all seven ethnic states in the country (see Fig. 1 for a map); notably, only one ethnic *Bamar* participant—Myanmar's majority group—is present in the whole conference. The first two days are spent sharing preliminary research for a joint report on ethnic customary land law across the country. The report seeks to show how, in many ethnic areas of Myanmar, customary law has long guided practices of land tenure, including individual and collective lands, forests, and rivers, shifting cultivation, and mechanisms for dispute resolution.

On the last day, a debate emerges regarding the draft strategy for gaining state recognition of customary law. Referring to the two-pronged strategy, one vocal participant, an ethnic activist from Kachin state, insists that "farmers want to go to parliament directly, not indirectly." Rather than seeing the two approaches as complementary, this comment reflects a belief that advocating to members of parliament directly is a more powerful route for recognition of customary law. However, what one participant calls an 'indirect route'—working with ethnic armed groups to develop semi-autonomous land law and leverage their significant power with the central government—is one that many activists, particularly those with cross-border[1] experience, believe is more effective.

[1] I use the term 'cross-border' rather than 'exile' to emphasize the dynamic movements of activists and organizations who undergo training or pursue activities under relative freedom in neighboring territories (especially on the Thailand, China, and India borders) while continuing their work—sometimes clandestine, sometimes above-ground—in ethnic areas of Myanmar.

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http://dx.doi.org/10.1016/j.geoforum.2017.01.017
0016-7185/© 2017 Published by Elsevier Ltd.

Please cite this article in press as: Hong, E. Scaling struggles over land and law: Autonomy, investment, and interlegality in Myanmar's borderlands. Geoforum (2017), http://dx.doi.org/10.1016/j.geoforum.2017.01.017

Fig. 1. Map of Myanmar: This map shows the states named after major ethnic groups, including Kachin State to the North and Karen (Kayin) State and Karenni (Kayah) State to the Southeast (United Nations, 2012).

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