

June 28 – July 1, 2010  
Siem Reap, Cambodia

## **Community Forestry in Cease-Fire Zones in Kachin State, Northern Burma: Formalizing Collective Property in Contested Ethnic Areas**

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*This paper has been prepared for presentation at the CAPRI Workshop on Collective Action, Property Rights, and Conflict in Natural Resources Management. The present version has not undergone review.*

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*Community forests (CFs) in northern Burma have been gaining momentum since the mid-2000s, spearheaded by national NGOs, mostly in response to protect village land from encroaching agribusiness concessions. While the production of these new CF landscapes represents the material resistance against state-sponsored rubber, in effect it produces contested state authority by formalizing control of former customary swidden hills under the Forestry Department. The CF land management plans mirror state land classification schemes that delineate between 'forest' and 'agriculture' land uses, in stark contrast to traditional land management practices. For instances of post-war zones with continued contentious state authority, as is the case in Burma, rebuilding state-society resource relations and institutions present new challenges beyond the more narrow environmental conflict framework. This ethnographic case study challenges the "subsistence wars" premise, calls for in-depth area studies to understand the deep historical and political conflict driving so-called resource wars, and argues against the tendency to 'aboralize' and 'tribalize' indigenous people through collective forest management interventions. Overall this paper challenges several assumptions with advocating for collective property management as a conflict mediation strategy, and underscores the importance of development projects taking into account new forms of power and authority in post-war/conflict zones.*

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### **1. INTRODUCTION**

Community forests (CF) in northern Burma,<sup>1</sup> particularly in Kachin State, have been sprouting up in villages since the mid-2000s, spearheaded by national NGOs. The recent watershed of CF establishment follows several contingent foundational factors: greater political stability and government control in cease-fire zones; enhanced NGO capacity, access, and effectiveness in these areas; and most prominently the recent threat of agribusiness. This paper will critically examine (inter-)national NGO's assistance to rural farmers in formalizing collective forestland in cease-fire zones as a resistance strategy to land dispossession from military/state-backed agribusiness concessions.

My overall argument is that while CF represents a legally-sanctioned, bottom-up resistance against land dispossession – a rare phenomenon in a country such as Burma – an unintended consequence is producing forms of contested state authority and power in cease-fire zones. For instances of post-war zones with continued contentious ethnic politics and contested state

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<sup>1</sup> The current regime in power (the State Peace and Development Council, or SPDC) changed the country's official name to Myanmar in 1989. Although the UN recognizes the name change, the US government, EU, ethnic minority groups, and Burma activists refuse to accept this name as a political statement. For this paper I follow suit by referring to the country as Burma unless an official title of a department or in a quote.

authority, as is the case in northern Burma, rebuilding state-society resource relations and institutions present new political and resource use and access challenges. Data presented here is part of a broader research agenda conducted since the early-2000s on resource politics in northern Burma, with qualitative analysis for this paper based upon interviews with CF user groups, participant observation at CF workshops, interviews with Burmese NGOs, and secondary materials. This research project is a work-in-progress, and all errors are of course of my own unintentional making.

CF represents a refashioned collective property regime. This novel land management strategy does not represent any sort of customary arrangement; in fact Kachin<sup>2</sup> are upland swidden farmers, not strictly forest-dwelling communities. This scenario then causes conflict in that the CF joint- management plans mirror state land classification schemes that firmly delineate between ‘forest’ and ‘agriculture’ land uses, unlike traditional land management (much like for other rural communities) that does not clearly separate forest from agriculture. CF falls under the jurisdiction of the Ministry of Forestry (MoF), which enables the increasingly weak MoF to stake an institutional claim against the increasingly powerful Ministry of Agriculture and Irrigation (MoAI). In addition to symbolizing emerging state institutional struggles in cease-fire zones, newly established CF are also altering local resource use and access by villagers planting state-favored, high-value timber trees, such as infamous Burmese teak, in former swiddens – an act that uncomfortably brings colonial-dictated resource use practices into the present. Furthermore, only CF user groups can access forest products, with outsiders (non-CF members, even within the village) formally blocked from access, including for shifting cultivation.

By farmers and NGOs attempting to block the expansion of large-scale agricultural plantations, they instead cultivate state authority and institutions, in this case the Forestry Department, state-recognized land management categories, and new state-governed farmers. This case study highlights the importance of seriously considering how development interventions cultivate new forms of authority and power –perceived as both legitimate and illegitimate by different actors – in post-war zones when devising collective action strategies. These same interventions also inculcate new environmental practices in farmers, shaping them into NGO-state subjects that contrast with their customary practices. In this case, NGOs assisting farmers in establishing state-authorized collective property in the form of CF does not respect customary land use, facilitates bringing in a villager-perceived illegitimate state, and is increasing food insecurity. The positives though – which may or may not outweigh the negatives – include stemming the tide of land dispossession by private companies and providing a potential platform for political mobilizing at the village level. An alternative strategy could be to push for legal recognition of customary land management, such as upland swidden cultivation, could potentially block rubber expansion while concomitantly strengthening food security, customary land use regimes, and traditional village power bases to challenge state centralization in these politically contested cease-fire ethnic areas.

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<sup>2</sup> ‘Kachin’ is the ethnic group officially recognized by the Burmese government, and for which their state is called. However, six different sub-groups fall under the colonial term Kachin, the majority of which are Jinghpaw (the lingua franca), each with different dialects (some unintelligible to each other), geographical areas within Kachin State, and denominations of Christianity. While both the government and Baptist Jinghpaw Kachin would have people believe they are all united as ‘Kachin’, in reality this is certainly not the case. Each sub-group and clans within sub-groups has their own particular customs, and subsequently customary land management practices.

## 2. BACKGROUND

The geographic scope of my study is the northernmost state in Burma, called Kachin State, which borders Yunnan province, China (see map Figure 1). I give particular attention to CF situated around Myitkyina, the provincial capital, as well as closer along the China border in southeastern Kachin State, all of which is situated in national government-controlled territory since the cease-fire agreements. A similar scenario holds for northern Shan State in northern Burma, but will be left out of this analysis due to space limitations. Northern Burma has been caught in protracted war, violence, and conflict for over half a century, governed by a confusing concoction of control by the national Burmese government, cease-fire ethnic political groups, and local ethnic militias. But the cease-fire agreements in the mid-1990s ushered in a new era of seeming peace, anchored through national military policing and buying out ethnic political leaders. The post-war period with increasing national military battalions, supplemented by new national land laws enabling private investment in land development, has sparked an agribusiness investment frenzy, mostly by mainland Chinese businessmen backed by (sub-) national Chinese policies. The NGO development sector in Burma has recently begun to employ two strategies to keep at bay land dispossession from agribusiness ventures: privatizing customary swidden fields (*taungya* in Burmese)<sup>3</sup> into household permanent terraced agricultural plots (under the Ministry of Agriculture, or MoAI), and state-sanctioned community forests co-managed by the Forestry Department (under the Ministry of Forestry, or MoF). For the sake of this conference and working paper series, I will examine only CF as it entails formalizing collective property regimes in post-war zones.

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<sup>3</sup> *Taungya* is a Burmese word translated literally as “hill cultivation”; other phrases commonly used are swidden cultivation, shifting cultivation, or slash-and-burn. This now globally-recognized term to describe a type of agroforestry practice originally came from the colonial British forcing Karen Burmese to plant teak in their swidden fields.

Figure 1. Map of Burma



The people and their natural resources in Burma suffer from the world's longest running civil war, with no clear end of the political turmoil in sight, despite the country's first elections in two decades later this year. In the early 1990s most of the former ethnic 'insurgent' groups signed cease-fire agreements with the Burmese military-state after they fractured from lost financial and political support from the Chinese Communist Party (CCP). These cease-fires reconfigured the political – and subsequently biophysical – landscapes of northern Burma in rather dramatic ways, only now which we are beginning to witness. The cease-fire groups retained their arms and respective administrative control over limited politico-territory along the Yunnan, China border, in exchange for a cease in fighting. Ethnic leaders of the political groups were tempted by joint resource concessions granted by the Burmese regime, turning ethnic political leaders into businessmen. Over the past decade northern Burma has turned into a mosaic of resource extraction concessions operated and nominally controlled by a

complicated mixture of political authorities – cease-fire groups, Burmese national military, Burmese national state agencies, warlords, and Chinese businessmen.

This transformation of political patronage over resource access and use has had profound implications on the production of territory, or territorialization, which can be defined as the process through which “all modern states divide their territories into complex and overlapping political and economic zones, rearrange people and resources within these units, and create regulations delineating how and by whom these areas can be used” (Vandergeest and Peluso 1995:387). Over time since the cease-fire agreements the newly created cease-fire zones have become piecemealed into government-controlled territories, represented through new administrative land categories, resettled villages under state administration, new state resource management regimes, and a surge of military battalions. I frame these changes as predominately new articulations of governance over land, resources, and people.

Related to governance, new state land laws encouraging private investment in Burma’s agricultural sector have begun to be felt in the uplands of northern Burma, impacting farmer’s access to land resources, jeopardizing their livelihoods, food security, self-autonomy, and overall well-being.<sup>4</sup> Since the late 1980s the Burmese government has sought to begin to deviate from its socialist path and gravitate more instead towards a quasi-capitalist trajectory. This has included new land laws which encourage private investment in Burma’s agricultural sector. In recent years military/state-private partnerships with Chinese and Burmese businessmen, subsidized in large part by China’s national opium crop substitution policy, have led to dramatic landscape changes in northern Burma. While less than a decade before rural peasants in Kachin State engaged in subsistence upland agriculture in logged-out forests (from aggressive Chinese logging), now private agricultural concessions are sweeping across these denuded landscapes, dislodging peasants from their farmland. The encroaching concessions, namely rubber, now present the largest threat to peasant subsistence livelihood strategies.

This current scenario means that landlessness and land-poorness in rural northern Burma has become a serious problem. About 75 percent of Burma’s population lives in rural areas, with almost 70 percent of the population dependent on land as their primary means for their livelihood (Hudson-Rodd and Myo Nyunt 2001). Over 60 percent of farmers in Burma own fewer than the 5 acres (2 hectares) of land considered a minimum to achieve subsistence levels (MASRIS 2004). Nearly one-quarter of all people working in agriculture are landless in Burma; another study estimated that nationally 40 percent of households in Burma are landless, although this declines to (a still high) 30 percent of households in rural areas. According to another NGO report, more than half of households are landless in 12 of the 19 Townships in Kachin State (South 2007). Refer to Tables 1 and 2 for government data on number and size of landholdings in Burma for Kachin State.<sup>5</sup>

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<sup>4</sup> These new alterations to colonial and socialist laws are meant to encourage private companies to invest in land development. The most influential law passed was the 1991 Management of Cultivable Land, Fallow Land and Waste Land, which remains a fundamental law that moves the socialist state away from the centrally-planned economy more towards a quasi-market-oriented economy by relaxing the former restrictions on private industry and trade and offering incentives to attract foreign investment. The government also approved the Foreign Investment Law to help encourage this new national drive for controlled privatization of the economy, mostly by foreign companies. Thus non-citizens, as approved by the Myanmar Investment Commission, are able to apply for land allocations.

<sup>5</sup> Although the following figures should be viewed cautiously since official data often purposefully attempts to hide realities and does not take into account ‘illegal’ land transactions which account for far-higher numbers than official statistics, nonetheless the quantitative trends are worrying. According to official data, whereas the

**Table 1. Number and Area of Land Holdings, Burma, 2003.**

Size of Holding	Number of Holdings	% to Total	Area of Holdings (acre)	% to Total	Average area (acre)
Country Total	3453850	100.00	21550113	100.00	6.24
Under 1 acre	513221	14.86	155100	0.72	0.30
1 and under 3 acres	799292	23.14	1486804	6.90	1.86
3 and under 5 acres	648637	18.78	2459166	11.41	3.79
5 and under 10 acres	819160	23.72	5665213	26.29	6.92
10 and under 20 acres	509875	14.76	6871361	31.88	13.48
20 and under 50 acres	157188	4.55	4387338	20.36	27.91
50 and over	6477	0.19	525131	2.44	81.08

Source: Myanmar Agricultural Consensus 2003.

**Table 2. Average Number of Households by Land Holding Size in Burma, 2003.**

State	Total No. of HHs	HH size	< 5 Acres	5-10 Acres	10-20 Acres	20-50 Acres	50-100 Acres	Over 100 Acres	% Total HH's With Land	% Land-less HH
Kachin	143,526	9.2	74.69	17.13	4.50	0.53	0.02	0.04	96.91	3.09
Total										
Country	8,469,502	6.2	35.60	14.18	5.84	1.32	0.03	0.01	56.98	43.04

Source: Myanmar Agricultural Sector Review And Investment Strategy, 2004.

HH= Household

It is apparent from the government data (more of which is not illustrated in the tables) that a major agrarian transition has been under way since the mid-1990s and early 2000s. Overall there have been increasing areas of officially recognized cultivation (i.e. land titles), which can be accredited to the expansion of cultivation of marginal 'wastelands' (i.e. what is actually customary unregistered swidden fields), state use of reclaimed land, and/or increase in cropping intensity, as pushed by the MoAI as well as the top military leaders.<sup>6</sup> These national goals have been achieved by the rise of "non-household land holdings", meaning private (i.e. company) land holders. This transition is the result of the growing privatization of the agricultural sector over the past two decades, with national and foreign agribusiness companies leasing large parcels of land from the government, most recently in cease-fire zones in northern Burma. Even highly conservative official estimates which are now out-of-date provide a worrying trend:

growth in number of (titled) household-based land holdings from 1993 to 2003 increased by 22 per cent, non-household special land holdings (i.e., private agribusiness operated concessions) increased by a shocking 904 per cent. And for total area of holdings, household-based land holdings increased only by 26 per cent over the same time period, whereas the non-household category (i.e., private) increased by 324 per cent (Myanmar Agriculture Consensus 2003).

<sup>6</sup> According to the country's agriculture policy published in 2000, the MoAI aimed to reclaim 1.14 million acres of arable land for agricultural cultivation within 2000-2005/6 (NCEA 2000), although it is unknown to what extent that was actually achieved. This translates into stabilizing shifting cultivation areas in upland areas by reclaiming highland areas for more 'productive' and 'stable' land use (MASRIS 2004). MoAI's 30-year Master Plan for the Agriculture Sector (2000/01 to 2030/31) has planned to covert 10 million acres of these so-called 'wastelands' for agricultural production (MoAI 2002).

approximately 1.5 million acres have been allocated to almost 200 private businesses. According to government data (and thus deemed a very conservative figure), in Kachin State a total of nine private corporations have invested in various large-scale commercial farming contracts, totaling nearly 300,000 acres (refer to Table 3) (Myanmar Agriculture in Brief 2008).

With this political economy context, it is more helpful, and indeed accurate, to not frame these cease-fire environments as being plagued by so-called “subsistence wars”, but rather a landscape ravaged by large-scale (trans-) national resource extraction. It is not resource competition that has led to violent environments, then, but rather renewed post-war socio-political and economic conflict from the allocation of resource concessions to (trans-)national corporations during seeming cease-fire peace (see Watts and Peluso 2001). The resources may not necessarily be degraded (i.e. land grabbing without resource extraction) or the land could be devastated (i.e. clear-cut logging). The important point is that the military/state-backed resource concessionary model of development has incited the violence, not necessarily the actual depletion of those resources. Development interventions that attempt to mitigate conflict through reinforcing customary land management schemes are thus perhaps displacing the blame from military/state-backed resource extraction regimes to less powerful stakeholders: subsistence farmers. If the root problem is not “subsistence wars” and farmer competition over depleting resource bases, but rather predatory state resource extraction practices backed by private transnational finance, then we must consider whether any collective property arrangement will mitigate conflict or stem the flood of land dispossession, or perhaps even contribute to it. Furthermore, as can be shown through this brief historical narrative, the conflict over land and resources did not actually emerge until after the cease-fire agreements when political and economic risk decreased enough to invite investment, cease-fire concessions began to be granted to (trans-)national companies, and government agencies and military battalions became established in these cease-fire zones to facilitate state-backed resource concessions and implement quasi-private land development.

**Table 3. Granted Area to National Entrepreneurs for Large-Scale Commercial Farming (January 31, 2008).**

State/Division	No. of Company	Granted Area (acre)
Kachin	9	290699
Kayin	1	781
Sagaing	28	10057
Tanintharyi	33	628050
Bago (East)	9	5859
Bago (West)	7	13913
Magwe	40	165613
Mandalay	18	10446
Yangon	7	30978
Shan (South)	9	70772
Shan (North)	9	40937
Ayeyarwady	28	193180
Total	198	1461285

*NOTE: in the original source the total area = 1551285 (assumed calculation error)*

*Source: Myanmar Agricultural in Brief 2008.*

Despite my reservations with post-war interventions that seek to reinforce collective property regimes as a conflict mediation strategy, positive immediate outcomes may outweigh possible future negative longer-term consequences, pending on each specific situation. These formal property-making endeavors in reaction to rubber expansion are not part of an explicit national market capitalist project to turn “land into capital”, but rather a NGO-led response to the most recent threat to land tenure security. In a country ravaged by atrocious human rights abuses, violence, and continuing conflict, securing land tenure through community forestry does appear to be – at least in the short term – a glimmer of hope in a bleak landscape. The local and national political context, political economy, history of land conflict, forms and severity of ensuing land enclosures (and therefore dispossession), and forms of possible resistances must be taken into account when examining possible formal property-making schemes. Despite several reservations and potential long-term negative consequences, formalizing collective property regimes in the uplands of northern Burma may be the best hope for rural farmers today to salvage more secure access to land, resources, and livelihoods in the face of rapid and unregulated expansion of industrial private agricultural concessions. Further coordination and strategizing among the CF stakeholders in Burma could help to minimize the negative consequences and maximize the potential benefits of employing this strategy.

#### FORMALIZING PROPERTY, FORMALIZING CONTESTED STATE AUTHORITY AND POWER

My central argument is that national and international NGOs, development workers, and foreign donors reinforce state authority in the country’s last remaining largely non-state upland areas as an unintended consequence of attempting to block land confiscation for agribusiness ventures. These NGO-led projects, then, act as a form of development that contributes to creating legible state regulated landscapes in politically contested ethnic cease-fire zones. Without considerable careful attention to the short and long-term impacts of recreating collective property (i.e. CF), such as the further marginalization of the land-poor, landless, and female-headed households, this strategy could provoke a NGO-led “tragedy of formalization”. My intent is to illustrate how formalizing property regimes – whether it be collective or individual private land titles – renders the landscape more legible by simplifying multiple and de facto land claims into a more unified, state-recognized form.<sup>7</sup> In post-war areas this unintended consequence could present a serious dilemma if “the state” represents part of the former and/or current conflict, and if state administered landscapes impinge on the livelihoods of farmers.

The classic western notion of “the state” deserves deconstruction to illustrate that often times it is not “the state” per se that carries out ‘state’ functions, but rather what Christian Lund refers to as “public authority” (2006:678), and more importantly the process of struggle from which authority and control emerges and takes form. Following a disaggregated state analysis, this paper makes the claim that NGOs, development experts, and donors act as a very new institutional form that exercises public authority in cease-fire zones. Framing these state-like actors as possessing “state qualities” (Lund 2006:676) moves past a more statist analytical framework by understanding other forms of authority that partake in state formation. As such, I follow Rose and Miller’s assertion that “the state should first of all be understood as a complex

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<sup>7</sup> All land in Burma is owned by the state; it is illegal to sell or transfer land (although in practice is quite common, mostly unofficially). The multi-layered customary and statutory legal landscape may be best described by the ‘bundle-of-rights’ (or ‘string-of-rights’) metaphor, which underscores the diverse array of rights and users, customary and statutory laws, and various authorities governing land (Singer 2000).



and mobile resultant of the discourses and techniques of rule” (1992:178). We can thus better understand the process of how property and territory, and therefore new forms of authority and power, get produced in ethnic cease-fire zones.

Property produces authority (Sikor and Lund 2009). New property regimes, such as formalized collective property, reinforce state authority since that is the institution officially recognizing such land claims. This creates a situation then where we must not just look at property-making projects as NGO-led interventions, but rather as part of the “non-profit-government complex”. This paper will explicitly focus on how development workers and donors govern land, resources, and people, and how NGO-led property-making projects are the milieu through which state authority, and thus contested state formation, emerge.

Arguing that NGOs, development workers, and foreign donors possess state qualities and public authority in new civil society spaces in cease-fire zones, whose actions facilitate carrying the state in, is an important argument to lay out when considering collective resource management as a post-war strategy. Organizations working on post-war/conflict environmental management must recognize, as public authority actors with state-like qualities themselves, that encouraging collective resource management regimes formalizes new resource relations with the villagers and the institution that recognizes the collective property arrangements. The process of state centralization via property-making normalizes officially-recognized property (whether private or collective) at the expense of unofficial, customary law and land claims. Brian Tamanaha traces the consolidation of law by the state as an essential historical aspect of state-building processes (2008). Peluso and Vandergeest claim that states attempt to place spatial limits on cultivation rights to land: “where land rights were contingent on formal registration, land authorities transformed what had been largely local matters into systems in which the government’s documentation of occupancy, use, or enterprise rights became the final authority” (2001:773). According to Meinzen-Dick and Mwangi’s article examining the pitfalls of formalizing property rights, “formalization of property rights has historically led to a cutting of the web of overlapping interests, creating more exclusive forms of ownership of the resource” (2008:38).

Formalizing property regimes also produce new forms of territory, a process known as territorialization. New private property regimes re-territorialize space in the attempt to control resource use, people, and their relations to resources. Although originally applied to “the state”, the concept can be extended to NGOs as a contending public authority that uses “territorial strategies to control people’s activities and their access and use of local resources” (Vandergeest and Peluso 1995). In effect, the titling of state-sanctioned property constitutes national territory – a highly contentious political act in ethnic cease-fire zones where hostile farmers often still call for indigenous autonomy and where some ethnic political groups and militias attempt to claim sovereignty.

The creation of national territory through property formalization is particularly important in the ways that national territory is governed by the state, both in terms of its resources and its people. National land use policies institutionalize resource use according to existing categories of state resource management regimes, in this case separating ‘forest’ from ‘agriculture’. For CF, tree planting is the major activity permitted, with only limited planting of crops in restricted areas between the tree seedlings until the crops are shaded out. The reorganizing of nature according to state land categories and management regimes dramatically impacts rural villagers whose ‘messy’ *taungya* (swidden) practices don’t fit these national simplified land use

categories. For this reason, poverty and food security can be exacerbated; for the CF user groups interviewed the farmers needed UN food aid since turning their upland swidden fields into community forests.

The act of formalizing customary and/or collective land management regimes as a specific strategy for poverty alleviation, conserving resources, and conflict mediation can entail major problems with regards to gender, equity, and inclusiveness. “It makes it difficult to register multiple claimants, and thus has favored the exclusion rights of single interests; this has shifted rights to land and related resources to subsets of the original claimants, and involved a transfer of authority to the entity that was sponsoring the formalization” (Meinzen-Dick and Mwangi 2008:41). As the state is the ultimate authority over official property claims in the country, formalizing property regimes thus substitutes state authority (through NGO projects) in place of other customary social institutions regulating traditional land claims and management schemes. The “state as junta”, however, forces us to reconsider these American-/Euro-centric “state as benevolent” arguments used to legitimize formal property regimes. Property as power over others can be particularly problematic, or more to the point tragic, when the authority upholding formal property is a military junta, such as is the case for Burma. When the country ranks as Transparency International’s third most corrupt nation,<sup>8</sup> compounded by the world’s most brutal long-lasting regime, the unintended consequences can be severe. The problems of formalizing customary land in countries with failed states has been shown in post-war Nicaragua, for example: “The fact of having obtained the land through an administrative procedure from a nation state, which is often not considered to be a legitimate authority...further aggravates the insecure tenure situation as it is perceived by these beneficiaries of the land reform” (Broegaard 2009:158-9).

The political context within which property formalization occurs, and the authority that becomes legitimated through the recognition of the new property regimes, is a fundamental element in post-war/conflict resource management interventions. In cease-fire ethnic areas in northern Burma, the Burmese military-state is deemed illegitimate by villagers who largely still call for their own nation – a Kachin Land, for example. When the state – the authority that becomes reinforced through property formalization as a post-war mediation strategy – is perceived as illegitimate by villagers, the issue of property formalization becomes a more complicated endeavor. As Sikor and Lund remind us, “The process of recognition of claims as property simultaneously works to imbue the institution that provides such recognition with the recognition of its authority to do so” (2009:1). While the process of authorization for property claims works to authorize the authorizers – specifically in this case the Forestry Department – other rival claims to the same resources are undermined (such as poor and marginalized households), highlighting the highly political nature of property formalization.

Just as we must not imagine “the state” as necessarily benevolent, we should be careful of “pernicious localisms” and not fall for the “romance of the public domain” (Chander and Sunder 2004). Customary property regimes are also embedded within political power and often not equitable and inclusive. Therefore, the formalization and bureaucratization of new property regimes may be able to offer the possibility for new upheld rights to previously neglected community members (by both the state and community itself), and/or offer new forms of

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<sup>8</sup> The corruption watchdog, Transparency International, in its 2009 report, ranked Burma as the third most corrupt country in the world -178 out of 180 - just behind Afghanistan and Somalia (Transparency International 2009). The report also placed Burma at the bottom of the list as South East Asia's most corrupt country. According to the report the five most corrupt countries are Somalia, Afghanistan, Burma, Sudan and Iraq.

protection to previous rights holders under the new formal property claims. This of course depends what traditional land management arrangements exist, and how any formalization of collective property adds or subtracts to the equitable inclusiveness of villagers. The case study of CF presented in this paper underscores just such possibilities – both new forms of protection to old and new rights holders, as well as further marginalization of villagers who cannot afford to participate, who may or may not be the same villagers previously neglected before formalization.

But property and the production of territory do not just produce authority and power; it also produces new governed subjects through the re-articulation of new social relationships, following the understanding of property not as a thing but as a social relation. Benda-Beckman et al. underscore the social properties of property: "...[B]oth production practices and social relationships are shaped by the principles and rules of property law, but they are not the same as those principles and rules; [a]ll these (inter)actions contribute to the maintenance and change of concretized property rights as actual social relationships" (2006:26, italics in original). These new formalized property relations vis-à-vis NGOs and state authorities carry new meanings for not only land management regimes, but also identity formation (i.e. citizenship). "Territorializing strategies allow and disallow certain forms of land use and access; they regulate certain forms of mobility; and by differentiating rights to resources they contribute to the structuration of citizenship" (Sikor and Lund 2009). Therefore CF not only makes national territory through the "non-profit-government complex" by reinforcing state authority, but also state subjects, who, for example, must now abide by state land use policies that separate forest and agriculture.

#### IMAGINED COMMUNALISM: ABOREALIZATION AND TRIBALIZATION

In Kachin State before the arrival of the British, and even to some extent after, three traditional land categories existed: Sawa (chief) land, spirit doctor land, and village land. Due to the government abolishing the traditional land rights of the Sawa, and then decades of war, these traditional land categories are mostly not respected any longer. In some villages where they have a longer settlement history (more than 50 years), they may still traditionally recognize land rights and ownership. In particular, Putao (Lisu, Naga and Lacheik sub-groups), Chipwe (Lacheik and Muru/Rawang sub-groups), Sadong, Panghwa (controlled by cease-fire Kachin group, the NDA-K), and the "Triangle Area" (between the two major rivers that then form the Irrawaddy River) all still practice traditional Kachin land management (*taungya*) and recognize customary land ownership,<sup>9</sup> whereas many other places in Kachin State have already come under the government official system.<sup>10</sup> The dynamics of collective land management systems,

<sup>9</sup>*Taungya* is practiced collectively, but specific *taungya* plots are allocated to individual households. The *taungya* plots are farmed for one year (or more as the case may be now) then the whole village moves to a new area with each household being assigned a certain *taungya* farming plot. When the villagers return to the original area that they let fallow, the household gets the same individual *taungya* plot as before. In this way, plots in different hills are farmed by the same household members every time. In areas controlled by the government, though, the government-elected village chairman, with recommendations from village elders, decides on *taungya* location. In some instances elders can still follow customary land claims which then is 'fortified' by the village chairman if they consent. But the government-supported *taungya* system is far from 'traditional'.

<sup>10</sup>In areas that still practice customary land inheritance in Kachin State, the land is passed down from father to son, or "A Myay Kum". In one of my Lacheik (Kachin sub-group) informant's villages near Bhamo town on the China border, they still respect customary land laws; they refer to land by the family name. Land is inherited by the youngest son only. The other sons have to find land to farm in other ways, such as from relatives who have

which differ from village to village and according to clan customs, come into stark contrast with collective forest conservation and management, i.e. community forestry.<sup>11</sup> Overall there have been many upheavals from the British colonists, WWII Japanese and American forces, Burma's socialist path, civil war against the Burmese regime, and most recently aggressive state-building and national militarization. All these tumultuous uprisings clearly disrupted any notion of customary land management practices, traditional social institutions, and village-level leadership.

The pre-determined decision to fortify collective or customary property represents another debatable point to take serious in devising development intervention strategies to mitigate conflict in post-war areas. This model reveals many biases, such as that indigenous peoples prefer to remain fixed to a certain area, that collective tenure regimes existed prior to the conflict, and that the target people do not want private land titles (that can be bought and sold) or to be further integrated into the market (see Li 2010). There is a risk of "tribalizing" the population as a part of a racialized paternalism in establishing collective property management (see Moore 2005). For example, the World Bank's 2005 policy on indigenous peoples asserts that their identities are linked to the lands in which they live, which are tied up in collective rights (World Bank 2005). A collective tenure system then, according to this new development intervention model, "promotes capitalism while seeking to manage its dispossessory effects" by encouraging investment in land improvement while keeping at bay the supposed evils of the market (Li 2010:397).

There are similar historical disjunctures and imagined communalism for community forests, the case study explored in this paper. According to Tania Li, this type of "communal fix" proposes to "link indigenous people and other 'forest dwellers' more firmly to markets as a means to secure both their livelihoods and forest conservation. But for the plan to work, these people must not be granted individualized, alienable title to their land" (2010:398, italics in original). Furthermore, linking the promotion of collective tenure regimes to forest conservation tends to 'aborealize' the population (Walker 2004), erasing their agrarian livelihoods. Kachin may be forest-dependent communities, but they are upland farmers (and lowland rice cultivators for resettled populations near urban centers) who rely on upland swidden cultivation to meet their food security needs. While they have traditional village forests (although almost all are gone now, mostly by state agencies and logging companies), the concept of CF and the way it must be managed jointly with the Forestry Department is a novel concept in Kachin State. Therefore, two issues present themselves with promoting community forestry as a collective tenure arrangement: one, forced aborealization at the expense of agricultural practices; and two, imagining a collective past. While certainly various types of collective and customary land tenure systems have been practiced by various Kachin clans over long periods of time, community forestry as envisioned by NGOs and the Forestry Department presents a novel form of land management. In this sense, collective yes, customary or traditional, no.

How do we reconcile that NGOs and villagers are appropriating the same mechanisms – the military-state apparatus in previously non-state spaces, as well as possible future private sector

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enough land already, through purchasing, renting, etc. Most Kachin sub-groups inherit land this way, with some subtle differences, pending on sub-group and village circumstances (Interview, June 2008).

<sup>11</sup>These customary land management practices and claims often do not represent equitable land practices, but rather are based along clan lines, family power, and household wealth on which plots (based on size and location) get allocated. Disillusion of equity is further dampened by more than half a century of war which has devastated traditional customary practices.

involvement in CF establishment and harvesting – that spawned their land tenure insecurity situation in the first place (i.e. military-state-backed private agribusiness development)? Does it really matter that establishing community forests is conferring legitimacy to the military-state in these contested ethnic territories, and CF in some cases seem to be blocking to some degree the advancement of rubber? Are (inter-)national NGOs based in Yangon trumping the voices and concerns of local ethnic villagers, who may devise a different strategy if given a greater role in devising actions to enhance their land tenure security in the face of state-backed plantation development? If the villagers would prefer private forest land titles in the hills, how does that sit with NGOs set on assigning collective forestland tenure arrangements? What is the role of state laws – both colonial and contemporary – in managing dispossession? Highlighting these issues presents a serious dilemma to development workers, donors, and villagers working to establish CF in Burma.

### CEASE-FIRE DEVELOPMENT AND DISPOSSESSION

Customary land management has been weakened during the sixty-plus years of conflict in northern Burma, due mostly to large-scale displacement during the war as well as from government and NGO-led programs to resettle villagers in the lowlands. After the cease-fires were signed, many Kachin seeking refuge in NE India and Yunnan, China returned to Kachin State, but often not in the same areas as before their flight, and usually settling with different members of their pre-flight communities. And since returning, many communities have been fractured from cease-fire development projects, such as logging and mining concessions, agribusiness ventures, and large-scale hydropower. Customary ownership is still respected in certain parts though, especially in areas outside the direct administration of the Burmese government, although customary institutions and land management are continually weakening with further state-formation in cease-fire zones.<sup>12</sup> The state overrides customary authority, rights, and land management practices upon asserting its sovereignty in areas previously controlled by ethnic political groups, or in more peripheral areas of government-controlled cease-fire zones, such as in the uplands surrounding peri-urban centers. In villages under the control of the government, which is now the majority of Kachin State, the traditional village headman is replaced by a village authority figure (head of the Village Peace and Development Council, or VPDC) who is hand-picked by the government (therefore realigning allegiance towards the military-state rather than local custom and villagers). The VPDC chairman is “chairman of the land”, and is the chairman of the VPDC’s Land Management Committee who influences land use in the area.

This form of state territorialization does not respect customary use rights when granting resource concessions, instead relying upon land categories marked on the state-based land registration system and British maps.<sup>13</sup> If land is not officially registered with the government,

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<sup>12</sup> One important factor on whether customary land is recognized and respected or not is the public authority in control of that area. For government-controlled areas, it is less likely that customary land rights will be honored, but in areas under the semi-autonomous control of ethnic political groups, it seems there is a higher probability of respecting customary land management practices; although that depends more on the political group controlling that area.

<sup>13</sup> The use of state maps invisibilizes customary land as these are not codified in any way on the cadastral maps. In fact, these maps show mostly ‘wasteland’, apart from designated forest protection zones. Based on interviews with retired MoAI government officials, the maps often still used in rural areas are the colonial British maps, without any modern mapping technologies yet employed due to financial, technical, and human resource limitations.

as is the case for most upland swiddens, then it is deemed ‘wastelands’ by the Settlement and Land Records Department (SLRD) of the MoAI. According to law, then, this land can be confiscated by the government agency from peasants farming the land and granted as a land concession to a company. For the military, who often signs the deal for concessions, land is often confiscated regardless of official registration. Finally, forests are also targeted for plantation development, although less so than upland swiddens due to institutional struggles in handing over land under the jurisdiction of the MoF to the MoAI (rubber being an agricultural crop). In addition to customary swidden fields, villagers also have customary village forests where the community collectively regulates its use. Walking through these different land categories and property regimes (i.e. ‘bundle-of-rights’) points to the importance of the varied institutional and property regime complexities involved with the contemporary enclosure movement in northern Burma – and the potential negative consequences of simplifying from recreating a collective property regime such as CF.

The recent surge of land property formalization (CF and privatized household agricultural plots) highlights possible avenues local communities are increasingly travelling down – hand-in-hand with NGOs – to legally contest military-state territorialization. But what concerns me, among other issues pointed out so far, is that the very effect that cease-fire development is inflicting on peasants – dispossession – is the same effect (to some degree) that their counter-movement brings about. Creating collective forest land management schemes may be a collective property regime, but the joint-forest management plan regulates the forest land according to state laws and categories. These new state regulations cultivate trees at the expense of eradicating *taungya*, displacing households that rely on these forests and fields for their subsistence. In this sense, cease-fire development brings about a double-dispossession effect. Furthermore, while the counter-movement to block rubber plantation expansion, for example, recreates a sort of commons, it is nothing like the ones destroyed. Finally, a collection of NGOs working closely on pushing CF in the country has shown a very recent interest in private sector involvement in establishing CF, with contracts made between businessmen and potential CF user groups. While in many countries where CF flourishes the private sector plays a vital role to its success, but in a country like Burma without regulating private investment and corporate behavior serious problems could arise, such as CF providing yet another mechanism for unregulated private extractive development. If CF were to become financed by the private sector, then the very mechanism that initiated the CF movement (unregulated private land development) would then govern the movement posing to mitigate its dispossessionary effects.

The real problem that needs to be addressed then is that no national law formally recognizes traditional land use (i.e., *taungya*). This means that if a farmer practices swidden cultivation on a hillside, then that livelihood practice will not be formally or legally recognized and therefore not protected by any state authority. The legal and empirical implications are important: it is legal under state law for a government agency to confiscate swidden land since it is not recognized as an official land practice and therefore not marked on state maps. Furthermore, as traditional management does not employ the same distinct categories of forest and agriculture, the only method for farmers to protect their land in forested landscapes (mosaic of trees and swidden fields) is to establish a CF, which forbids continued traditional agricultural use. Villagers are thus left with two options, both of which put them between a rock and a hard place: continue *taungya* although risk land confiscation, or turn your village forest or cultivated hillside into a community forest with the hopes of legally protecting it, despite having to give up harvesting that land.

## COMMUNITY FORESTS CASE STUDY

The very recent wave of CF establishment in northern Burma highlights a NGO strategy to protect farmer's land from private land development. As these various forms of power and money gain momentum during the current agribusiness boom in the north, traditional village headman and leaders, Baptist pastors, development workers, and donors challenge the spatialization of state-private power and property. The production of these newly privatized mosaic landscapes represents the material resistance against rubber, and the ideological acceptance of state authority, in this case the Forestry Department which co-manages the CF. Ethnic farmers who rebel against the government in this hotly contested and violent landscape are put in an awkward position, evident in interviews with community leaders who renounce the Burmese regime and praise the value of CF in the same breath. Nonetheless, in a landscape of hardship scarred in lost battles, community forests offer the promise of an open and active political and material struggle with real possibilities.

In 1995 the Forestry Department passed the Community Forestry Law and then Instructions (CFI), thus creating the country's only legal avenue for villages to organize outside state institutions. The law calls for the creation of a community forest user group (FUG), which is headed by a democratically-elected villager from within the village.<sup>14</sup> But only since the last few years when plantation development hit northern Burma did villagers actually start putting the community forestry law into practice, which is now getting more attention from community development workers, donors, and researchers alike. The majority of Kachin villages surrounding the provincial capital, for example, are establishing community forests in their former upland swidden fields around their village, often organized through the village's local Baptist churches.

The three FUGs interviewed in July 2008 around the provincial capital of Kachin State are actively contesting territorialized power by strategically appropriating this legal framework as an explicit resistance to the recent surge of plantation development that specifically targets their swidden fields. As a result, villagers are planting a few different valuable hardwood species, such as teak (a quintessential colonial and post-colonial tree species still exclusively owned by the state), where once they planted food crops.<sup>15</sup> Following village engagement with the Forestry Department hand-in-hand with NGOs, rather sophisticated detailed land management plans are drawn up with the FUG, which delineate between 'forest' and 'agriculture' in the same manner as state land classification schemes. The land thus becomes co-managed by the NGO, Forestry Department, and the villagers' FUG – but the land is formally registered under the jurisdiction of the MoF, which then stakes a claim against the encroaching and the increasingly powerful MoAI.

This highlights the institutional struggle embedded within the community forestry process (MoF vs. MoAI), mirroring MoF's fall from grace since the British introduced scientific

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<sup>14</sup> It is important to note that the elected head of the FUG is not the government-elected headman of the village. Informal research has shown how the village-elected FUG head may usurp power from the government-selected village headman, showcasing the political possibilities of CF.

<sup>15</sup> Individual household *taungya* plots are not being targeted, but rather a whole *taungya* mountain is demarcated into a community forest. This is an important distinction noted in all three community forest sites where governance mechanisms changed from 'communal' land management to 'FUG-limiting' resource access. As a result, marginalized households incapable of participating in the FUG (due to work burdens and/or distance between village and swidden) lose access to a previous communal resource sink (e.g. NTFPs).

forestry by way of Germany via India. It is unclear; however, what the future will hold for villager's CF: who will be able to harvest and where will the profits actually go.<sup>16</sup>

*Taungya* land is often selected for establishing community forests, in addition to degraded watershed forests. Different strategies are employed to establish a CF; one way is to plant rice intercropped with trees, then let it fallow and turn into a CF timber plantation. In this instance, households are making informal agreements with each other on which *taungya* plots to use to plant trees on to establish the CF. Individual household *taungya* plots are not being targeted, but rather a whole *taungya* mountain is demarcated into a community forest. Some households however are not interested in community forestry, and so do not want to partake. Or other labor-poor households are not available to partake in FUG meetings because everyone must work the fields; so they are not able to benefit and lose their collective or customary farming land. The main problem with this situation is that uplands are taken away from village *taungya* cultivation practices (i.e. dispossession), even though some villagers are “not interested” in or “not available” for engaging in CF.

Following the clear separation between ‘forest’ and ‘agriculture’ in state-regulated landscapes, similar problems emerge in practice with the establishment of CF. One local development worker explained their new strategy for villagers: “We advise that wherever you do *taungya*, just start planting trees” (Interview, June 2008). For one community in Waingmaw across the Irrawaddy River from the provincial capital, before the forested land became a CF marginalized households used the forest for harvesting bamboo, firewood, etc., as well as *taungya* in a few spots on the hill. But after the land became a designated CF, only the FUG could access forest products, specifically firewood, with outsiders blocked from access. *Taungya* was also made to stop in the CF (Interview, June 2008). This could have disastrous consequences for poor households – especially female-headed households – who rely heavily on forests to meet their daily needs, but are too busy with work or live too far from the village center to partake in FUG membership, a common problem of the most poor and marginalized households. One innovative approach would be to allow agro-forestry in community forestry plots to allow villagers to be able to continue practicing variant forms of *taungya* within CF areas over the long-term (rather than just short-term as is the case now).

The CF Instructions (CFI) offer many new loopholes to would-be members and possible private investors. For example, if family members are included, it risks becoming a private forestry scheme monopolizing a community asset. There is thus concern that CFI may make it attractive to village elites as a mechanism for land grabbing, where several cases have supported such fears (Interviews, 2008). One report clearly states this concern: “If community forestry is promoted by ‘selected approach’ in which only capable village elites are involved in Forest User Group (FUG), common property of the villages will be gradually falling into the hand of a few powerful people and the rest of poor villagers might be facing more stringent access to such resources for their livelihood” (ECO-Dev n.d.). In this way, CF may hinder, rather than help, poor households’ access to forest resources. This may be the cost of the majority of villager’s collectivizing property near their village under a range of property

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<sup>16</sup> It remains to be seen whether this strategy will play out successfully, and for whom. There have been NGO documented cases in which newly-established CF have successfully fought off plantation development in their area, as in the case with the Community Forest explained above. However, other cases have emerged where community forests have offered an unexpected loophole in land grabbing by local official’s allies. In another case a military-backed Chinese rubber company took over part of a legal community forest, although the village was able to save from rubber one hill for their remaining CF.



regimes as a way to keep the land away from private companies. While the land may be retained in the community, it is not for the whole community to use anymore, nor to be utilized as they necessarily want.

All three FUGs interviewed in July 2008 made it explicitly clear that at the same time they established their community forestry plots, they had to accept food handouts from the UN's World Food Program (WFP), as the village no longer had enough land (swiddens are now CF plots) or labor (time spent maintaining CF plots) to adequately feed themselves. An elderly couple who head one FUG explained: "We started to have a rice shortage problem since last year when we started our community forest. We expect to continue to have rice shortage in the future. This is directly because of the community forest, because now we do not have enough labor to do *taungya*. Since our community forest we do not have enough labor for *taungya*, because we have to manage trees, and fewer crops planted on *taungya* because now we have to share space with trees" (Interview, July 2008). Thus not only do community forests bring in the state, development workers, and funders, but also state-favored trees planted in swiddens, which then beckon food relief aid.

The villagers are thus embarking upon a calculated risk to gain incremental land tenure security backed by the state, and sharing economic returns upon timber harvesting, at best. In both forms of cease-fire development – rubber and community forests – enclosure ensues, the former vis-à-vis military-private interests and the latter vis-à-vis the non-profit-government complex. While certainly the most promising resistance movement against military-private enclosure in the country, serious problems present themselves with closer inspection, as outlined in this paper. But one must see the dim light bleakly shining through this resistance strategy, where villagers and this author both view NGO-state territorialization (i.e. CF) an overall much better scenario than military-private territorialization (i.e. rubber). Nonetheless, NGOs, development workers, donors, and villagers face a serious dilemma: dealing with the unintended consequences of using the "state as protector" given the historical and contemporary political context of state-society relations in contested ethnic areas of northern Burma.

## RECOMMENDATIONS

- Focus on building up civil society spaces and actors to encourage village-level leadership outside state institutions.
- Establish a network of CF user groups to cultivate village-level leadership at multiple scales to encourage political mobilizing.
- Focus on quality as well as quantity, without losing sight of the former to achieve the latter. Aspects such as gender and equity within the user groups must be stressed.
- Build capacity of the CF user groups through trainings, workshops, village exchanges, etc. which will contribute to achieving these recommendations.
- Consider the villagers as the primary stakeholder, and treat them as such. They should decide for themselves how they wish to manage their dispossession, and enlist the help of NGOs, development workers, and funders as they see fit.
- Recognize the multiple stakeholders and ambitions involved in such a development intervention, recognizing and giving space to these multiplicities so that as many objectives can be achieved as possible.
- Development interventions should assist villagers in rebuilding their customary institutions and land management practices that represent their traditional forms as much

as possible and desired by villagers themselves, instead of new state-defined, collective land management regimes designed by outsiders.

- More attention must be paid to scalar politics of conflict in order to find lasting solutions. An analysis of power and politics should be included in any conflict remediation study.
- More attention must be paid to political economy to better understand resource conflict. This analysis will help target the major causal agents of conflict.
- Development agencies, NGOs, and donors should address the actual multiple sources of the resource conflict to mitigate further violence and instability, rather than intervene in rural farmers' lives to change their land use behavior. In short, the causal mechanism of conflict should be targeted, not less powerful actors being negatively impacted by those causal agents.
- Development workers, funders, and policy makers should reassess the relationship between conflict and resources. Different intervention strategies should be deployed for situations in which limited resources causes conflicts ("subsistence wars") versus where outside extractive forces cause conflict through their land dispossession effects and/or depletion of resources.
- The multiple perceptions of state legitimacy, by all stakeholders, must be considered in devising any collective land management strategy; the villagers' views of the state should be taken seriously when any development intervention reinforces state authority and power through land titling and the production of territory.
- Close attention should be paid to the local context (political, economic, etc.) for each case in order to devise an appropriate intervention strategy, rather than create a post-war development model to be replicated in a wide variety of places. Particular focus should be placed on history and politics to gain a nuanced understanding of contemporary resource politics and conflict in order to best search for appropriate and sustainable solutions.
- The dynamic nature of land dispossession needs to be better understood in a particular area in order to advocate for more appropriate forms of economic governance through various possible land tenure systems (e.g. collective versus individual).
- Instead of advocating only for collective property regimes to mitigate conflict, the specific situation requires opening up options to possible allocation of private land titles with alienable land rights to ethnic peoples as another possible strategy to overcome conflict. Further integrating into, rather than a paternal distancing from, markets (of both commodities and land) may provide a better mechanism to reduce certain forms of conflict (e.g. land dispossession from state-backed concessions).

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