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USAID BURMA LAND TENURE PROJECT LAND BRIEF #1, MAY 2016

LAND GOVERNANCE ISSUES BRIEF

As Burma has opened to the international community and embraced a process of political transformation and peace building, it is apparent that the country faces a complicated set of issues relating to land governance that need to be addressed in order to support inclusive economic growth. While many of these issues require further study, the Government has already made positive steps that should be recognized and built upon. This land governance issues brief is aimed at informing policy decision-makers and other stakeholders of the key issues facing the country relating to improving land governance, and the important efforts that have already been made to address them.

LEGAL FRAMEWORK

The legal framework relating to land governance in Burma is poorly harmonized and often antiquated, with many important pieces of legislation, such as the Land Acquisition Act of 1894, dating back to the colonial period. As a result, it is frequently difficult to discern which laws, or specific provisions of laws, are still in effect.

The Farmland Law and Vacant, Fallow and Virgin Lands Management Law (VFV), enacted in 2012, moved the country towards the establishment of a land market, where land resources could be sold or otherwise transferred or encumbered. There is controversy relating to certain provisions in these pieces of legislation, though the main issue relates to the lack of governance capacity to implement the laws effectively, particularly with regard to the issuance of Land Use Certificates and allocation of grants and leases of land at the disposal of the state. Weaknesses in these laws and harmonization of the overall legal framework relating to land resources may begin to be addressed through implementation of the recently endorsed National Land Use Policy (NLUP), which will inform the drafting and enactment

of a comprehensive umbrella National Land Law through an inclusive multi-stakeholder consultative process.

REGISTRATION OF LAND TENURE

In most rural areas, the system for registration of land tenure claims originally established by the British (a deed registration system) has not been properly maintained since at least the early 1960s, which results in difficulties discerning who has legitimate claims to land resources and hinders inclusive economic growth. Those transferring land tenure rights often fail to register changes in ownership due to an overly complex system (registering changes to perfect title can take six months or more) and the imposition of unreasonably high land transfer taxes. The current system also makes it difficult or impossible to properly register collective and communal land tenure rights. This leads to confusion, conflict and a high level of tenure insecurity, particularly for vulnerable groups such as smallholder farmers, ethnic communities, women and the poor.

The lack of clarity relating to land tenure also has a chilling effect on high quality responsible investments in the country due to the risks the current land governance situation presents. Ultimately the country should seriously consider how to effectively make a sustainable and transparent transition to a modern, digitized title or Torrens type registration system, though such an effort will take significant investments of time and resources to accomplish, and will require well-coordinated support from the donor community.

RECOGNITION, PROTECTION AND REGISTRATION OF CUSTOMARY TENURE

Many areas of the country, particularly non-paddy upland hilly areas, do not have a system in place for the formal recognition or registration of legitimate land tenure rights. This leaves individuals, households and communities in these areas with a wide variety of informal customary tenure arrangements that are highly vulnerable to loss of land tenure rights important for local livelihood purposes. This situation presents both a political and social stability risk as the country opens up to higher levels of investment in land resources from both domestic and foreign sources. The formal recognition, protection, and registration of legitimate land tenure rights of individuals, households and communities in such areas will be a particularly important element in the ongoing peace process.

HIGH LEVELS OF LANDLESSNESS

While over 70% of the country's citizens live in rural areas, much of this population is landless. Landlessness in rural areas threatens local livelihoods, creates an unstable labor pool for the agriculture sector in the country, and is leading to rapid in-migration to urban areas that are not prepared to absorb these populations. There are also serious issues relating to internally displaced persons and returning refugees, which are directly linked to implementation of the ongoing peace process.

Steps should be taken to address landlessness in the country through creative land allocation programs linked to improved land information management, strengthened land property rights, participatory land use planning processes, and provision of agricultural extension services. Existing provisions in the VFV Law should be prioritized to address issues of landlessness through a process of re-allocating land resources for social purposes.

LAND GOVERNANCE ARRANGEMENTS AND PUBLIC ACCESS TO INFORMATION ON LAND

The governance architecture relating to land resources in the country is fractured and often unclear, with overlaps of authority being common. For example village settlement, agriculture and forest lands often times have unclear administrative boundaries. This causes confusion and bureaucratic inefficiency. It is recommended that the new Government resist making any quick changes to land governance architecture, as such steps can often cause more problems than they fix. Careful study and due consideration is required in this area.

In relation to the point above, accessing accurate information relating to land resources and tenure is very difficult in the country. Different ministries and departments hold information relative to their delegated authority, and are usually reluctant to share such information freely. This makes informed decision making processes relating to land resources difficult, often results in conflict over land resources, deters responsible investors and hinders inclusive economic growth.

LAND DISPUTE RESOLUTION

There are a variety of both historic (pre-2011) and more recent land disputes relating to land acquisitions, forced confiscations, and other management decisions made relating to land resources in the country. Currently, there is no effective resolution mechanism that is independent, accessible, timely, and affordable. In most instances, administrative decisions relating to land resources cannot be appealed to the judiciary, and it is unlikely the current judicial system would have the capacity or the independence required to effectively adjudicate many of these cases that exist. As such, appropriate alternative dispute resolution mechanisms need to be explored and implemented to address the issue of land dispute resolution in the country.

PUBLIC PARTICIPATION IN LAND RESOURCE DECISION-MAKING PROCESSES

Currently, there is little space for meaningful public participation in administrative decisions relating to land that might impact land tenure rights and local livelihoods, including during land use planning processes. Participatory approaches and broad stakeholder engagement in processes related to land governance is widely recognized to be a crucial element in ensuring more equitable, transparent and inclusive resource management systems. Opportunities for meaningful public participation should be incorporated into these decision-making processes to reduce conflict and improve outcomes.

DEVELOPMENT AND IMPLEMENTATION OF THE NATIONAL LAND USE POLICY (NLUP)

To begin addressing the complicated land governance issues highlighted above, the Government of Burma and concerned stakeholders, with support from the United States Agency for International Development (USAID), Swiss Agency for Development and Cooperation (SDC), and the European Union (EU), began work on the country's first NLUP back in 2012. The NLUP, which has now been formally endorsed, was developed using an unprecedented multi-stakeholder consultative process that included public consultations in every state and region of the country, a series of expert roundtables, a national workshop, and submission of written comments over a period of fourteen months that were carefully considered and incorporated into the final document. The NLUP represents the collective voice of the people, and provides an important foundation on which improvements to this "living policy" can be made over time as more information becomes available.

In addition to respecting the outcomes of the inclusive public consultation process, the NLUP adopts international good practice for addressing the range of land governance issues in the country, such as those found in the Voluntary Guidelines on the Responsible Governance of Tenure. With the NLUP's endorsement, work can begin on the National Land Law, donor supported land governance pilots have greater legitimacy, and stakeholders have an important advocacy tool at their disposal that previously did not exist. Endorsement also ensures that Burma can avoid a situation such as the one that currently exists in Laos, where nearly five years of efforts to develop a new land use policy are hopelessly stalled.

The donor community is committed to supporting the effective implementation of the NLUP, which provides a framework for such support over time. USAID, SDC, the EU, and UN Habitat have already been supporting development and implementation of the NLUP through various pilot activities. These pilots conduct work on: harmonizing laws in relation to tenure security and land resource administration in the country; undertaking a national land inventory; developing participatory land use planning processes; modernizing the land registration system; securing land resource tenure rights at the village or community level; developing local dispute resolution mechanisms; and, developing a government-managed, open access spatial database (One Map). These activities are interrelated to one another, designed to be scalable over time, and feed into and support the development of the One Map concept.

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