

Written Testimony of

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Thank you for the invitation to testify before this distinguished committee on land tenure issues and their effect on Southeast Asia’s economic development, a topic of great importance to the Department of State. The Assistant Secretary for the East Asia and Pacific Affairs Bureau asked me to convey his sincere regrets that he could not appear before you today.

My colleague, USAID Assistant Administrator Jonathan Stivers, will speak to the various programs USAID supports to address land rights in the region. I will focus my remarks on the State Department’s efforts to improve the protection of land and property rights in Southeast Asia, both from a human rights perspective and from a commercial perspective, which affects U.S. citizens and corporations abroad as well as economic growth.

Land and property rights issues remain a flashpoint throughout Southeast Asia and have a disproportionate impact on marginalized populations, including women, children, and indigenous groups. Transparent and fair land tenure laws – when followed – have a direct impact on foreign investment, poverty alleviation, and social stability. Without guidelines for officially-recognized land ownership documentation and effective mechanisms for dispute resolution, individuals are left in unstable situations and vulnerable to exploitation and abuse. For these reasons, we see land rights as a critical element to improving respect for human rights, strengthening the rule of law, and encouraging economic growth in the region.

When looking at land tenure issues from a human rights perspective, a major challenge in Southeast Asia is that vulnerable populations, particularly women and indigenous peoples, often lack the basic documentation to show their rights to the

homes and land upon which they live. In Cambodia, at least two thirds of the population, many of them poverty-stricken farmers, lack proper title deeds to the property on which they live. This is largely a lingering effect of the Khmer Rouge regime, which abolished all private property and, consequently, property records as a part of its efforts to create a collectivized agrarian society. Lack of updated records leaves families who are removed from their land with little legal recourse to prove ownership of the land or property on which they live and vulnerable to human rights abuses.

Recognizing this challenge, the State Department's Bureau of Democracy, Human Rights, and Labor (DRL) recently began a new program to assist vulnerable communities in Cambodia, as well as in neighboring Vietnam. Working with local partners, DRL's pilot project aims to create a multi-stakeholder, human rights-based approach to land use impact studies in communities, integrating these processes into land governance and dispute resolution initiatives. This builds on previous efforts supported by DRL from 2007 - 2010 that helped communities understand land rights under Cambodia law and legally document land claims to prevent eviction and ensure fair compensation, should the land be sold.

The State Department will also continue to closely monitor the resolution of the outstanding Boeung Kak Lake (BKL) land claims. While the Cambodian government has resolved a majority of the claims resulting from a 2007 economic land concession, as many as 39 cases remain outstanding. When 11 BKL land activists were arrested and immediately sentenced to one year in prison for their participation in land rights protests, the U.S. Government expressed our concerns both publicly and privately. The protestors received royal pardons earlier this year after serving a portion of their sentences.

A subsequent challenge to the enforcement of land rights is the strength of rule of law, which varies wildly through the region. Weak judicial institutions and corruption encourage private claimants to seek solutions outside of the legal system, which in turn hinders their ability to obtain a stable, legal solution to their dispute. It also unfairly prejudices the system towards the wealthy and powerful, exacerbating existing social and economic inequalities.

Through the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL), our State Department colleagues in Washington and around the world help countries combat corruption by working with governments and civil society to build transparent and accountable public institutions operating in the criminal justice sector – a cornerstone of strong, stable, and fair societies that offer a level playing field for U.S. businesses abroad. INL works with these partners through training, technical assistance, and mentoring to fight corruption and promote laws and court systems that are fair, legitimate, and accountable.

To take the Philippines as an example, the Philippine legal system contains a fairly robust set of laws that regulate land in urban and rural areas. These laws address inheritance issues, provide guidance on property ownership, and require registration of land titles through the judicial process. The Philippines also has institutional actors who oversee the implementation of these laws, including the Land Registration Authority and local government units that develop land-use development plans and zoning ordinances. The Government of the Philippines has also partnered with the World Bank and Australia to develop land administration policies and laws that formally recognize and record the rights of land holders through the Land Administration and Management Project.

In the Philippines, the institutions and laws governing land rights exist, but outdated land administration laws; an inefficient land administration and adjudication infrastructure; a poor land information system; and weak judicial institutions have resulted in problems of fraudulent, overlapping, and duplicate land titles and have led to widespread accusations of illegitimate land seizures. These challenges have also contributed to high transaction costs in securing, registering and transferring property rights and to tenure insecurity. Inconsistent legislation and policy declarations have led to unsustainable land use and conflict over competing land uses. Over the past decades, many countries in the region, including the Philippines, have tried various versions of redistributive land reform programs with little or no success in an effort to redistribute land from the landlords of various agricultural products to their tenants.

The strength of land rights has an impact on human rights as well as rule of law issues, but it also has a significant impact on a country's commercial climate and overall economic prospects. Hernando de Soto, a Peruvian economist known for his work on land rights reform and the informal economy, found that a nation cannot have a strong market economy without strong property rights. Many small entrepreneurs lack secure legal ownership of their property under a functional legal framework and lack access to functioning financial markets so they may be unable to obtain credit, sell or expand their business. Without the ability to monetize or collateralize their biggest asset, the growth potential of small-holders and entrepreneurs may be limited. They also cannot seek legal remedies to land conflicts in court.

The World Bank's 2015 Ease of Doing Business report highlights that Southeast Asia has the unique distinction of being home to the best country in the world for enforcing contracts – Singapore, widely considered to be the gold standard for commercial regulations – and the worst – Timor-Leste, where something as simple as purchasing property can seem like a mystery. The overall ease of doing business rankings for the region also show a clear correlation between strong rule of law and ease of registering property with overall economic prosperity. Singapore consistently pulls in the highest levels of foreign direct investment in Southeast Asia and boasts one of the most prosperous economies in the world. The region's poorest nations, including Burma, Timor-Leste and Laos, also occupy some of the lowest ranks on the index. Foreign investors are attracted to countries where their investments, including in property, are afforded protection.

In an effort to provide accurate information to U.S. businesses interested in investing abroad, the State Department prepares annual, country-specific Investment Climate Statements while the Department of Commerce writes Country Commercial Guides. These statements include a detailed discussion of the quality of a country's legal and institutional frameworks for protecting property rights, including the transparency of their regulatory system, the legal basis for land ownership, dispute settlement mechanisms and corruption. In crafting these reports, our embassies rely on information from a variety of sources including the host country government, the World Bank, Transparency International and foreign and domestic corporations.

In the event that a property dispute does occur, the State Department, through our embassies abroad, provides U.S. citizens with a list of local attorneys who speak English and a general overview of the local criminal justice process. In some countries, there are also other dispute resolution mechanisms, such as court-assisted mediation or direct negotiation with claimants. In many cases, going through a dispute settlement can help claimants avoid unfair settlements in countries with corrupt or otherwise compromised legal systems.

In addition to State and USAID advocacy programs and reports, the U.S. Millennium Challenge Corporation (MCC), an independent U.S. foreign aid agency, also considers the rule of law and property rights in its initial selection of partner countries. Where these issues later prove to be “binding constraints” to economic growth after a country is selected, MCC may support projects that address them. Currently, MCC has a partnership agreement known as a “compact” with Indonesia, will complete a compact with the Philippines in May 2016, and is developing a second compact with the Philippines.

Throughout MCC’s work in Southeast Asia, dealing with challenges like corruption, particularly in the legal system, has been a fundamental task. Indonesia’s progress on controlling corruption has been slow but steady. In the Worldwide Governance Indicator’s Control of Corruption indicator, Indonesia has improved from a 20 (out of 100) in 2005 to a 32 today. In order to address corruption, MCC’s threshold program worked to support anti-corruption measures at the Supreme Court and to strengthen the Anti-Corruption Commission. Indonesia’s progress on controlling corruption has been slow but steady. In the case of the Philippines, should land rights and tenure emerge as binding constraints to economic growth during development of the second compact, MCC will give careful consideration to interventions to address this issue.

Thank you for the opportunity to testify on the status of land rights and land tenure in Southeast Asia and on the various programs the State Department and MCC support to pursue greater justice on these issues. I look forward to answering any additional questions you may have.