

WRITTEN TESTIMONY
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Before the House Foreign Affairs Subcommittee on Asia and the Pacific

During a field hearing in California on:

“Property Rights and Development in Southeast Asia”

Friday, August 21, 2015; 10:00 a.m. – 1:00 p.m. PDT

Chairman Salmon, Ranking Member Sherman, Chairman Royce and Distinguished Members of the Subcommittee:

Thank you for the invitation to testify on the role of the U.S. Agency for International Development (USAID) in advancing secure property rights — which are fundamental to development not only in Southeast Asia, but globally. It is an honor to appear before the committee to discuss an issue so integral to all we do, and a pleasure to be here with my colleague James Caruso, U.S. Department of State Acting Deputy Assistant Secretary.

Land rights are not only an economic issue, but a human rights issue. In countries around the world, the absence of secure property rights protected by an effective rule of law is a major constraint to poverty alleviation and security. This is the reality for millions in the developing world, where over 70 percent of land is unregistered. In Southeast Asia, we know from our decades of work in the region and public surveys that property rights are either the top or among the top concerns of the people.

Chairman Royce, in particular you have been a champion of this issue in Congress, challenging us to provide more effective assistance to those fighting for property rights in Southeast Asia and around the world. I look forward to working with you and the members of the House Foreign Affairs Committee to build upon our current efforts to strengthen property rights in Southeast Asia.

Strengthening land rights — and the rule of law that protects them — are central to USAID’s mission of ending extreme poverty and promoting resilient, democratic societies. Perhaps most central is our rule of law and democratic governance programming, because for land rights to be secure, they must be recognized by law. An effective rule of law requires administrative and judicial institutions that are independent, transparent, fair and accessible to all — which are also vital to the maintenance of peace and security and the protection of human rights.

At USAID, we draw upon international and demonstrated best practices in our work to strengthen and increase public knowledge of the laws and systems governing property rights, access to the institutions responsible for recording legal property rights, and access to the justice system responsible for upholding and protecting land rights. Our activities are making a difference in the lives of many who have suffered injustices and are paving the way for generations yet to come.

When property rights are unclear, households are less likely to make long-term investments in their land — investments that can help them generate income and promote economic growth and prosperity that are vital for developing countries.

When there is unfair confiscation of land for large-scale commercial operations, it often results in damaging the environment which further destabilizes rural communities.

When women do not have the right to own or access land, their families and communities suffer — because women with secure rights to land and resources tend to have a greater say over household resources, which in turn means families are more likely to invest in their children's nutrition and education. Women with secure property rights are also more likely to be active members of their communities — and their communities are more likely to be responsive to their needs.

Where accessible and effective mechanisms for resolving land disputes are absent, conflict can erupt that undermines peace and stability. Some of the oldest, most complicated and violent conflicts in Southeast Asia are rooted in disputes over land.

For the purposes of the hearing today, I will provide brief overviews of the land tenure-related challenges and our initiatives in the Philippines, Cambodia, Burma, Timor-Leste and Vietnam.

Philippines

In the Philippines, the U.S. Government's Partnership for Growth has supported collaboration with the Government of the Philippines to address the country's most serious constraints to inclusive and lasting growth. In recent years, there has been substantial economic progress in terms of achieving high economic growth rates. Yet unemployment remains high, national poverty levels have scarcely budged, and income inequality persists between rural areas and the national capital region, where almost 40 percent of growth is generated. One-fifth of the population still lives in extreme poverty.

Protecting land rights is key to promoting growth in the rural and urban areas of the Philippines. In rural areas, despite the most recent comprehensive land reform program that transferred ownership rights and titles to a majority of the smallholder farmers, productivity of basic food crops and commodities has remained low, and farmers' incomes have not improved. Constraints to farmers' access to credit and prohibitions on land sales are key aspects that need to be addressed to realize the full potential of this reform program. In urban areas, the results of a recent USAID assessment of key constraints to land tenure and secure property rights identified the following factors that limit development and negatively affect tenure security:

- Overlapping mandates of and lack of coordination between government institutions working on land issues. Land administration in the Philippines is governed by over 60 laws and regulations, some of which date back more than 100 years. Multiple claims to the same property can occur due to parallel registration through judicial and

administrative processes, limiting access to reliable information and creating the potential for conflict and vast opportunities for corruption.

- Low coverage of land registration, including of transactions. This in part is due to the high cost of property registration and the fact that seemingly routine registry processes like correcting clerical mistakes, issuing lost titles and weeding out fraudulent certificates require lengthy court processes that can last for years.
- Land cases in courts are affected by delay and the high cost of litigation because of a large backlog of cases of all types. For example, 90 percent of the cases (of which 17 percent were land disputes) handled by the Supreme Court in 2012 took more than 20 years to make their way through the system of hearings and appeals to higher courts. In recent years, the Supreme Court and USAID collaborated to promote judicial efficiency by introducing automated case management, docket decongestion and streamlined litigation procedures. What remains to be done is to scale up these interventions in order to have broader impact on delay and congestion.

In response to the challenges of unclear property rights, overlapping land claims and lengthy resolution to land disputes, USAID has been leading the way by partnering with the people and Government of the Philippines to help promote land rights for marginalized peoples. These past and ongoing efforts include:

- Supporting the passage of the National Indigenous Peoples Rights Act, which established the concept of “ancestral domain” — one of the first laws of its kind in the world. Ancestral domain allows for indigenous peoples to secure the rights to their ancestral lands, which commonly are forest lands that legally belong to the state.
- Improving the regulatory environment and streamlining land registration processes for the past decade. Our support helped establish a public residential land titling program, which during its first year increased the number of residential titles issued from 5,000 to 65,000 per year.
- Supporting the creation of land management offices within Local Government Units to improve coordination across overlapping mandates and expedite the issuance of land titles.
- Launching the Cities Development Initiative (CDI) in 2012 to help disperse economic opportunities outside the metro Manila area and fuel inclusive economic growth. CDI aims to develop growth hubs in a select number of second-tier cities outside the metro Manila area that attract increased investment and generate increased employment and incomes. A key component of CDI is fostering more secure land rights.
- Working through our “Rebuild” project in Leyte Province to restore land ownership records damaged or destroyed by Typhoon Haiyan. Our assistance has helped restore approximately 250,000 such land titles covering 41 municipalities. The project is also

supporting the training of provincial, municipal and city planners in the development of local area development plans and comprehensive land use plans.

- Improving the efficiency and predictability of the adjudication of court cases through the “Judicial Strengthening to Improve Court Effectiveness” (JUSTICE) project. This project has a particular focus and direct impact on land disputes, in addition to decreasing the cost of doing business and increasing investor confidence in the Philippines through the judicial system.
- Working with the Philippine judiciary to streamline litigation procedures and address bottlenecks that cause delay. We’ve supported the implementation of these interventions in the largest court district in the Philippines (consisting of 58 courts and an estimated 15 percent of all cases pending in the trial courts) with notable results. For example, the median processing time of cases across all courts in the district has been reduced by 60 to 78 percent. We are now in the process of expanding the project to eight additional urban areas with similar high caseloads.
- Supporting the passage and implementation of the Residential Free Patent Act, which streamlines the process for obtaining residential land titles outside the lengthy and costly court process and helps facilitate the process of using them as collateral to obtain loans. Our ongoing efforts promote access to credit by educating and enabling local banks to utilize the law through the “Advancing Philippine Competitiveness” (COMPETE) project.
- USAID intends to promote land rights through the new “Strengthening Urban Resilience for Growth with Equity” (SURGE) project, in recognition of the integral importance of land tenure with regard to economic development in second-tier cities. This includes helping targeted cities with land use planning and zoning, improving land management information and coordination at the local level, and strengthening the capacity of land management offices to secure land and access rights.

Through the Cities Development Initiative, USAID intends to support critical land tenure-related activities under JUSTICE, COMPETE and SURGE, addressing the issue holistically — from a disaster response perspective, a legal and judicial perspective, and an economic and policy perspective. This committee’s counsel has been integral in shaping activities under SURGE, in particular, and I look forward to USAID’s ongoing engagement with the committee as we get SURGE off the ground in the coming months.

Cambodia

In Cambodia, after 20 years of rebuilding from decades of civil war, there has been significant economic progress, realizing steady economic growth rates and improvements in quality of life. One area, however, where the effects of the Khmer Rouge regime can still be tangibly recognized is in relation to land ownership. From 1975 to 1979, the Khmer Rouge abolished land ownership and destroyed existing land records. The system of land registration and titling has since evolved into a complex, multi-tiered system, with different land designations each existing within different levels of authority.

In Cambodia, the state retains broad powers to compulsorily acquire land, including for large infrastructure and private forestry and agriculture concessions, which undermines individual property rights and attracts irresponsible investment. Lack of transparency in many land transactions and extensive granting of land concessions by the state — ostensibly for economic development — have resulted in conflict over land ownership and use, as many households have been forcibly displaced through judicial and extra-judicial processes. Land is also a trigger for other rights violations, as the justice system has been used to prosecute outspoken land and human rights activists.

Property rights are further complicated by a weak rule of law, which enables existing legislation to be circumvented, particularly in cases that involve rich and influential individuals or companies. Even though there are legal protections intended to ensure that state land concessions benefit the local people and do not harm the environment, they are unevenly applied. From 2000 to 2013, concessions granted to private companies adversely affected over 770,000 people across the country. And it has also led to significant environmental degradation of critical Cambodian landscapes. Cambodia experienced one of the fastest rates of forest loss globally from 2000 to 2012, according to U.S. satellite image-derived data released in 2014 by the University of Maryland.

Improving land administration and enforcing established land laws will be critical to ensuring that Cambodia's progress benefits all its people. USAID's targeted programming focuses on formal and informal land dispute resolution, monitoring and reporting land rights violations, and environmental management in selected landscapes through communal land titling and forest reserves, including:

- Supporting local non-governmental organizations (NGOs) that provide training, advocacy and legal support to individuals and communities throughout the country engaged in land disputes. Our support to two local organizations advocating on behalf of displaced Cambodians during negotiations with the government has led to the successful resolution of some longstanding disputes. Just last month, their advocacy resulted in the resolution of a 2007 land dispute between 128 displaced families in Koh Kong and a well-connected business tycoon and politician. Their advocacy also resulted in the Cambodian Government returning over 115 hectares (~285 acres) of land designated in 1995 for tourism development to 747 families in April 2015.
- Expanding citizen expression and government and media attention on critical land and environmental issues. For example, with USAID support, the Prey Lang Community Network, a group of indigenous communities advocating for the protection of the largest remaining lowland evergreen forest in Southeast Asia, has created cross-forest linkages with indigenous communities, formed partnerships with national and international NGOs, and succeeded in highlighting the significance of the Prey Lang forest to national and international audiences.
- Improving forest monitoring and evidence based-advocacy, including through extensive mapping, data collection and community patrolling, for local organizations that monitor and report on land rights violations and related environmental

degradation. The profile of this critical issue — particularly economic land concessions — has risen among decision-makers within the government and public.

- Helping indigenous and other communities in and around forests understand their property rights, advocate for the conservation of their landscapes and secure communal land titles for the forests they've been managing for generations. For the first time in Cambodia's history, the government now formally recognizes the rights of indigenous communities through the issuance of communal land titles — a historic benchmark that USAID supported. We helped indigenous communities in Monduliri Province secure some of the first of these titles to be issued, with another eight in progress. We also helped indigenous communities in the Prey Lang region secure communal land titles and learn how to produce and earn income from a variety of non-timber forest products. USAID helped streamline and broadly implement the Indigenous Land Title Manual, a first-of-its-kind tool in Cambodia that enables the government to issue these titles to indigenous communities in a transparent way.
- Continuing to help indigenous communities learn their rights under the law and obtain land titles. For example, USAID supported a local NGO, Open Institute, in the development of a cell phone application that — through audio and images — gives one minority group in Cambodia first-time access to nearly 70 articles of Cambodian Land Law in their native, unwritten language, enabling them to better understand their legal rights relating to land ownership.

USAID will continue to build on these positive steps going forward through our steadfast support to NGOs and local civil society organizations standing up for the rights of all Cambodians, especially the historically disenfranchised.

Burma

In Burma, where disputes over land and resource ownership have fueled armed conflict for decades, secure land rights are central to reforms. Years of forcible and uncompensated land confiscation have historically been a source of conflict and abuse. While the democratic openings in recent years have enabled increased engagement by civil society on land confiscation issues, land activists have been subject to arrest and detainment. Addressing land rights will be essential for Burma's economic development, as well as for efforts to mitigate conflict and enhance national reconciliation.

In Burma, 70 percent of the population is economically dependent on agriculture. However, a complex and overlapping body of land and property laws dating back to the colonial era does not permit effective land use or safeguard property rights. The state owns all the land and natural resources, but permits some exercise of private property rights, which are unclear in practice. Many citizens do not have legal title to their land.

The Government of Burma is currently in the process of drafting and adopting a national land use policy that will ultimately inform the development of a national land law. As part of this, USAID supports active, broad-based citizen participation in what has been an unprecedented public comment and multi-stakeholder consultation process with civil

society. The draft policy has been developed using information garnered from public consultations held in all 14 states and regions in the country and from non-government technical experts, academic institutions, donors and NGOs, media reports, and various parliamentary commissions on land use issues.

Although the final, seventh version of the land use policy is expected to be formally endorsed by the President's Cabinet this month, there is still a long road ahead. Once adopted, the policy will inform the development of a comprehensive national land law utilizing an inclusive, multi-stakeholder consultative process as described in the draft policy. Even after the law is enacted, which will not occur until after elections in November 2015, it will take time and firm political commitment to effectively implement and enforce property rights in accordance with the law.

In addition to supporting broad-based public participation in the land use policy dialogue, USAID also supports civil society in addressing land grievances and strengthening citizen awareness of and access to their land rights, with a particular focus on smallholder farmers, ethnic communities, women and other vulnerable groups. USAID collaborates closely with local civil society organizations working at the village level to survey, demarcate and register land, conduct community-based natural resource management, and engage in land use planning and dispute resolution.

So far in 2015, the United States has advocated for the immediate cessation of illegitimate seizures of land rights during the U.S.-Burma Human Rights Dialogue and supported a multi-stakeholder National Land Use Policy Workshop, which included over 200 participants from government, civil society, the private sector and academia. The workshop emphasized international best practices for establishing human rights of landholders and support for improved agricultural practices with a focus on food security.

Timor-Leste

In Timor-Leste, property rights are a significant economic and livelihood issue. USAID addresses the potential for conflict by supporting community police forums, which bring together police officers and rural communities, to provide an avenue for the resolution of disputes, which very often involve disputes over land use and ownership. In addition, the prime minister recently recognized the USAID-supported Ita Nia Rai ("Our Land") project as the beginning of a process to document every land plot in the country, issue ownership titles, solve disputes and assess taxes. From 2007 to 2012, this pilot project mapped over 50,000 land plots in partnership with the Government of Timor-Leste, which has since continued and expanded upon the effort.

Vietnam

In Vietnam, the legal framework is often thwarted by general lack of awareness and resources to enforce women's property rights at the provincial level. USAID is addressing this through a targeted program aimed at increasing awareness among women farmers of their land rights and how to exercise them. The centerpiece of the program is the mobilization and training of 60 community volunteers for gender equality from four communes across two provinces.

Conclusion

Mr. Chairman: It is in the United States' economic and security interests to invest in advancing secure land rights — in Southeast Asia, and around the world.

At USAID, advancing secure land rights is at the core of our mission and an integral part of our work across sectors. Secure land rights protected by an effective rule of law are necessary for both democratic governance and inclusive economic growth that helps lift the world's most vulnerable people out of poverty and engender more resilient societies.

Thank you for the opportunity to testify today, and I look forward to your counsel and questions.

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