



Displacement and discrimination continue to affect Rohingya

A U.S. Asian-Pacific Pivot Point: Burma's Natural Resources

By Kirk Talbott, John Waugh, and Douglas Batson¹

*Ship me somewheres east of Suez, where the best is like the worst,
Where there aren't no Ten Commandments an' a man can raise a thirst;
....On the road to Mandalay, Where the flyin'-fishes play,
An' the dawn comes up like thunder outer China 'crost the Bay!*

from Kipling's Mandalay

Burma wavers on the cusp of a transition from conflict, plunder, and risk towards peace and a more open, stable society. A half-century of armed warfare, largely financed by the rapid exploitation of high-value natural resources, may be coming to an end in mainland Southeast Asia's largest nation. The use and extraction of environmental assets will continue, however, to determine Burma's political and economic future. Unfortunately, natural resources too often play a perverse role in preventing needed reforms in countries emerging from protracted conflict. In an era of fiscal constraint, "sequestration," and a decade of Iraq and Afghanistan nation-building fatigue, how can the U.S. best aid Burma's transformation? The on-the-ground situations in Burma, namely, ethnic conflicts, land grabs, internally displaced persons, each undergirded by a deep distrust of the central government, are as varied as they are fluid. U.S. foreign policy issues regarding the nation also known as Myanmar, beginning with that nation's toponym,² are so complex as to defy the Interagency and Tactical Conflict Assessment Frameworks, respectively vaunted by U.S. government civilian agencies and military services.

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Advancing business investment is paramount to continue advancing human rights interests in Burma. Significant challenges to U.S. foreign policy aims of improving human rights and promoting responsible investment are legion. Illicit transnational business networks hinder national reconciliation and societal integration. These well-entrenched networks, including the Burmese military, also impede building an effective civil society that would promote shared benefits and responsibilities of managing Burma's natural resource wealth. Along Burma's borders lurk resource-hungry neighbors, two with billion-plus populations, eyeing the U.S. foreign policy "pivot" to the Asia-Pacific region with suspicion. Burma has attracted a deluge of foreign aid and commercial interest, ostensibly invited in as new trading partners to balance competing interests among China, Thailand, India, etc., but with ravenous resource appetites of their own. In response the Burmese government is enacting new laws and policies, including in resource governance, and is beginning to receive some donor support for reforms. Good governance, encompassing both business and human rights agendas, provides just the anchor that U.S. foreign policy needs to interface with, as opposed to intervene in, "the new Burma."

This article argues for strengthening land tenure and community-based property rights and agreements for the equitable sharing of natural resources as a point of entry for the U.S. to support Burma's transition. As that fragmented nation faces its ethnic divisions and the arduous tasks of reconciliation and peace building, natural resource governance provides direction and substance to democratization and tangible investment incentives. With landlessness among Burma's rural population ranging from 30-50 percent,³ and a dearth of capacity and experience in land administration and dispute resolution, the challenge is a daunting one. The prospect of an open, prosperous, and stable Burma, based on rule of law, hinges on its capacity to manage its natural resources sustainably for the benefit of the entire nation of 55

million people and not its small but powerful and well-connected elites.

Burma: at the Crossroads of South and Southeast Asia

In the late 19th century, Rudyard Kipling penned *Mandalay*, a poem that British soldiers in Burma identified with licentious freedoms to enjoy its exotic beauty. The 21st century may well see a Road to Mandalay, but in the form of a high-tech information highway, both physical and cyber; in other words, an Indo-Pacific-Corridor that links India to Thailand via Burma. In the absence of rule of law, however, the increasing number of actors coveting Burma's rich natural resources may also evoke more than "thunder out of China," whose influence with Burma's rulers may no longer be paramount. Renowned for its valuable teak reserves, copper mines, and gems, Burma is also endowed with huge natural gas deposits as well as the potential for much hydropower from the region's great rivers. Stretching 2,000 km south to north, from the Andaman Sea coasts to snow-clad Himalayan peaks, Burma stands at the geographic crossroads of India, China, and Southeast Asia. Extensive river valleys, mountainous watersheds and rich soils have long provided valuable yields whether in food, logs, cash crops, or poppy. Burmese natural resource riches have long factored into the national political economy and internal territorial competition.

For centuries Burmese practiced traditional agriculture through evolving rules and customary laws regarding the use, allocation and transfer of land, water and natural resources. A diverse array of ethnic minorities (Shan, Karen, Chin, Kachin, Wa, etc.) comprising 40% of the population of 55 million, ring the majority ethnic Burmese, who chiefly dwell in the central lowlands and river deltas.⁴ Most minorities inhabit mountainous border areas and the once heavily forested uplands, mainland Southeast Asia's largest.

Pre-colonial exploitation of Burmese forest, water, and wildlife was often regulated through

centuries-old customary laws and traditional resource management systems. Collective land and natural resource management (NRM), promulgated and enforced by traditional leaders and social bonds, protected remote communities from outside commercial interests. The Burmese, 70% of whom still rely on farming and fishing for their livelihoods, remain dependent on the sustainability of their agro-ecological systems and natural resources, forests, and watersheds in particular.

Burma experienced relative prosperity in its first 15 years of independence after WWII. The early government administrations built on remaining British colonial infrastructure to capitalize on the nation's rich natural resources, particularly in the agricultural and mining sectors. During this brief period, Burma was Southeast Asia's second largest rice producer and its literacy rate was among Asia's highest. With an economy comparable to that of Thailand at the time, Burma is now a desperately poor country with per capita GDP by purchasing power parity of just US\$ 822.⁵ In 2011, Burma ranked 149th out of 186 countries on the UN Human Development Index, and desperation has driven hundreds of thousands of migrants into Thailand.⁶

The Burmese Military Regime: Fifty Years of Plunder, Power and Control

For fifty years Burma has been ruled by a series of increasingly repressive and powerful military governments ushered in with General Ne Win's 1962 nationalist coup d'état. A half a century long experiment in autarky styled as the "Burmese Way to Socialism" nationalized teak production, mining and other major industries. The country receded into isolation, poverty and "rent seeking" behavior, which ignited long-simmering internal tensions.⁷ After 1988, the military regime switched to a quasi-market economy, opening up the country, particularly to Thai and Chinese investors.

The *Tatmadaw*, the regime's armed forces, approximately 400,000 strong and Southeast Asia's second largest (after Vietnam), provided the

regime with the means to penetrate the rugged regions bordering India, China and Thailand. The heavy hand of the *Tatmadaw* in the economy fueled corruption, forced labor and relocation; reports of the use of rape as a war tactic have been numerous and ongoing for many years.⁸ Economic and political refugees as well as those simply fleeing conflict have numbered in the hundreds of thousands, mostly living in Thailand, Bangladesh, Malaysia, and elsewhere in the region. Stripped of citizenship and rendered officially stateless by the regime's 1982 citizenship law, the *Rohingya* population, continue to be subjected to severe legal, economic and social discrimination. The government requires prior approval for travel outside their villages of residence, limits access to higher education, and imposes several work restrictions. Authorities also require *Rohingya* to obtain official permission to marry and have imposed a one-child policy. The 800,000 *Rohingya* constitute one of the world's largest stateless populations. Sadly, violence that has sporadically erupted in Burma's western Rakhine State since June 2012 has produced, by one estimate, more than 140,000 internally displaced persons (IDPs).⁹

While Western nations shunned Burma due to the litany of human rights abuses, China and Thailand have invested heavily and profited greatly from the booming natural resource extraction. India, long preoccupied with security concerns from Pakistan and China, also initiated a "Look East" policy in the mid-1990s. Once supportive of fellow democratic leader Aung San Suu Kyi and the National League for Democracy, India shifted its attention to the regime in light of Burma's strategic position as a resource-rich neighbor. India's engagement has steadily increased, although it does not match China and Thailand's extensive involvement in Burma's economy.¹⁰

Beginning in the late 1990s, the military government pressed into territories in the non-Burmese ethnic hinterlands in search of locations for pipelines and transport infrastructure, and prime agricultural real estate. The development of and



Photo by Leon Meerson on Flickr

Mandalay

production from the Yadana natural gas fields off the southeastern coast became an unprecedented resource bonanza for the regime. Hydroelectric power provided another vehicle for the regime to extend its control over large swaths of ethnic minority lands and profit from local natural resources.¹¹ For example, in the eastern Shan State, the region surrounding the Tasang Dam on the Salween River underwent intensive militarization that displaced over 300,000 members of ethnic minorities.¹² A similar pattern of logging, mining, hydro- and agri-business expansion, which had denuded much of Shan and Karen States, expanded into the more remote, northern Kachin State. The 2011 suspension of construction on the Chinese-backed hydroelectric Myitstone (meaning confluence) Dam has, for the time being, eased tensions in Kachin. Former Assistant Secretary of State for Democracy, Human Rights, and Labor,

Michael H. Posner, notes that “war is being waged there for both reasons of political autonomy generally and control over these resources specifically. [...] In the past when the military and business join forces, often we have observed patterns of land confiscation, forced labor, environmental destruction, and severe human rights abuses on local populations around these projects.”¹³

Kevin Woods, a scholar of Burma’s political economy and natural resources, provides a valuable perspective on the role of ceasefires and the military regime’s solidifying control over ethnic minority areas:

“Ceasefire agreements between the Burmese government and ethnic insurgent groups have created unique geopolitical spaces (the so-called ceasefire zones). Different territories, and the authorities that control them,

overlap to create conditions where national military and state officials both share power and compete with non-state authorities, such as ceasefire political organizations, insurgent groups and paramilitaries. These overlapping authorities all participate in decision-making in the complex, poorly delineated mosaic of political territory that is created through the ceasefire zones. These ceasefire accords legitimize the new territorialized military-state spaces, and therefore hold serious political implications.”¹⁴

For half a century Burma's military government tightened its grip on power and control over land, resources, and people. Decades of natural resource plunder have dispossessed millions of citizens of land and usufruct rights while billions of U.S. dollars in natural gas revenues remain unreported. Profits, from natural gas in particular, have generated the wealth to build and entrench the interests of many groups connected to the regime. These interests, whether military, government, or private, will not easily yield. Fortunately, Burma still has enormous natural resource wealth, the reason that NRM stands as the decisive factor in Burma's transition from military rule.

Rapidly Improving U.S. and Burmese Relations

Over the past two years the United States, Canada, the European Union, and others have gradually eased sanctions on Burma following changes to its authoritarian political system that saw nearly 800 political prisoners freed. In the past 12 months the rapid pace and high profile faces of improved relations between the U.S. and Burma have been staggering. Secretary Clinton traveled to Burma in November 2011, the first visit by a U.S. Secretary of State in more than a half a century. Then, after a period of 22 years, the United States and Burma increased their diplomatic engagement by exchanging Ambassadors. In June 2012, the U.S. Senate confirmed Derek

Mitchell as the new United States Ambassador to Burma. In September 2012, democratic icon and Nobel Laureate Aung San Suu Kyi, head of the National League for Democracy (NLD), traveled to Washington DC to receive the Congressional Gold Medal. Aung San Suu Kyi now sits with other NLD members in Parliament. Also in September 2012, Burmese President Thein Sein made his first visit to the USA as head of state to attend the United Nations General Assembly. Lastly, in November 2012, President Barak Obama became the first sitting U.S. President to visit Burma, reciprocated in May 2013 when President Thein Sein became the first Burmese head of state to visit the White House since the visit of General Ne Win in 1966. According to W. Patrick Murphy, acting Special Representative and Policy Coordinator for Burma, this bilateral diplomacy has catalyzed further reform. “The Burmese Government committed to international standards on human rights, good governance, nonproliferation, transparency, and trafficking in persons. Many of these commitments have already yielded positive results, including improved international humanitarian access to conflict areas, dialogue with armed ethnic groups, and greater freedom of association.”¹⁵

Other recent developments bear on Burma's upcoming transformation milestones that, Special Representative Murphy states, are closely linked to the success of reform. 2013 has already seen a flurry of USAID and other international development agency activity in Burma's former and new capital, Rangoon and Naypyidaw, respectively. In 2014, Burma will assume its first rotation as Association of Southeast Asian Nations (ASEAN) chair, a prominent leadership role in tackling complex regional issues and in engaging fellow Pacific powers. Also in 2014, Burma will undertake its first national census since 1983, the results of which will shape its political and economic landscape for years to come. In 2015, the country will attempt, for the first time in the memory of its citizenry, multiparty national elections that adhere to international standards.¹⁶

John Blaxland, senior fellow at the Strategic and Defence Studies Centre, Australian National University, views military engagement as critical to achieving a democratic, market-oriented state in Burma, because the army is the pivotal institution in the country. “The authorities in Myanmar clearly want to diversify their strategic security relationships,” Blaxland said. “They have had a very close relationship with China in recent years, India has made overtures, they’re part of ASEAN, so the opening up of the opportunity of participating (as observers) in (the humanitarian assistance portion of the joint U.S.-Thai military exercise) Cobra Gold is actually a very important step.”¹⁷ While not “military-to-military” in nature, U.S.-Burma engagement, especially the recent reestablishment of a USAID mission there, can only improve the dismal Burmese record on human rights. USAID’s goals for Burma, to strengthen democracy and the rule of law; to promote transparent governance; and advance peace and reconciliation, would work to curb the inordinate military influence on the Burmese economy. Says Murphy, “We hear from a range of Burmese stakeholders who urge us to engage the armed forces to build support for the reform agenda.”¹⁸ And security sector reform is the watchword when Burmese police, seemingly unaware of less odious means to disperse protesters, spray Buddhist monks with white phosphorous! The incident occurred as villagers rallied against forced relocations to make room for an expansion of a copper mine co-owned by a Chinese company and the Burmese military.¹⁹ Nevertheless, Burma watchers warn international organizations to maintain vigilance and caution given the nervous and mercurial nature of Burmese military and police and their reluctance to cede their vested interests and privileged positions.²⁰

Posner states that “the U. S. should remain committed to serving as a long-term partner in the reform process as long as it continues to move forward.” He then suggests a way forward for Burma in the near-term. “An important element of strong, democratic societies is adherence to the rule of law,

which in turn depends on a strong constitution that has broad public support. Civil society actors, ethnic nationality representatives, and international human rights experts alike have repeatedly called for changes to Burma’s 2008 Constitution so the document may better reflect the country’s new democratic aspirations. The Constitution is the foundational document of any society — in the run up to the 2015 national elections there is an opportunity for the people and government to debate and decide how best to address these issues.”²¹

Burma’s vulnerability to natural disasters and climate change havoc adds to the complexity of U.S. engagement. Burma, an environmentally as well as a socially fragile state, holds tremendous potential for shocks in one domain to reverberate to others. Climate change poses such a shock, given that Burma ranks in the top ten nations vulnerable to climate-related disaster.²²

Near Neighbor Comparisons

After Cyclone Nargis slammed into the Irrawaddy Delta in 2008, current President Thein Sein, former Chairman of the National Disaster Preparedness Central Committee, toured the devastation wrought by the storm. The view from his helicopter exposed a staggering lack of infrastructure and widespread poverty. A corrupt, ineffective regime was responsible for thousands of lost lives, and Thein Sein committed to change. Burma would do well to heed lessons-learned from its Southeast Asian neighbors and focus on the role of natural resource use and allocation in post-conflict peace and democracy building.

The infamous “resource curse” abounds in post-conflict settings where populations and socio-economic expectations soar. Pro-cyclical economic policies—ones that amplify economic fluctuations—are more pronounced in resource-dependent economies. Spending revenues from resource extraction, to the exclusion of savings and reinvestment, follows a pro-cyclical path. An appetite for revenue can drive demand for more

resources, which accelerates the depletion of the resource base while adding volatility to a fragile economy and increasing the potential for conflict over resources.²³

This pattern accompanying cessation of armed warfare can lead to plunder and ecosystem degradation. Instead of managing and exploiting natural resource assets for the nation's development, those with access and power use these resources to reward supporters and strengthen their position; the net result is tantamount to looting. Cease-fires and peace agreements can have the unintended effect of permitting the well-connected and powerful to make huge profits at the expense of the country as a whole while undermining its economic base.

Burma faces three possible future scenarios if, indeed, it succeeds in transitioning to a post-conflict environment, with an end to armed warfare in Kachin and Rakhine states and sectarian violence in Meiktila Township. Like Cambodia, Burma can easily degenerate into an extractive, authoritarian regime. Or, like Indonesia, it can move towards democracy, while retaining an extractive economy. In either case, the familiar pattern of despoiling the nation's resources for the benefit of the few would ensue. A third, far more promising scenario, hinges on the accountable, transparent, inclusive governance of land and natural resources.

Cambodia Two Decades Later

In 1993 Cambodia emerged from a nightmare that had begun during the final years of the Vietnam War, and peace finally appeared possible. The remaining Khmer Rouge soldiers and many leaders had recently defected or died. United Nations peacekeepers provided security and the international community made massive investments. Despite the horrors of war, Cambodia's rich forests, water, agricultural and other resources had remained relatively intact. Unfortunately, Cambodia's example is one of post-conflict plunder of natural resources and an opportunity lost. Outside its national parks, Cambodia's forests

have been heavily logged since the 1980s, when tropical forests covered around 60% of the country and it was viewed as "the green lungs" of Southeast Asia. In the 15-year span between 1990 and 2005, the United Nations Food and Agriculture Organization (FAO) documents a decline in primary forest from 766,000 hectares, to 322,000 hectares.²⁴ Fueled by poverty and widespread corruption, land grabbing; and illegal mining, logging and fishing have compromised Cambodia's future.²⁵ The small nation of 14 million remains near the bottom of most UN development rankings. Hundreds of thousands of Cambodians have been rendered landless, forced to migrate to the swelling, violence-prone slums around Phnom Penh and other large cities.

Indonesia, Philippines and Thailand: Democracy without Restraint to Post-Conflict Plunder

Indonesia, unfortunately, also suffered in many respects from poor natural resource governance since the end of major armed conflict and the fall of the Jakarta-based, military government in the late 1990s. Too often, rampant, localized, over-exploitation of frontier forest and marine ecosystems has replaced the Suharto regime's centralized, authoritarian grip on natural resources. Much of Sumatra and large swaths of Kalimantan's tropical forests have recently been burned and converted to palm oil plantations, generating discontent and marginalizing thousands of citizens. Despite impressive civil society gains, Indonesian democratization has also perpetuated, and, in some cases, exacerbated widespread natural resource over-exploitation and ecosystem damage. Unfortunately, fewer profits in local timber extraction generally defines the major factor slowing "wild logging" across much of Indonesia.²⁶

The Philippines and Thailand, on the other hand, turned the corner towards improved natural resource governance, but only after losing much of their natural patrimony. Both nations experienced wholesale deforestation across most of their national territories, except for protected



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zones, and even these had come under increasing pressure from people relocating from other areas. The degradations include extensive soil erosion, localized droughts, and marked declines in inland and coastal fisheries. Largely unplanned real estate and infrastructural growth, a population boom, and declining land fertility have all increased the growing populace's vulnerability to climate change and natural disasters in both countries and much of Southeast Asia.

Burma's Window of Opportunity

The remedy to the resource curse usually advanced by the multilateral financial institutions is a "rule-based fiscal framework" to reduce volatility and promote fiscal sustainability. The problem rests with the interpretation through the so-called "Washington consensus:" the solutions fail to take into account the political

constraints to apparently rational economic prescriptions. Economists Daron Acemoglu and James Robinson explain why these "solutions" fail: "Attempts by international institutions to engineer economic growth by hectoring poor countries into adopting better policies and institutions are not successful because they do not take place in the context of an explanation of why bad policies and institutions are there in the first place, except that the leaders of poor countries are ignorant. The consequence is that the policies are not adopted and not implemented, or are implemented in name only."²⁷

This revelation gives pause with regard to crafting measures intended to transform Burma and requires a deep understanding of the interrelationships between economic development, political power, and resource extraction. Change in post-conflict environments may have to be

incremental, and not conducive to the quick wins that the international community typically seeks; on the one hand demonstrating “value for money,” and on the other, “optimal impact.” The situation militates strongly in favor of starting with very practical bottom-up approaches.

Co-author and Department of Defense geographer Doug Batson observed in Ghana the kind of grass roots land rights documentation that may be appropriate in Burma. There, the USAID-funded *Title Registration and Microfinance Project* captured “best available evidence” from customary land tenure to generate paralegal property folios. This first-time documentation of (orally bestowed) customary rights and interests in land not only serve as collateral for microfinance loans, it also offers a step forward in bringing lands under customary tenure into the formal system over time.²⁸ In the case of “stateless” ethnic minorities, the same documentation might also be used in a pathway to Burmese citizenship.

Such a bottom-up approach provides a double benefit given that Burma’s judiciary does not engage in resolving land disputes, an anomaly among nations. According to the Burmese Farmland Law, Farmland Management Committees hold the responsibility for resolving them. Unfortunately, it is only at the village level where these committees include representation of farmer’s associations and village elders. Above the village level, the Farmland Management Committees are comprised of government officials only resulting in an often-biased dispute resolution body. In the absence of documentation, this situation bodes badly when disputes over land or resource rights and responsibilities emerge between households or communities and large-scale investors, the government, or military. The natural resources sector provides a logical place to begin to address peace-building in Burma—by documenting land use, claims, rights and interests—where even paralegal property folios provide “best evidence.” The following paragraphs offer some pragmatic measures that can lead to stability in Burma with its transformation rooted in rule of law.

Free and prior consent of local communities and transparent and equitable benefit-sharing mechanisms can bring affected communities into the mainstream of a natural resource dominant development model. Extant models for such mechanisms remain few, with most either imperfect or immature; here the U.S. has the opportunity to help Burma to avoid the mistakes of its neighbors. In that direction, Burma has initiated the process of becoming a member of the Extractive Industries Transparency Initiative (EITI), begun legal reforms, and welcomed environmental and institutional capacity building in its transition.²⁹ Burma could look to lessons learned from revenue-sharing models as diverse as Alaska’s Permanent Fund and Liberia’s post-conflict forest reform process, positive and negative, respectively, on sharing resource revenues.

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With one of the highest deforestation rates of any tropical forest nation, but significant remaining forest resources, Burma could be a candidate for forest carbon mitigation investments. The Reducing Emissions from Deforestation and Forest Degradation (REDD) portfolio under the UN Framework Convention for Climate Change could give forest communities and investors a mutual stake in a well-regulated, fair, and transparent system of forest management. Achieving this will require inclusive management employing best financial practices and equitable land and resource tenure policies, combined with benefit sharing with stakeholders. If successfully implemented it can help to build civil society and strengthen the governance of Burma’s national resources.

Many international organizations have accumulated valuable experience from Indonesia, East Timor, Liberia and other resource-rich developing nations on how to address the “resource curse.” The U.S. is engaging with Burma to reform natural resource extraction and revenue sharing. From field visits, USAID has gained an appreciation of the key issues and constraints, and has developed a number of NRM recommendations for Burma.³⁰

Support the development of a land policy and a comprehensive land law and related implementing rules and regulations.

- Improve tenure security for vulnerable populations, women in particular, and reduce landlessness.
- Bring compulsory acquisition policies in line with international best practices.
- Promote expansion and improvement of community forest user groups.
- Support more sustainable water management and the regulation of the mining industry.

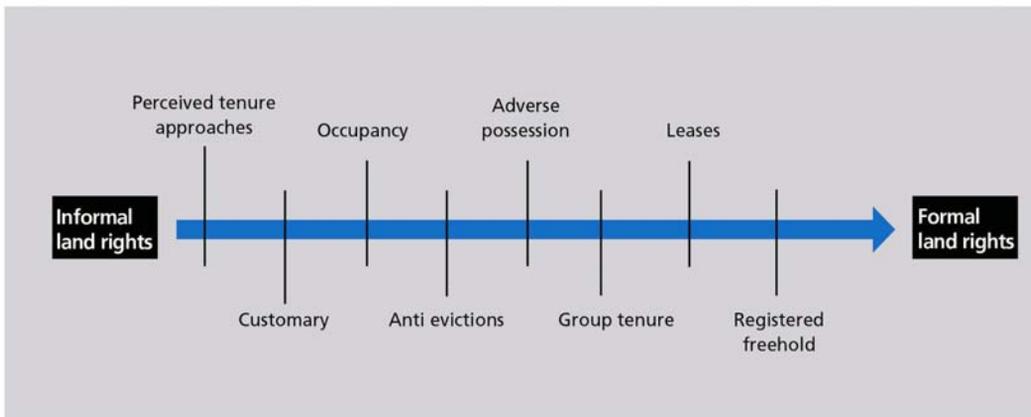
As national consultations and, hopefully, reconciliation occurs, Burmese public and private representatives can agree to adhere to minimal industry standards to develop the country’s resources. One such example is USAID’s aim to assist the Settlement and Land Records Department of the Burmese Ministry of Agriculture and Irrigation to implement its process of registering land rights and enhance citizen awareness and capability to participate in the land registration process.

Land Tenure and Property Rights: the Crux for Sustaining Democracy and Peace in Burma

Throughout the previous conflict-ridden half-century to the present, the majority of people, particularly in Burma’s vast ethnic minority territories, have lacked clear rights to their lands and

resources. Approximately 10 million Burmese remain “landless” agricultural laborers. The 1991 Wastelands Law provided the military government the ability to legally allocate large areas of land to private investors. A criticism of the recently-enacted Farmland Bill and Vacant, Fallow and Virgin Land Management Law is that it enables even greater government control over local peoples’ lands. As multilateral and bilateral aid agencies, humanitarian, conservation, and religious organizations and others race into Burma, few seem to be aware that Burma’s future depends in large measure on sustainable stewardship of its natural resources on the one hand, and on the other, greater inclusiveness of its citizens in the benefits from resource exploitation.³¹ In the words of Burmese Minister of Environmental Conservation and Forestry, U Win Tun, “in many areas of development and environment we are starting from scratch.”³² Indeed, achieving sustainable and equitable development in the face of entrenched, vested interests stands as Burma’s primary challenge in its political-economic transition. Its people need international support sensitive to the underlying causes behind Burma’s poverty and weak governance. Burma’s ability to build on recent positive political developments is inextricably linked to the allocation and use of natural resources.

So, how, in an age of government fiscal austerity, can the U.S. best support efforts of the quasi-civilian Burmese government to promote the conditions for peace and prosperity? A historic, if tenuous, opening for reform in the natural resource extraction and management sector now exists; a mainstay of the Burmese economy. Rather than trying to perfect a former authoritarian regime or its corrupt economy, the U.S. should focus on supporting good local governance and sustainable use of natural resources based on the principles of accountability, transparency, representation, and equity. Together, they provide the necessary political (human rights) and economic (investment) foundations to build a legal and institutional framework for a successful natural

Figure 1: Continuum of Land Rights

resource-based economy. A key indicator of effective engagement in Burma is private investment from risk- and reputation-sensitive western business interests. “Investment grade” projects in the natural resources sector in particular will depend not only on legal safeguards, but also on environmental and social safeguards only possible with a functional rule of law. Land administration and resource tenure reform offers a critical step in this process.

Development experience worldwide has demonstrated that insecure tenure and unclear resource rights undermine food security, sustainable resource use, and livelihoods. Clarifying and negotiating an on-going, enforceable framework of tenure and property rights-related agreements between local people, governments, and other parties offers a way forward for Burma. Since the time of the world’s first agricultural settlements, land tenure and property rights (LTPR) have played a central role in building prosperous, stable societies. Today, Afghanistan, Burma, and many other countries in, or emerging from conflict, face LTPR issues as core challenges of peace and nation building. Defined as “a right or mode of holding or occupying over time” (Black’s Law Dictionary), tenure includes the bundle of rights and associated responsibilities in owning or occupying land vis-a-vis all others. Ownership is not

absolute; and almost invariably local people do not hold fee simple ownership or unmitigated usufruct rights. Instead, a continuum of rights, to include non-statutory customary interests in land that protect livelihoods, provides options for LTPR support programs. For each right, access to public forestlands and the right to practice traditional *swidden* agriculture, for example, relies on a concomitant duty such as maintaining long enough fallow to sustain the soil for other uses.

In a landmark six-volume study, *Post-Conflict Peace-building and Natural Resources Management*,³³ to which the three co-authors contributed chapters, the Environmental Law Institute and its partners examined NRM experiences in more than 60 conflict-affected countries and territories. They identified lessons learned showing how effective NRM can encourage post-conflict peace building and the rule of law. These lessons include supporting an independent judiciary, accountable legislative and executive bodies, and institutional capacity building in civil society. Postponing institution building in the short term, experience shows, “risks destabilizing a country when donor fatigue sets in and political elites and rent-seeking groups attempt to regain power over the resource sector.”³⁴ Coordinating and sequencing strategic reforms in the legal system and institutions requires adherence to the

basic principles of good governance and decision making. That said the U.S. foreign policy agenda for Burma should focus on rights of access to land and resources for communities, a human rights agenda item, and the protection of investor and business interests. This two-pronged approach of legal and policy reforms can shift authoritarian state control to a more partnership-based NRM approach with local communities that provide incentives for land improvement and environmental protections.³⁵ Delineating resource rights often depends on surveys, participatory mapping by communities, and presenting best evidence to substantiate community claims. Elsewhere, efforts to “bring state to custom” have demonstrated simple but durable steps to build good will between citizens and government.³⁶ Their successes rely on transparent sharing of cadastral data and judicial proceedings in forging new public-private partnerships to restore the environment and reconstruct society with trust between former adversaries.

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Customary legal systems emphasize community ecosystem management rather than individual, state, or corporate ownership rights. Traditional rules and practices governing resource use for millions of people have proven vital and resilient in LTPR initiatives. Customary laws also include cultural and religious belief systems that often perpetuate gender biases, ethnic tensions, and discriminations against females, the young, and other vulnerable groups. Given varying degrees of literacy and weak capacity for civil society building, particularly in post-conflict societies, combining statutory laws with appropriate customary practices and rules strengthens LTPR.

An effective framework for addressing systemic inequities in negotiations and land and resource disputes builds on good governance, utilizes synergies in customary and statutory laws, and improves recognition of rights and interests in land for both individuals and groups.

Batson suggests how the U.S. whole-of government approach might employ a low-cost peace-building tool, the Social Tenure Domain Model (STDM), which, in November 2012, became the basis for the first international standard for land administration—ISO 19152.³⁷ He advocated that the Federal Geographic Data Committee vote “yes” on the model not for use in the U.S. homeland, but for its efficacy in defense, diplomacy, and development:

“Future peace operations will be conducted in areas where the ground truth about people and land is often unknown or ignored in formal land tenure arrangements and statutory legislation. As a result, many people caught up in or fleeing conflict are invisible to host nation governments and international actors because their secondary land rights, such as access to forests and water, are not documented. The STDM is an initiative of UN-HABITAT to address these land tenure gaps [...] it identifies relationships between people and land independent of levels of formalization or the legality of those relationships. It signally improves human security by realizing the [...] aim of including every human being in some form of Land Administration System. The STDM can contribute to poverty reduction, as the land rights and claims of the poor are brought into the formal system over time; it opens new land markets, and aids development by equipping communities with land management skills, helping them deal with the future challenges of population pressures and climate change.”³⁸

Identifying and addressing local community concerns from the earliest possible point safeguards locally-functioning land tenure and resource rights. International standards for conducting environmental and social impact analyses for any large-scale natural resource project bring local community concerns into the decision-making process. With enormous infrastructural growth around the natural gas and oil pipelines, road networks combined with the Greater Mekong Sub-region initiatives, many more Burmese face major changes and disruption in their once-secluded lives. The allocation of benefits to communities impacted by the resource extraction and production should be guaranteed as a component of any land or resource extraction deal. In Burma, this might include:

All transactions are based on transparent legal contracts with terms and conditions predetermined by the counterparts, including the traditional occupants of the land. Burmese public and private representatives agree to adhere to minimal industry standards to develop the country's resources.

Contracts, judicial resolution, clear property rights and duties, etc. must be at least minimally enforceable to replace the specter of military rule, with its attendant human rights abuses, and to attract long-term investment.

Some form of direct benefit sharing with affected communities should be undertaken, drawing lessons from experiences in recent forest sector reform processes that support local, even customary, NRM.

In sum, the U.S. can assist in building the capacity of civil society institutions that can deliver the benefits of secure land tenure and resource rights, including protection from the rent-seeking practices of those in, or close to, military, political, or private sector power. As a rule, documented social agreements and benefit-sharing mechanisms reflect human rights and constitute increasingly enforceable components of international investments. A major constraint is the lack of information and communication technology in much

of Burma, meaning that data collection will be laborious and data entry will be prone to error. If the 21st century Road to Mandalay is indeed a cyber-highway, road construction should begin with support for information and communication technology to speed up the process of land registration and data collection. With USAID assisting the Settlement and Land Records Department of the Burmese Ministry of Agriculture and Irrigation to implement its process of registering land rights and use, U.S. support for Burma's transition is well situated. Issuance of land-use certificates based on participatory mapping, cadastral and census data lays the groundwork for improved human rights and future development efforts.

Conclusion

A new wave of foreign investment and assistance, coupled with the active engagement of the U.S. whole-of government community, can play pivotal and complimentary roles in Burma's transition, but only with a thorough understanding of the constraints that have created the current situation. Now, with Western embassies opening and international corporations demonstrating strong interest in investing in one of Asia's last natural resource-rich countries, leverage to support better resource governance exists. Compared to recent reconstruction and stability efforts in the Near East and Central Asia, building governance capacity in Burma can prove cost-effective but requires a long-term commitment. The long-view U.S. foreign policy agenda of prioritizing local resource and land tenure security, transparency, and accountability stands to strengthen the most human rights and safeguard the most livelihoods for the greatest number of people and groups who comprise Burma's 135 officially-recognized "national races" that still exclude the *Robingya*. Posner reiterates: "Making Burma a home for all of its peoples requires broad, grassroots engagement by the widest possible range of its citizens, from ethnic leaders and bloggers, to lawyers and lawmakers, to factory workers and human rights

advocates. All of these groups will need to push for structural changes from the bottom up, at the same time as the political leadership works to push reform from the top down. Where these two forces meet is not for the United States to say. It's up to the Burmese to build trust on both sides and to negotiate a space where they can coexist peacefully, and in so doing to begin to make durable, systemic change. Reforming the system from within is an immense task. It will require political will from the top down, dynamism from the bottom up, and for those who have profited from power to share it.³⁹

Strengthened capacity to govern the wealth of gas and oil, agriculture and forests, water, and many other natural resources can sustain political and economic gains to the benefit all the peoples of Burma. A U.S. foreign policy that aids Burma's transition through the governance of its rich natural resources should be its Asia-Pacific pivot point. **PRISM**

Notes

¹ This article builds on and updates a shorter article by the same authors, "Sharing the Wealth: Burma's Post-Military Rule and Natural Resource Governance," *Small Wars Journal*, October 26, 2012, available at <http://smallwarsjournal.com/jrnl/art/sharing-the-wealth-burma%E2%80%99s-post-military-rule-and-natural-resource-governance> Approved for Public Release, NGA Case Number 13-273. Mr. Batson's expressed opinions are his own and do not represent the positions of the U.S. Government, the Department of Defense, or the National Geospatial-Intelligence Agency.

² Per U.S. Government policy, the country's name is Burma. See "Obama Calls Country 'Myanmar,' to the Delight of Its Leaders," *Wall Street Journal/Southeast Asia*, November 20, 2012, available at <http://blogs.wsj.com/sear-ealtime/2012/11/20/obama-calls-country-myanmar-to-the-delight-of-its-leaders/> Accessed June 4, 2013.

³ "Burma Country Profile," *USAID Land Tenure and Property Rights Portal*, May 2013, accessed at <http://usaaid-landtenure.net/burma>

⁴ The term "ethnic minorities" is commonly used in Burma to describe approximately 40% of the non-Burmese population. Most of the ethnic minorities fit the United Nations definition of indigenous peoples. Burma,

it should be noted, is a signatory to UNDRIP (the United Nations Declaration on the Rights of Indigenous Peoples, 2008, a non-binding resolution. For more perspectives on indigenous peoples' issues in Burma, see Kanbawza Win, "Myanmarnization of the Ethnic Nationalities – the Betrayal of the Ideals of Bogyoke Aung San," *Asia Tribune*, January 23, 2012, available at <http://www.asiantribune.com/news/2012/01/23/myanmarnization-ethnic-nationalities-betrayal-ideals-bogyoke-aung-san>

⁵ "Restarting Burma," *Asia Sentinel*, August 2, 2012, available at www.asiasentinel.com/index.php?option=com_content&task=view&id=4753&Itemid=214

⁶ "Myanmar Country Profile: International Human Development Indicators," *United Nations Development Programme (UNDP)*, available at <http://hdrstats.undp.org/en/countries/profiles/MMR.html> accessed June 4, 2013.

⁷ As opposed to profit-seeking, which is the creation of wealth, rent-seeking behavior is the extraction of existing wealth through the manipulation of institutions and access to centers of power.

⁸ "Burma Country Report," *U.S. Department of State Country Reports on Human Rights Practices*, (Washington; Department of State, 2011), 36, accessed at www.state.gov/documents/organization/186475.pdf

⁹ "Limited health options for Myanmar's Rohingya IDPs," *IRIN News*, May 31, 2013, available at <http://www.irinnews.org/report/98135/limited-health-options-for-myanmar-s-rohingya-idps>.

¹⁰ Recently, a 15-member business team accompanied Indian President Singh to Naypyidaw, the new capital city located 320 kilometers north of Rangoon (Yangon). The Indian industry delegation explored a range of new opportunities for India's burgeoning industries and appetite for gas, timber, minerals, and other natural resources. The Confederation of Indian Industries (CII), reports that India and Burma have recently seen substantial increase in their bilateral trade..."This implies that the sky is the limit." *India Knowledge@Wharton blog*, June 14, 2012, available at <http://knowledge.wharton.upenn.edu/india/article.cfm?articleid=4689>.

¹¹ Yuki Akimoto, "Hydro-powering the Regime," *The Irrawaddy*, 12, no. 6 (June 2004), available at http://www2.irrawaddy.org/article.php?art_id=3757

¹² "Recent Dam and Water Diversion Plans," *Salween Watch*, available at http://www.salweenwatch.org/index.php?option=com_content&view=article&id=51&Itemid=60

¹³ "Human Rights in Burma: Testimony of Michael H. Posner, Assistant Secretary of State, Bureau of Democracy, Human Rights, and Labor," *U.S. Department of State*, February 28, 2013, available at <http://www.state.gov/j/drl/rls/rm/2013/205475.htm>

¹⁴ Kevin Woods, "Ceasefire Capitalism: military private partnerships, resources concessions, and military style

building in the Burma-China borderlands," *Journal of Peasant Studies* 38, no 4, (September 14, 2011), 747-770.

¹⁵ "Human Rights in Burma: Testimony of W. Patrick Murphy, Special Representative and Policy Coordinator for Burma," *U.S. Department of State*, February 28, 2013, available at <http://www.state.gov/p/eap/rls/rm/2013/02/205487.htm>

¹⁶ *Ibid.*

¹⁷ Danielle Bernstein, "Military Outreach Seen as New Step in Engaging Burma," *Voice of America News*, October 20, 2012, available at http://www.voanews.com/content/military_outreach_seen_as_new_step_in_engaging_burma/1530172.html,

¹⁸ W. Patrick Murphy testimony, *Op. Cit.*

¹⁹ Thomas Fuller, "Myanmar Police Used Phosphorus on Protestors, Lawyers Say," *The New York Times*, January 30, 2013, available at http://www.nytimes.com/2013/01/31/world/asia/myanmar-troops-used-phosphorus-on-protesters-lawyers-say.html?_r=0

²⁰ Bertil Lintner, "Realpolitik and the Myanmar Spring," *Foreign Policy*, November 30, 2011, available at http://www.foreignpolicy.com/articles/2011/11/30/democracy_myanmar_china_clinton

²¹ Michael Posner testimony, *Op. Cit.*

²² Michael Bittner, "Climate Change Vulnerability: Country Rankings," *EHS Journal*, October 24, 2010, available at <http://ehsjournal.org/http://ehsjournal.org/michael-bittner/climate-change-vulnerability-country-rankings-maplecroft/2010/>

²³ For an in depth discussion of the resource curse, see Alberto Alesina, Filipe R. Campante and Guido Tabellini, "Why Is Fiscal Policy Often Procyclical?," *the Journal of the European Economic Association* 6, no.5, (2008), 1006-1036, available at <http://ideas.repec.org/a/tpr/jeur-rec/v6y2008i5p1006-1036.html>; Philip R. Lane, "The Cyclical Behaviour of Fiscal Policy: Evidence From the OECD," *Journal of Public Economics*, 87, no.12, (December 2003), 2661-2675, available at <http://ideas.repec.org/a/eee/pubeco/v87y2003i12p2661-2675.html>; Philip R. Lane & Aaron Tornell, "The Voracity Effect," *American Economic Review*, 89, no.1, (March 1999), 22-46, available at <http://ideas.repec.org/a/aea/aecrev/v89y1999i1p22-46.html>. For a useful discussion of the resource curse that includes Burma as an example, see Michael L. Ross, "How Do Natural Resources Influence Civil War? Evidence from Thirteen Cases", *International Organization*, 58 (2004), 35-67, accessed at <http://www.sscnet.ucla.edu/polisci/faculty/ross/IO%202004.pdf>.

²⁴ FAO, *Global Forest Resources Assessment*, (Rome: Food and Agriculture Organization of the United Nations, 2010).

²⁵ Jake Brunner and Kirk Talbott, "Post Conflict Biodiversity Loss: Burma's Challenge," *Burma Debate*, 8, no.4, (Winter 2001/2002), 17.

²⁶ C.V. Barber and Kirk Talbott, "The Chainsaw and the Gun: The Role of the Military in Deforesting Indonesia," in Steven Price (Ed.), *War and Tropical Forests, Conservation in Areas of Armed Conflict*, (New York: Haworth Press, 2003), 161.

²⁷ Daron Acemoglu and James Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*, (New York: Crown Business, 2012).

²⁸ Douglas E. Batson, *Ground Truth in Building Human Security* (Carlisle, PA: U.S. Army War College, Peacekeeping and Stability Operations Institute, 2012), 40-44, available at <http://pksoi.army.mil/PKM/publications/papers/paperreview.cfm?paperID=31>

²⁹ "Myanmar appoints EITI lead," *EITI*, December 17, 2012, available at <http://eiti.org/news/myanmar-appoints-eiti-lead>.

³⁰ "Burma Country Profile." *USAID, Land Tenure and Property Rights Portal*, May 2013, available at <http://usaid-landtenure.net/burma>

³¹ Asian Development Bank (ADB), *Myanmar in Transition: Opportunities and Challenges*. (Manila: ADB, 2012), available at www.adb.org/publications/myanmar-transition-opportunities-and-challenges

³² Tiffany Stecker, "Facing Daunting Challenges, Myanmar Seeks to Protect its Forests," *ClimateWire*, April 23, 2013, available at <http://www.eenews.net/cw/>

³³ Carl Bruch, David Jensen, Mikiyasu Nakayama, Jon Unruh, eds., *Post-Conflict Peacebuilding and Natural Resource Management*, 6 vols., (London: Earthscan, 2011-2013).

³⁴ Rustad, S. A., P. Lujala, and P. Le Billon. "Building or Spoiling Peace? Lessons from the Management of High-Value Natural Resources," *High-Value Natural Resources and Post-Conflict Peacebuilding*, ed. P. Lujala and S. A. Rustad, (London: Earthscan, 2012), 608.

³⁵ Resource security helps reduce landlessness and promote investments in greater agricultural productivity, and is an important, if not sufficient, step in slowing the conversion of natural habitat and protecting Burma's rich biological diversity.

³⁶ International Institute for Environment and Development (IIED), *Making Land Rights More Secure: International Workshop for Researchers and Policymakers*, (London: IIED, 2002), 164, available at <http://pubs.iied.org/pdfs/9446IIED.pdf>.

³⁷ "ISO Standard for Land Administration Approved," *GIM International*, November 6, 2012, available at http://www.gim-international.com/news/land_management/cadastral_surveying/id7015-iso_standard_for_land_administration_approved.html

³⁸ Douglas E. Batson, *Ground Truth in Building Human Security*, *Op. Cit.*, 39

³⁹ Michael Posner testimony, *Op. Cit.*