Understanding How the Legal Framework in Myanmar Currently Supports Recognition of Shifting Cultivation Tenure Arrangements

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Yangon, Myanmar

17 June 2016
Legal Framework = Tools in a Toolbox

- Legal framework provides tools to achieve objectives.

- Need to define objective trying to achieve (registration of shifting cultivation land tenure).

- Search the legal framework for provisions that support the objectives trying to achieve.

- May need to interpret provisions creatively.

- Ultimately requires political will.
Where to start? Constitution

ARTCLE 37

• Myanmar: “Union is the owner of all lands and all natural resources…”

BUT

• Shall permit citizens right of private property

• So, Constitution recognizes immovable property rights = land property rights, including shifting cultivation land property rights of communities.
What tools exist in various laws?

- Association Registration Law (other more complicated mechanisms for creating legal entity)
- Farmland Law
- Vacant, Fallow and Virgin Land Law
- Forest Law and Community Forest Instructions
- Need for new tools? New law?
Association Registration Law

• Important, because creates a mechanism for recognition of a community as a legal entity (association)

• Shifting cultivation land tenure right would be in the name of the community.

• Problem: implementing rules and regulations have not been enacted, but may not be needed.

• Need to lobby the Ministry of Homeland Affairs and the General Administration Department for legal recognition for purposes of land tenure recognition.
Farmland Law (Strengths)

• “Farmland means land defined as...hill-side cultivation land (Taungyar)...”

• Recognizes a form of conditional permanent tenure rights to farmland.

• Article 6 allows issuance of a Land Use Certificate to an organization, such as an association.

• Question: Is shifting cultivation land Farmland?
Farmland Law (Weaknesses)

- Conditions on the tenure right, particularly those relating to leaving land fallow “without sufficient reason,” which makes the tenure security potentially weak.
- Can sell immovable property rights granted under the Farmland Law, which creates a risk.
- Does not include areas that would fall under the definition of forestland within the PFE.

- Not a perfect tool, not specifically designed for the objective, but could work in some circumstances.
Forest Law and CFI (Strengths)

- Creates a mechanism for granting areas of forestland to a community under a co-management regime.
- Relatively flexible mechanism, allows for both traditional and commercial production of forest products.
- Could potentially include large areas of land.
- Question: Is shifting cultivation land Forestland?
Forest Land and CFI (Weaknesses)

- The right that is granted is not exclusive (co-management regime).
- Overly complicated in some ways with the need to develop management plans.
- Failure to comply with management plans can lead to the rights being rescinded.
- Time limit on the right (30 years), so the land tenure arrangement is not permanent: Interim Measure?
- By definition, land resources in question remain as State Property.
- Not a perfect tool, not specifically designed for the objective, but could work.
Vacant, Fallow and Virgin Land (VFV) Law

• May permit the right to cultivate land for agricultural purposes, up to 50,000 acres.

• Problem is the intent of the VFV Law is for commercial business purposes, need to pay annual fees, difficult to apply to the objective of recognizing shifting cultivation land tenure rights.

• Question: Is Community willing to invest and adopt commercial production practices? Would they be able to access markets?

• Not a perfect tool, not specifically designed for the objective, but creates some interesting arguments for recognizing shifting cultivation land tenure rights under the right circumstances.
Need for a new tool

• Need a legal mechanism specifically designed for recognizing shifting cultivation land tenure that is flexible and meets the needs of the Myanmar context.

• Need clear policy statements from Government supporting this (could be State/Regional Government).

• Need a chapter in a comprehensive umbrella National Land Law dedicated specifically to formal legal recognition and protection of community land tenure in its various forms.

• Can use examples from other countries as guidance, but tailor to the Myanmar context.
THANK YOU