

Housing, Land, and Property Rights in Burma

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The main objective of this research is to examine housing, land, and property rights in the context of Burma's societal transition towards a democratic polity and economy. Much has been written and discussed about property rights in their various manifestations, private, public, collective, and common in terms of "rights". When property rights are widely and fairly distributed, they are inseparable from the rights of people to a means of living. Yet in the contemporary world, millions of people are denied access to the land, markets, technology, money and jobs essential to creation of livelihoods (Korten, 1998). The most significant worldwide problems of unjust property rights remain those associated with landlessness, rural poverty, and inequality (Hudson-Rodd & Nyunt, 2000).

Since 1989, transformations from planned/ command state economies to open market economic systems have been taking place, in former socialist countries of Eastern Europe, Russia and in Communist China and Vietnam. At the core of these economic transformations is the need for a clear definition of property rights. Transitions are occurring at different rates and in diverse forms depending on the local historical contexts of the countries involved. Research into recent transformations in Eastern Europe countries reveals three distinct transitions. One is a change from a command economy to a market-based economy. The second change is from one party dictatorship to democracy and the third is a transition from a political context in which the rulers are unconstrained by laws to one of the rule of law and constitutionalism (Sunstein, 2000). The economic transition is predominantly the major focus of Western academic researchers and of international policy consultants representing the World Bank. I argue that in research on land, housing, and property rights, dimensions of the three transitions need to be critiqued simultaneously and not studied as

separate entities.

In Burma, a military-run dictatorship has adopted its own version of market economy, with no substantial move to transform the other dimensions of a democratic polity. While maintaining ownership of all land, the State has privileged the rights of ownership of land and resources for some private entrepreneurs, but denied similar rights for peasants and small farmers (Hudson-Rodd & Nyunt, 2001).

The right to land, property and adequate housing are human rights established in several international conventions, resolutions and declarations adopted by different bodies of the United Nations. In Burma the military State remains in control of all land with citizens having no rights. A future democratic Burma will need to find ways to resolve the many conflicting claims on land, property, and housing including the return of great numbers of people displaced from their lands with their houses and property destroyed or confiscated. The language of human rights has been used to develop a critical consciousness in the person and to encourage social action to overcome oppressive social structures (Magendzo, 2002). Knowledge of human rights is also a means of healing the guilt of a person fleeing a life of state enforced terror in Burma. Women, men, and children are learning in Thai/ Burma border refugee camps that their so-called national Burmese culture of “voluntary labour” is not inevitable, or an action of divine right of the ruler over the peasants, but rather is an illegal act of force by the State against its own citizens. Individual people, citizens of Burma have rights. This awareness of their rights as human individuals is a powerful tool for denying the ‘righteous’ power of the military dictatorship and empowering individuals in their struggles against state rule. Popular consciousness of rights is often dulled by the “burden of traditional values and authority” (Ghai, 2001). The depth and extent of human rights abuse committed by the military on people of Burma, including dispossession from land, forced evictions from villages, confiscation of labour and materials has been documented in a number of human rights reports concerning ethnic nationalities (Bamforth, 2000; Human Rights Watch, 1996; Mon, 2003; Norwegian Refugee Council, 2004; Shan Human Rights, 1998; 2004)

Burma covers a land area of 676, 578 square kilometres, making it the largest country in mainland Southeast Asia and one of the least densely populated countries in the region, at 67 people per square kilometre in

1996/7 (UNDP, 1998). Burma's wealth of natural and human resources should be able to sustain the present and future generations of people while maintaining ecological diversity. But Burma, ruled for more than 40 years by successive military regimes, is widely considered to be Asia's "principal development disaster" (Booth, 2003: 1). Under a variety of names and guises, the rulers in Burma have focussed upon the perpetuation and survival of their own military status class. The current military regime claims to be the central institution of the State dedicated to safeguarding the unity and integrity of the nation and creating a 'modern developed nation'. The reality is that this unelected, illegitimate regime rules by force creating widespread poverty and committing systemic acts of violence against the people of Burma.

The majority of the population remains poor, the land is increasingly impoverished, and most people simply try to survive living in fear of the military. Poverty, more acute in the non-Burman ethnically dominated border areas, directly results from violations of the freedoms of citizens by the military regimes (Hudson-Rodd & Myo Nyunt, 2000; 2001). A United Nations survey (1997) found that 70% of household expenditure was on food, an indicator of extreme vulnerability of people in Burma. According to *UNICEF*, in 1994 GDP per head in Burma, based on a purchasing power parity basis, was the lowest in South-east Asia.

The Asian Human Rights Commission (1999) found that food scarcity in Burma was a direct result of militarisation of the nation. By whatever standards of measurement concerning quality of life in Burma, the majority of people suffer through dispossession, discrimination and social exclusion. Conspicuous consumption of a small urban elite who benefit from military rule aggravates the widening gap between rich and poor struggling to survive (USA Embassy, 2000: 13). The military regime have achieved their goal of a large military force at the direct cost to the economic survival of the nation and at the cost of the lives of the majority of people in Burma who lead daily lives of quiet desperation (Myo Nyunt & Hudson-Rodd, 2002).

Poverty, defined by the High Commission for Human Rights (September 2002), is "an extreme form of deprivation". The denial of resources, economic, social, and political power keeps the majority of people of Burma poor. Poverty is a major cause of human rights violations. Human rights is therefore relevant to the goals of the Copenhagen Declaration on

Social Development and Programme of Action which places particular emphasis on the eradication of poverty. "Poverty is the greatest cause of the denial of human rights" (Ghai, 2001: 1). Poor people enjoy a disproportionately small measure of economic rights such as education, health, and shelter. They are also unable to exercise civil and political rights to the same extent as those with wealth. Poverty produces the insubordination of some people to others in contexts which deny them their basic human dignity.

Amartya Sen (1999: 11) writes of "human development as the freedom to be able to live as we would like". Freedoms are not only the primary ends of development but they are the principal means of development. Political freedoms (free speech and elections) help to promote economic security. Social opportunities in the form of universal education and health services facilitate economic participation. Economic freedoms in the form of opportunities for participation in trade and production help to generate personal abundance as well as public resources for the common good. The realization of economic rights and social rights are closely linked to the condition of civil and political rights. In Burma, the military junta prevents people from pursuing their lives in peace. Individuals are denied their political and civil liberties. Restrictions are imposed on individual and group freedoms denying citizens opportunities of participation in the social, economic, and political life of their country. The military regime violates all human rights forcing families off their farms and land, while confiscating property, crops, and labour destroying whole villages. Citizens are unable to live freely and in security, are often denied means of sustaining their families at subsistence levels.

Poverty is perpetuated in Burma by the demands placed on people by those in power. Army officials, government authorities, local village members of the SPDC exploit their connections for personal gain through bribes, 'donations', taxes, and other forms of payment over and above their inadequate salaries. The World Bank (2000/2001: 103) shows that the burden of corruption falls disproportionately on the poor. This is evident in Burma where rent-seeking practices are widespread. The military elite extract rents strengthening their hold on power. Human rights are undermined further because corruption requires secrecy and "corporate cronyism thrives" (USA Department of State, 2004). According to *Article 17* of

the *Universal Declaration of Human Rights* (1948), “Everyone has the right to own property alone as well as in association with others” and “No one shall be arbitrarily deprived of his property” (United Nations, 2002: 4). No person, household, or village is secure in Burma. The State owns all land and property, and evicts, relocates, and displaces many citizens. The military regime enforces their strict disciplinarian control denying all human rights to people of Burma.

The State Law and Order Restoration Council (SLORC) formally abandoned the *Burmese Way to Socialism* in 1990 declaring an “open door market economy of Myanmar”, in essence a *Burmese way to capitalism* (Maung, 1995: 649). No other open policies followed. Slightly opening the door to foreign investment, embracing a stunted creation of a modern developed nation, the regime closes the door to ‘foreign’ ideas such as democracy, transparency and human rights. Burma the world’s least free economy (Cato Institute, 2004) suffers from problems of economic marginalisation yet refuses to permit residents of Burma any more than a marginalised role.

In this paper I expose the variety of laws relating to property and housing in Burma and describe current practices concerning housing and property which exist often quite independently of the laws. Case studies of people who have had their urban property expropriated with unfair compensation by the military regime will be explored to illustrate the fragility of individual property rights in Burma. Examples of forcible relocation of people for construction of national development projects, dams, roads, bridges, railways, as well as conflict induced displacement demonstrates the total disregard of the military junta for individual human rights. It is estimated that between 600,000 and 1 million people are internally displaced from their villages in Burma because of the military regime’s struggle to control border areas populated by ethnic minority peoples (Norwegian Refugee Council, 2004).

Burma is ruled by a strict military junta. In 1962, General Ne Win overthrew the elected civilian government and replaced it with a repressive military regime. In 1988, the armed forces brutally suppressed pro-democracy demonstrations killing and injuring thousands of people throughout the country. A group of nineteen military officers, the State Law and Order restoration Council (SLORC) took command and abrogated the

1974 Constitution. The nation has been ruled by decree since this time. In 1990, pro-democracy parties won over 80 per cent of the seats in a fair and free parliamentary election, but the rulers refused to relinquish power imprisoning elected members of parliament. The current (since 1997) State Peace and Development Council (SPDC) of Burma represent a de-legalised state refusing to recognise the result of the election they called in 1990. The thirteen member SPDC has subordinate Peace and Development Councils ruling by decree at the division, state, city, township, ward, and village levels.

Burma remains guided by martial law as defined in Declaration No. 1/90 to prevent “the disintegration of the Union, the disintegration of national unity and the perpetuation of sovereignty”. These foundational aims of the State are reiterated (Khin Maung Win, 2004) in the latest form of State Constitution. These aims reveal the lack of political, intellectual and legal discourse required to establish a system of Burmese law which will direct Burma towards transition to legality. There is no independent judiciary and there is no meaningful Rule of Law in Burma. The SPDC appoints justices to the Supreme Court who appoint lower court judges with the approval of the SPDC. These courts adjudicate cases under decrees promulgated by the SPDC that effectively have the force of the law. Laws are applied selectively and arbitrarily by the military regime seeking to maintain control (Steinberg, 1995: 7). The court system includes courts at the township, district, state and national levels. The state rules by decree and is not bound by any constitutional rights for fair public trials or any other human rights. “The only law in Burma is what the generals from day to day decide it to be” (Gutter & Sen, 2001: 14).

One high profile example is that of a claim for half ownership on the property at 54 University Avenue, Rangoon. The SPDC allowed Aung San Suu Kyi's brother, a non-citizen of Burma, to file a suit against her seeking half ownership of the family compound in which she lives. This case is politically motivated as foreigners are not permitted to file claims for property against Burmese residents. The SPDC government granted a special authority to the brother for the case to be filed. The trial was public and lasted for several months. The case was dismissed for being filed improperly. The Government granted the brother authority to file a second suit and October 2002, a judge presiding over the case ruled that the Aung San Suu

Kyi's brother had the right to inherit property under Buddhist customary law (PolitInfo United States, 2004; US Department of State, 2004).

The SPDC is a most repressive regime whose actions have broad cultural, social, and economic consequences. Gross violations of human rights including torture, rape, extra-judicial killings are common especially in rural areas dominated by ethnic minorities. There exists a layering of laws in Burma as laws have changed dramatically over the past decades so that there is no single *status quo ante* to which democratic governance in Burma could return (Huxley, 1998). Pre-colonial, British colonial, independent democratic, socialist, and military regimes have each contributed to the layering of laws in Burma. The dispossession of people from their land and livelihood is done according to 'laws', 'directives', 'proclamations' which have nothing to do with justice. Force is the only law in Burma.

Current and Historical Status of Burmese Land and Property Law

As a result of British annexation of lower Burma (1826) and Upper Burma (1856), customary, legal, and administrative differences still remain in these two major areas of Burmese approaches to land and property laws (Hla Myo Than, 2000; Maung, 1963).

In Upper Burma, there are three main types of land ownership recognized as:

- Hereditary (privately owned) land commonly known as *Bo-ba-paing* literally Grand-fathers' land;
- Government lands
- Land under land holders' rights, that is after 12 years of continuous occupation and taxation, the occupant has right to land, not absolute ownership BUT right to "hold" land.

Under the *Lower Myanmar Town and Village Acts* of 1898, the following rights to land accrue for hereditary lands:

- Right to keep under occupant control (to live and to dwell on the land)
- Right to cultivate
- Right to mortgage
- Right to sell
- Right to inherit

For Government lands, people have the rights to:

- Keep under occupant control
- Cultivate
- Inherit (but this right is not for non-cultivators, only for agriculturalists)

The British introduced cadastral surveys to distinguish the following classes of land in addition to the existing land forms:

- Land under grant (long and medium grants)
- Lease-hold lands
- Temporary lease lands (seasonal only)
- New colonies (newly opened lands)
- Inundated and 'island' lands found only in riverine areas (lands submerged under rivers during Monsoon season, which re-appear when river water recedes).

Since independence, the various ruling governments have reinforced state ownership of land. Gaining independence from British rule in 1948, and under section 30 (1) of the *Constitutional Law of the Union of Burma*, the state is the ultimate owner of all land. Under the *Land Nationalization Act* of 26 October 1953, all land was re-affirmed as owned by the state. Again reinforcing the state rights to land, section 18 (a) of the 1974 *Constitutional Law of the Union of Socialist Republic of Myanmar*, the state declared ultimate ownership of all land and resources arising from above and below ground, water, air space within the country. Therefore all land and resources are absolutely owned by the state.

The area of land law under most dispute is that of definition of land under cultivation or non-cultivation. Under *Land Nationalization Act* (1953):

- Section 3, lands for residential purposes, non-agricultural uses termed 'exemption lands' are exempt from nationalization.
- Section 39, lands formerly used for agricultural purposes, now used as football grounds, training depots are no longer recognized as land for cultivation.

Disputes concerning these lands can be taken to several different levels of court under sections 447, 426, 420 of the Penal Code and sections 145 to

148 of the Criminal Procedure Code. Other suits of civil nature can be tried under two main Acts, the Transfer of Property Act and the Specific Relief Act. No disputes arising from lands used for agricultural purposes can be sued in any courts as specified in Section 36 of the *Land Nationalization Act*, except for compensatory claimant cases and Directive Number 8 of the Central Court of Yangon dated 7 August, 1965. Therefore all cases concerning agricultural lands were to be tried in the different levels of the People's Council's under (1977) section 66 (e) and (j) of the Law of Rights and Duties of the People's Councils. This demarcation between land for purposes of cultivation and land for non-agricultural purposes is taken seriously. Any law-suit mistakenly considered by any of the Courts is to be summarily dismissed.

There is a special recognition to cover moveable lands called 'impermanent' lands. These lands become inundated and submerged during Monsoon season of May to September by river water and emerge when river water recedes in October and November. These lands are geo-physically and agriculturally viewed as impermanent lands varying in size and site. When appearing these 'moveable' lands belong to agricultural lands. Disputes concerning these lands cannot be tried in the courts but by the People's Councils via section 66 (d) of the Law of the Rights and Rules of 1963 utilizing special powers given via the letter Number 1/ Balaka (9) Gagyí 70 (292) by the then Central Land Committee (27 May 1970).

Private property rights are fragile and poor land ownership records facilitate involuntary relocation of people and their families by the regime. The law does not permit outright private ownership of land. It does recognize different categories of land use rights, many which are not freely transferable. These post-colonial laws have revisited colonial traditions making private rights to land contingent on the land being used 'productively', as defined by the State.

The latest land and property laws were suggested at a 'Seminar on Understanding Myanmar', entitled *Myanmar Roadmap to Democracy: The Way Forward*, hosted by the Myanmar Institute of Strategic and International Studies (Yangon, January 2004). These *State Fundamental Principles* (Khin Maung Win, 2004) affirm that:

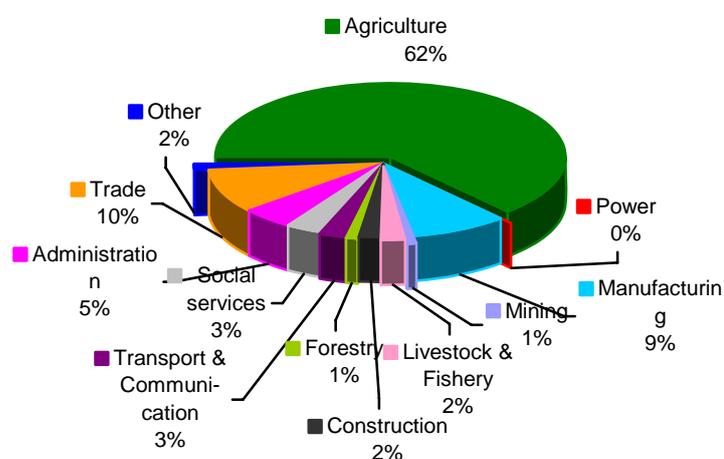
- The State is the ultimate owner of all the land, and natural resources above and below the ground, above and beneath the waters and in the atmosphere within its territorial boundary;
- The State shall enact necessary law to supervise economic forces extraction and utilization of State owned natural resources’
- The State shall permit citizens right of private property, right of inheritance, right of private enterprise, right of initiative and right of patent in accord with law.

The State may ‘permit’ citizens right of private property and right of inheritance. This statement claims to ensure the rights of individuals to own private property yet these rights remain fragile and at the whim of the government, as the State is the “ultimate owner of all land”. It is significant that citizenship in Burma is limited to only those “persons born of parents both of whom are nationals” (Khin Maung Win, 2004: 12). Muslim Rohingya are only one group of residents denied citizenship in Burma. A National Registration System ensures that each person’s ‘ethnic’ identity is declared and visible. This card is required to be on a person at all times.

Land and Livelihood

Burma remains an agrarian society with access to agricultural land the single most important resource of rural households.

Figure 1: Distribution of Sectoral Employment in 1997/98



Source: Sein Htay, 2004, Economic Report on Burma 2003/4, Bangkok: FTUB.

The greatest proportion (73%) of the Burmese population resides in rural areas. By 2015 the rural population will decline to 63.3% according to the United Nations Development Programme (2003). Rural poverty and scarce or no access to means of agricultural livelihood is closely linked. Rural households are experiencing increasing levels of poverty and households with female heads are the most disadvantaged. Citizens are forced off their land to support an increasing military. Rural poverty and lack of access to means of agriculture are closely linked in Burma. For most farmers, the methods and structures of production have remained largely unchanged over the years. However, the numbers of people who are landless and who cultivate marginal, non-viable farms of less than two acres are increasing.

Rural households are larger than urban. One in ten rural households is headed by a woman and these female heads tend to be older women. Overall, females marginally outnumber males but great differences exist in more remote states, divisions and townships in which men migrate out to find work for extended periods of time. Landlessness is positively correlated with household size and this relationship is profoundly pronounced for female headed households. Large households suggest surplus labour and landless households indicate a lack of access to livelihood. The largest concentrations of poor households live in Sagaing, Bago, Magwe, Irrawaddy, and Mandalay Divisions, comprising the country's more populous rice-growing region, and the Dry Zone region. Each of these states or divisions contains more than 10 percent of the country's total rural poor. Chin State has the highest rural poverty rate with 47 percent of the state's rural households in poverty, more than double the national average.

The lack of assets such as land or livestock is a strong indicator of rural poverty. The 1997 Human Development Index Baseline Survey (HDIBS) of 20,000 rural households found that one-third of rural households owned no land, 40 percent owned no livestock and 25% owned neither land nor livestock. Many families who do have land are also poor. Over 60 percent, or over 2.8 million of land-holding households have less than five acres, roughly the minimum sized holding needed for subsistence farming, at current levels of technology and input use. The size of a plot

needed for subsistence farming varies, depends upon agro-climatic conditions. In the upper dry zone, a farm of three acres, with multi-cropping, can be sufficient. A farm of three acres is inadequate in the single-crop rice-growing areas.

Analysis of the findings of the Human Development Index Baseline Survey (HDIBS) suggests that 77 percent of rural household heads are engaged in primary production as their predominant economic activity. The share drops to 56 percent for poor rural households. The 1993 Agricultural Census found that larger farms (average 8 acres in size) tend to employ wage labour. Agricultural wages are low (between 100-150 Kyats a day in 1998, 400 Kyats a day in 2002, 450-500 Kyats a day in 2003), and farm employment is available only a few months during the year. Many landless rural poor must therefore supplement their income with a variety of off-farm activities. For almost 40 percent of poor rural households, the predominant economic activity is in non-primary production, such as service activities.

The rural poor are engaged in a variety of off-farm, economic activities (Shaffer, 1999) depending on the local environment within distinct climatic and geographical regions of Burma: the Upland Area; Dry Zone; the Irrawaddy Delta. Common activities along the coastal areas are fishing and crabbing. Villagers with access to the necessary assets engage in raising prawn, breeding pigs, chickens, and goats. Other non-farm occupations include trading, weaving baskets and mats, and making jewellery. The landless rely on common property resources from which they gather firewood and fish. In all areas there is deterioration in ecological and social well-being of the majority of people.

The Upland Area ranges in altitude from 1,000 to 2,300 meters stretches along the eastern, northern, and western states of Kachin, Kayah, Kayin, Chin, Shan, Mon and Rakhine. Ethnic minorities who live in small and remote hamlets inhabit the area. Villagers are very poor and suffer from food deficits. Most farms practice some form of shifting cultivation, where a few acres of hilly, forested area are slashed and burned every year and planted with various crops. Declining soil fertility and crop yields are serious problems. With land becoming scarce, poor farmers are clearing steeper, more rugged hills, but sustained cultivation is virtually impossible due to water run-off and severe erosion. In some remote

areas, poppy growing for opium has become one of the few economically viable cash crops. Some farmers who live along small, flat valley floors grow rain-fed paddy; where possible they grow a second crop of legumes or garlic. In Northern Rakhine State, non-farming villagers engage in casual labour including land clearing, digging embankments, and paddy transplanting or harvesting. In the upland areas, the poor gather leaves, barks and roots used in traditional medicine or cut wood for sale. Others become traders and sell produce in other towns; men also find work in gem mines in Shan State.

The Dry Zone spans a large, semi-arid area of central Burma and includes the populous divisions of Mandalay, Sagaing and Magwe. The majority of the Dry Zone farmers are commercial rather than subsistence farmers. They grow cash crops such as sesame and pulses and beans for exports. Cotton is commonly grown in the northern area and seasonal vegetables such as onions, potatoes, and tomatoes are often grown on alluvial soils. In areas where water is available year round, small farms with five acres or less may be able to support a decent standard of living. However, analysis conducted in 1995 estimated that at least 7 to 10 acres were required to sustain a minimum standard of living, or 15 to 20 acres for farms with poor quality land (Cools, 1995). Many small farmers and the landless supplement their incomes by cutting fuel wood. During the slack-farming season, household members may migrate to find work in Rangoon, Mandalay or the border areas. In the Dry Zone, the landless are commonly engaged in raising goats and sheep and jaggery production. Other common off-farm jobs in the Dry Zone are gypsum mining and dam or road construction.

In the Irrawaddy Delta area, of southern Burma, the environment is deteriorating. Sources of freshwater are becoming scarce and there is an increasing scarcity of crabs, fish, firewood, and even vegetables for the landless and land-poor households (UNDP, 1998). Households cope with income shortfalls by migrating in search of new sources of fuel wood, crabs, and fish. In the Delta townships of Laputta, Bogalay and Mawlamyaingyun, more than half of the population is estimated to be landless. One 1998 study estimated that agricultural labourers, with no land to cultivate and no prospects of inheriting land constituted 33% of those employed a doubling of the number of people working as labourers

in 1974-75 (Myat Thein & Maung Maung Soe, 1998). Many marginal farmers engage in fishing or crabbing. Those who fish, usually do not own their fishing gear or boats depending on fish traders for such resources. Some households raise pigs, chickens, or ducks. Others cope during the slack farming season by borrowing from better-off farmers: loans being paid back in kind through labour, or through a portion of the paddy crop. The effective interest rate charged by fish traders, rice traders and others in these loan arrangements typically amounts to 10 percent a month.

The United Nations Development Programme in recognition of the severity of unsustainable livelihoods in these three zones including Chin and Rakhine States, the Irrawaddy Delta, the Dry Zone and Shan State implemented the Human Development Index (HDI). This 1994/95 HDI Programme was a structured approach to human development pursued. The aim was to impact in a sustainable manner on basic needs of the people. In successive HDIs interventions were concentrated in villages of only 23 townships (3 in the Dry Zone, 5 in Shan State, 3 in the Delta, 5 in Chin, 5 in Rakhine, and 2 in Kachin State). Ranked among the 20% poorest based on the following criteria, the townships had:

- More than 50% of landholdings less than 3 acres;
- More than 50% of landless households;
- Low educational facilities in relation to population;
- Inadequate health services.

According to the 1993 Agricultural Census, the latest census analyzed, more than 80% of land holdings in Burma were below 5 acres, roughly the minimum sized holding needed for subsistence farming, at current levels of technology and input use. Landholdings have remained small (FAO & World Bank, 2004). Almost half of the households of Burma have no access to cultivable land and about one third of rural households are landless). Another 37% of households live on small farms cultivating less than 5 acres of land. In Shan East, less than 5% of the households have farms greater than 5 acres. Kachin and Chin States have the next proportion of marginal farms with only 25% and 28 % of the households farming greater than five acres.

Three fourths of the landless households reside in rural areas. The greatest share of small and marginal landholding households exist in the States and Divisions remote from central Burma. As the military establishes its network of bases in these border areas more people are displaced from their homes and villages, especially in Shan and Karen States on the Thailand border and Rakhine and Chin States at the western Burma border. The lack of assets such as land or livestock is a strong indicator of rural poverty. The 1997 Human Development Index Baseline Survey (HIDBS) or 20,000 rural households revealed that one-third of these households had no land, 40% owned no livestock and 25% owned neither land nor livestock. Many families who have land are also poor.

There has been limited change in land use over the past two decades. About 10.6 million hectares (16%) of land is occupied, being cultivated or in fallow. A further 6.7 million (8.5%) was classified as cultivable but unused. The remaining land includes reserved forests (18%), other wood land (25%) and other (22%). Yet there are significant differences in access to land and household size depending on location and sex. For example, the proportion of rural landless households is highest in Bago (West), Mandalay, Bago (East) and Rakhine. Landlessness is positively correlated with household size and this relationship is especially pronounced for female headed households. In 2003, one in ten rural households was headed by a woman and female heads of households tended to be older women (Khin Pwint Oo, 2003). Members of large households with land indicate surplus labour. Landless households indicate lack of livelihood choices and are more apt to move outside the family and town.

The Agricultural Census of Myanmar (1993) indicated that one in five of households was female headed by a woman. It is significant that less than 10% of farming household heads have any formal training. Very few women had been engaged in any formal education. Once women assume any leadership role they are even less likely to participate in formal education. Many studies claim that women and men have equal opportunities in Burma, that gender difference is minimal. There is little to substantiate this claim. As the age of the household head progresses more females end to assume leadership roles in the household. It is often suggested that gender difference is minimal in Burma. There is little evidence to support this claim.

Landlessness is positively correlated with household size and this relationship was especially pronounced for female headed households.

Number of Households by State/Division and Landholding Distribution in Myanmar, 2003

State/Division	Total No. of HHs	Average Proportion of Households by Land holding Size in Myanmar (%)							Landless Households	
		HH Size	Under 5 Acres	5-10 Acres	10-20 Acres	20-50 Acres	50-100 Acres	Over 100 Acres	Total (%)	Rural (%)
Kayah	36,183	7.8	57.57	26.39	2.29	0.25	0.00	0.00	13.5	10.0
Kayin	191,990	7.8	63.03	16.43	5.67	1.18	0.02	0.01	13.7	10.1
Chin	78,855	6.3	71.97	7.06	0.33	0.01	0.00	0.00	20.6	17.6
Sagaing	787,081	7.0	35.10	21.30	10.20	3.10	0.11	0.00	30.2	26.0
Magwe	586,156	7.8	64.87	20.80	8.52	1.77	0.02	0.00	4.0	3.4
Tanintharyi	187,309	7.7	55.61	14.24	3.43	0.91	0.12	0.05	25.6	19.6
Mon	335,584	8.0	40.96	14.48	7.24	1.59	0.03	0.01	35.7	25.6
Rakhine	463,590	6.3	47.96	10.77	2.59	0.78	0.03	0.00	37.9	32.2
Ayeyarwady	1,108,770	6.3	37.44	18.88	9.13	1.90	0.06	0.02	32.6	27.7
Bago (East)	512,928	5.5	26.67	18.84	8.44	1.19	0.04	0.03	44.8	36.1
Bago (West)	579,677	5.3	27.90	14.80	5.47	0.33	0.00	0.00	53.3	42.9
Yangon	1,092,886	4.7	6.40	4.20	2.32	0.52	0.02	0.01	84.4	26.8
Mandalay	1,197,334	6.0	26.82	14.82	5.77	1.58	0.01	0.00	51.1	37.5
Shan (South)	338,667	5.8	49.57	13.12	3.80	1.00	0.01	0.00	32.5	25.6
Shan (North)	297,685	7.0	66.60	17.26	3.62	0.81	0.02	0.02	11.7	9.2
Shan (East)	121,525	7.7	96.50	3.10	0.33	0.03	0.01	0.01	0.0	0.0
Kachin	143,526	9.2	74.69	17.13	4.50	0.53	0.02	0.04	3.1	2.4
Total	8,059,746	6.5	37.4	14.9	6.1	1.4	0.0*	0.01	40.1	30.3

Source: Mission calculations based on rural-urban proportion reported in the 1983 Census of Population using data provided by DAP (January 2004).

Nationally 40% of households in Burma are landless. A further 37% of households depend on small marginal farms cultivating less than 5 acres of land. The ownership of rural land is held by the State. The right of cultivation is only provided by the village level committee as per approval by higher level land committees. Under normal situations, land cannot be used as collateral to access rural finance. There is no legal basis for transfer of land ownership from one individual to another. But personal communication (2004) reveals that rural land transactions are common all over Burma and especially in the most densely populated areas such as the Irrawaddy Division. People speak of informally mortgaging land with money-lenders. They may sell their land to meet immediate cash needs or to repay high interest loans secured by households. A consistent pattern of indebtedness is emerging in Burma with rising levels of landlessness. The study conducted by FAO and the World Bank (2004) reveals that almost one third of households inherited their land, and about 20% purchased their land. About 23% of the households stated that they had title to the land they were cultivating. Two thirds of the households with no cultivable land had only a

home base. Less than half of the people who had cultivable land produced paddy.

Status of Customary Land Ownership

“Under the *Burma Laws Act 1898*, any questions regarding succession, inheritance, marriage are decided by *Myanmar Customary Law* where the parties involved are Myanmar Buddhists, according to *Muhammadan Law* in the case of Mohammedans, and by the *Hindu Law* in case of Hindus” (Aung Than Tun, 2001: 125). In the case of claims on an estate of a deceased person (Hindu, Mohammedan, Buddhist, Jain, Sikh) according to the *Succession Act, 1925, letters of administration* entitle any person to the whole or part of the estate. If a person dies who is not one of the mentioned groups, letters will be granted to those connected by marriage or by consanguinity. There is no right for a Myanmar Buddhist to transfer his/her property by means of a will. “The right to make a will can only be conferred on a person by the legislature” (Aung Than Tun, 2001: 126). The status of women in Myanmar society is reflected in the *Myanmar Customary Law* and *Dhammasats* relating to marriage, divorce and inheritance. On the death of her husband, the wife inherits a ‘major share’ of the family estate. However, in the case of a polygamous marriage, the major inheritance of property goes to the first wife and her children then smaller amounts are successively apportioned to the other wives and children (.Myint Zan, 2000).

For the peripheral areas, where land settlement and recording of land has not been undertaken, customary land ownership is permitted under the supervision and oversight of the local administrative authority, with consent of the traditional leaders of the ethnic, indigenous community, but mandated by the central government and administration. Practice varies depending on the individuals and group social norms and customs involved.

Land Registration

The basic colonial era system of land records and taxation remains in operation. Detailed surveys of land use are conducted for purposes of land revenue and for designation of specific crop. The crop survey used to determine obligatory government quotas coincides with major cultivation seasons. Land tax rates date largely from the same pre-independence era and account for no more than K 22 per acre (US\$ 0.05) and as low as K 0.25

per acre. Moreover, taxes are collected in unconventional ways in Burma, as evidenced by the procurement system in agriculture, which mimics a land tax. As a result, the ratio of tax to GDP understates the actual extent of taxation. At the same time, generous tax exemptions were offered to investors in large-scale agricultural projects (1993).

The Land Records and Settlement Department in Burma adopted a modified Torrens System of land registration, for all areas settled by the colonial state. British. Burma was conquered in two stages, 1826 Lower Burma and 1886 in Upper Burma, becoming a colony of the British Empire. To suit these different jurisdictions, the Land and Revenue Act 1874 and the Upper Burma Land Revenue Act 1889 were two acts that effected the imposition of a tax to cover the cost of administration and governance by the British colonial government on settled and alienated land in both Lower and Upper Burma. Legal control and classification of land in Burma was initiated by the British in 1876 as part of their introduction of a revenue collection and taxation system. Cadastral surveys were conducted to classify all land according to ownership and use. The Settlement and Land Records Department of the Ministry of Agriculture and irrigation was established during this period.

With independence in 1948, a series of Land Nationalization Acts were passed which abolished all lease, rental, or sharecropping arrangements. Size limits were established on agricultural holdings according to land classification, use, and size of the family in possession of the land. A basic limit of 50 acres was the size decreed for paddy and sugarcane, with smaller holdings allowed for other crops and land types. These rules remained throughout the socialist period of rule. Changes in land laws were made in 1991 with the establishment of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land. This committee was granted the power to allocate control over much larger holdings of land for the purpose of State owned enterprises (Hudson-Rodd & Myo Nyunt, 2001; USA Embassy, 2000). For perennial crops such as rubber, oil palm, coffee, the Committee can assign blocks of 5,000 acres. If this land is developed, more land can be granted up to a possible 50,000 acres. For orchard crops, smaller limits of 1,000 to 3,000 acres were established. Large landholdings for livestock and aquaculture operations were made possible. Non-citizens as approved by the Myanmar investment Commission were able to apply for

land allocations. By 2001 more than one million acres were allocated involving about 100 enterprises and associations (FAO & World Bank, 2004).

In urban, municipal areas under various Town and Country Acts, land parcels are registered. Under the Rangoon Municipal Development Trust, Laws and Acts, a Register of Titles and Deeds was established by the Yangon Development Trust Law in 1995. This local municipal power was replicated throughout Burma under Municipal Laws and Acts in larger urban towns such as Mandalay, Moulmein, Bassien, and Sittwe.

State registration of houses

Homes are considered as fixtures to land and estates and the latter are recorded and registered. Households on land parcels, delineated as individual private property, (*eing/myay paing saing mhu*) are registered by local authorities, and village headmen, at the local, level of jurisdictional authority delegated by the State for administration. This registration of house and household is a form of population census, which enumerates the head of household, location and type of house, family demographic characteristics. It is the duty of the local authorities at various community levels to know the whereabouts and movements of the local population. This constant monitoring of the population is used as a means of surveillance and control by local authorities. The principal authority is dictated by the Civil Court of Procedures and the various criminal laws. The courts at different jurisdictional levels are mandated by Acts, Decrees and Orders of the State and the Courts. The principal authority and the executive agency responsible for population registration and alien/ citizenship status is the Department of National Registration, Population and Immigration, Ministry of Home Affairs.

Property Titles

Under Municipal Laws, only plots and parcels of land are recorded and registered (title deeds). In certain cases ancillary attached fixtures/ immovable assets situated on the land parcel plus extensions and improvements to the specific land parcel are considered as Real Property for valuation purpose by the municipal authorities. According to Aung Than Tun (2001:113), real property in Burma means, land or rights title and interests related to land and immovable property means property of every

description except moveable property. Property liable to be attached and sold refers to land, houses, and other buildings for debts decreed by judgements passed by the courts. Titles, Deeds of Land can be deposited as a Mortgage with an intention to create a security thereon to the mortgagee-creditor (Aung Than Tun, 2001:56). In Burma, mortgage of immovable properties can be adjudicated under the Transfer of Property Act 1882, and pledges of moveable properties can be executed under the Contract Act, 1872 (Aung Than Tun, 2001). These laws, formulated in the context of British India were imposed in Burma without regard to the very different existing social system.

Urban evictions

Since 1989, the military junta has followed their 'beautification' program in Rangoon and other cities forcefully relocating and inducing voluntary relocation of residents to new satellite towns. In one 12 month period (1988-1989) 260,000 squatter residents were evicted from around Yangon. They were provided with plots and some services at their new locations on the urban periphery (UNCHS, 1990). About half a million people were moved to ten satellite cities around Rangoon in the 1990s. In 1994, at least 500 families were evicted from their homes in Rangoon in preparation for 'Visit Myanmar Year'. The SPDC claim that most of those people were squatters who lived in poorly constructed hovels which were fire traps. "Yangon had to be cleared twice of congestion created by squatters who have now been given their own land and helped to build their own houses in the new towns" (Aung Thein Lynn, 2003).

However, Burmese nationals claim that people evicted were often regular house owners and evicted from these homes, not from squats. Residents were offered little compensation, far below market value, and were asked to pay for the new plots of land in satellite towns. If they could not pay, people were moved further away and forced to settle in towns with no resources. People are given little advance notice and no option but to move. "Never before in the history of Yangon had so many projects for urban development been undertaken in so short a time. From 1988, vast areas of Yangon teeming with hutments and low grade housing were replaced by apartment buildings, private towers and condominiums" boasts Aung Thein Lynn the Mayor of Yangon, (2003: 35).

Rangoon is being groomed again to represent the regime's perspective of a city worthy of hosting the 2006 ASEAN Summit, chaired by Myanmar. This focus necessitated a special seminar 'Tall buildings: A challenge for Myanmar architects & engineers to promote knowledge about high-rises (May Thandar Win, 2004). Houses of teak and brick are being destroyed to make space for high rises in central Rangoon. In light of the December 2005 "deadline for all new buildings, just before the ASEAN Summit" (Kyaw Zwa Moe, 2003), there have been several commercially motivated forced relocations.

Civil servants who have lived for generations in downtown Rangoon have been moved with little compensation for their houses. Senior Government officials refused to listen to appeals and many residents simply accepted relocation to apartments estimated at about 10% the value of their lost homes. In one new satellite town, there was land granted to firemen, policemen and government employees. The land, former paddy land is situated about 30 minute drive from Rangoon. Given the low salary of government employees, and for a doctor in a public hospital earning less than a rickshaw driver, loss of house, property, and access to central Rangoon is especially damaging to survival.

Wages in Burma - 2002/03

	Month		Private	sector	Month	
Civil service pay	Kyat	US \$	employees		Kyat	US \$
scale						
Daily rated labourer	100/day	0.12	Daily rated worker (unskilled)		400-500/day	0.47-0.59
Lowest salaried worker (office helper)	3,000-3,500	3.53-4.12	Daily rated worker (skilled)		Over 1,000/day	1.18
Office Driver	3,600-4,100	4.24-4.82				
Clerical officer (junior)	4,200-4,700	4.94-5.53	Driver (private)		Over 2,000/day	2.35
Clerical officer (senior)	4,800-5,300	5.65-6.24	Driver (taxi)		Over 3,000-4,000/day	3.53-4.71
Dy	5,400-	6.35-	Minimum wage			

Administrative officer /tutor	5,900	6.94	(JV)	4,500-5,000/m	5.29-5.88
/secondary teacher	6,000-6,500	7.06-7.65			
Administrative officer					
Senior administrative officer / lecturer	7,500-8,500	8.82-10	Sale assistant		
Dy Assistant Director	8,700-9,700	10.24-11.41	Administrative/secretary	6,000 Over	7.06 17.65
Assistant Director	10,000-11,000	11.76-12.94	Executive/manager		
Dy Director	11,500-12,500	13.53-14.71	/technology specialist	Over 25,000-30,000	29.41-35.29
Director / professor	13,000-14,000	15.29-16.47	General manager	Over 30,000-40,000	35.29-47.06
Director-general / rector	15,000-16,000	17.65-18.82			

Sources: 1. Lokethar Pyithu Neizin (daily), various issues. 2. Personal communication with private-sector individuals from Burma. Sein Htay, 2004, FTUB.

Note: 1 US \$ = 850 kyat / market exchange rate in May 2004.

The current minimum wage in the private sector (joint venture) has been about Kt 4,500 (US\$ 0.18 cent/day) per month (free-market exchange rate, in May 2004). The minimum wage of a Thai worker is 162 baht (roughly US\$ 4.15) per day in Bangkok and 130 - 140 baht in other major cities. It can be seen that, minimum wages of employees working in joint venture industries are much lower than the international standard.

Tourism

Villagers and residents living in ancient towns, now tourist sites such as Mandalay, Pagan, and Amarapura in Upper Burma were relocated for the purpose of renovating these cities as tourist attractions. Since 1988,

Burma's tourism infrastructure expanded rapidly. From 1988 to 1995, the number of hotels increased from just 19, with a total of 800 rooms to 256, with a total of 4,000 rooms. There is now a surplus of hotel accommodation in Rangoon and it is speculated that people with close ties to opiate growing or opiate exporting organizations continue to invest in hotel construction for the purpose of "whitening" foreign currency that cannot be shown to have been legally earned (USA Embassy, 1996: 19).

In Mandalay people who lived in traditional wooden homes were forced to convert these structures into modern, two-storey buildings. Residents were forced to leave their homes in Mandalay to accommodate new commercial ventures and construction of hotels. If residents could not afford this re-construction, they were displaced to satellite towns. Liberalized border trade since 1992 has led to Yunnanese transactions dominating the Mandalay Commodity Exchange, the largest in Burma, which handles 70% of total border trade in non-rice products (DFAT, 1997: 135). The presence of Chinese (20% of the population) merchants is notable with Mandalay known as the *yuan* zone. Easing of foreign trade restrictions and increased trade with China has brought a boom-time atmosphere with building of hotels, office buildings and department stores. Hsue Hgnet (2003) writes about dramatic streetscape changes in contemporary Mandalay.

"Like the new buildings replacing the old ones, new developments have made the native residents of old Mandalay leave their long-residing homes, departing from this block from that block, this *win*, that *win*.....Whenever these Mandalay-*thas* who have moved away meet among themselves they reminisce about their cherished past...this quarter, this festival, this home, this *Win* and its residents" (Hsue Hgnet, 2003: b). Long-time residents have been forced out of their homes to make way for development of buildings not fully used. Residents occupy spots on the edge of the city in new satellite towns pushed out from the centre as modernisation continues. These residents travel along muddy roads with few transportation links each day to work in the city centre arriving exhausted back home in their new houses. The four lane tracks linking new satellite cities with the centre are transformed into pools of mud and water and bicycles are means of movement.

The changing ownership of property is described by Hsue Hgnet, (2003: 186) with reference to Theikpan Street symbolising change bridging

the old and the new Mandalay, the rural and the urban. Theikpan Street runs into the new satellite town where 60 by 40 foot land plots emerge from small rice fields into new thatch roofed huts. Hsue describes a large commercial development by the Mandalay Municipals Department built in 1992 at a cost of *Kyats* 58.2 million opened as a super market specialising in Chinese-made goods. The Ar-Thar-Wadi super market paid a rent of *Kyats* 950,000 a month to Municipals. The super market closed after 1 year of operation not supported by local residents. The space is to become a five star hotel.

On Theikpan Street: hotels, stores, karaoke bars, country spirit shops, petrol station, and name-changing service for motor-car driving licenses. There was a heroin bust on this street. ...There are several unoccupied beautiful buildings, companions who agree to sleep for a night at the price of about *kyats* 10,000, men who blackmail *kyats* by stopping bicycles under the dark shade of the trees, a sedan car carrying bags of cash to buy a telephone and two storey building built on 100 by 100 feet plots of land, old bicyclists who buy four cans of rice after receiving a day's wage (Hsue Hgnet, 2000:189).

Mandalay is recognised as a major international distribution centre for illegal drugs, a centre of gambling and of prostitution and investment from the profit of these activities which allows for the purchase of real estate. Tourists do not visit these satellite towns but are attracted to a Mandalay of restored royal palaces, seeking a Myanmar cultural experience.

A central feature of these towns created across Burma is that modern homes of military commanders and high ranking government officials are built along main highways and railway tracks with access to electricity, telephone, and water supply. In contrast, the homes of the evicted residents are built with traditional bamboo and thatch and located far away from main roads with no electricity or water supply. Military elites and high ranking officials are able to secure low-interest mortgage loans from state banks and building materials at subsidised prices to build two to three homes in the best sections of satellite towns. They have the option to sell these homes to make good profits or maintain absentee ownership of unoccupied houses

and rent them out to foreign businessmen and diplomats as means of earning foreign exchange (Hudson-Rodd, Myo Nyunt, Saw Thmain Tun & Sein Htay, 2003).

The current military regime SPDC claims that only when Myanmar was placed under military rule did the people of Yangon get proper housing. In 1958, three satellite towns, South Okkalapa, North Okkalapa, and Tharketa, were created around Yangon. In 1988, the military renewed its urban re-development of Yangon, and continues to move people from central Yangon to areas around the city. New directives, laws enacted by the military ensure that men are directly appointed by the State to “enjoy full authority” (YCDC, 2003: 38). Citizens have no voice in urban development. They have no rights to determine their home ownership or place of home.

1990, the State Law and Order Restoration Council (SLORC) enacted Law No. 11/90 which invested the Yangon City Development Committee with authority to convert “Yangon with the characteristics of the city of international standards”. The committee was authorized to:

- Re-demarcate the territorial limits of the city municipality limits;
- Operate works independently with funds owned by the Committee;
- Prescribe, revise, assess and collect duties and taxes and specify rates relating to development works;
- Utilize foreign currency derived from the lease of buildings, lands, or other means of development work.

Directive No. 7/90 and Yangon City Development Law (14 May 1990) gave the chairman, mayor of the Yangon City Development Committee ministerial power being directly responsible to the Head of State. All members of the YCDC are directly appointed by the State. The Department of Human Settlement and Housing Department (DHSHD) works closely with the YCDC. The DHSHD is responsible for sub-division and allotment of land, construction of houses, buildings and development of infrastructure.

The Yangon City Development Committee (YCDC) jurisdiction extends to 33 townships covering an area of 300 square miles. In his address to the 25th *Special Session of the United Nations General Assembly for the Overall Review and Appraisal of the Habitat Agenda*, U. Tint Swe (2001) explained the role of the private sector working with the government to develop land for the increased demand for housing. The main focus was squatter upgrading

through the 'hut to apartment' projects. To achieve this aim, people living in 'squats' are removed and 'accommodated' in new apartments. To remove increased population pressure from the central business areas of the two largest cities of Yangon and Mandalay, a city development committee was formed under direct supervision of the chairman of the SPDC and the Prime Minister. This new level of authority and control has in these two largest cities has benefited a few select 'national entrepreneurs', construction firms, given special import permits for vehicles, equipment, and low interest rates to build new apartments, condominiums, and housing developments.

The SPDC (*Myanma Myo Pya*, 1992) estimated demand for housing (brick, timber, timber & bamboo, bamboo & other) and land (5 houses per acre) for the year 2003 for each city with a population over 20,000. The greatest demand for housing and land was predicted to be in Yangon (20,951 houses on 4,910 acres) and Mandalay (6,189 houses on 1,239 acres). The military junta claim to "thoroughly clean the city, to dismantle the slums and encroachments and to resettle them in satellite towns" (YCDC, 2003: 21). The YCDC asserts that squatters who lived in the back-yards of "hospitals, offices, schools, and temples" were moved to six satellite cities, Shwepyithar, Hlaing Thayar, Shwepaukkan, Dagon (North), Dagon (South), Dagon (Port) and Dagon (East). Each township is supposed to be self-contained with markets, hospitals, restaurants, condominiums, places of worship. About 246,000 households were allocated plots and housing loans.

HOUSING DEVELOPMENTS

One housing development constructed in 1997 in Hlaing Thayar Satellite Township (map) close to all weather bridge crossing the Hlaing River and located on the Yangon-Pathein Highway, 9 miles from city centre. This closeness to the city centre and proximity to economic and industrial zones on the Yangon/ Ayeyarwaddy Delta Highway made this project attractive. On the five hundred acres 2000 single houses and 500 apartment flats are proposed. The flats are four levels/strata having 16 units per level. 'Strata-title' requires no rental monthly fee and the unit belongs to the owner. The floor layout includes shrine room, master bedroom, single bedroom, living and dining room, kitchen, store room and bathroom. The facility includes central water supply, generator and parking space for cars. A down payment of 50% (borrowed from Yoma Bank) of total is required. Second payment of

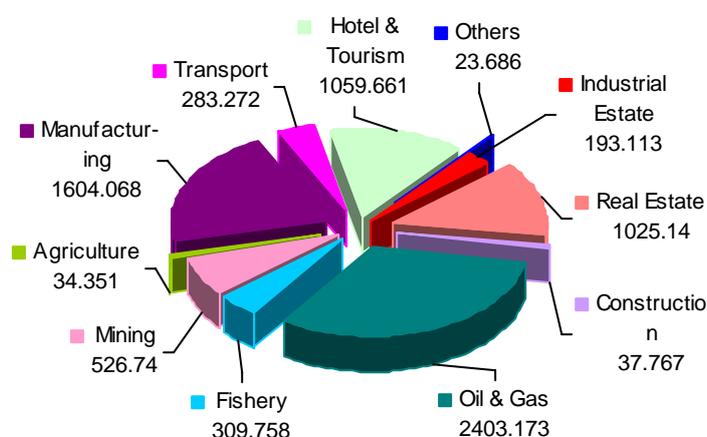
25% was due eight months from first payment, the remaining 25% being required at time of transfer of property. A 6% discount is offered to payment of full cost in one payment. Cost, in 1997 ranged from the most expensive at ground level (K 4 million), decreasing (K3.8, 3.5, 3.0) with each level (personal communication, 2004).

The increased cost of housing is illustrated through description of a current low-cost housing project. Shwe Lin Ban, developed by the DHSHD, is located in the Shwe Lin Ban Industrial Zone in Hlaing Thayar Township, one hour drive north west of Yangon. Construction of 32 apartments began March 2004. Ground floor apartments have an area of 918 square feet and other floors are 882 square feet. Depending on the floor plan prices range between K5 million to K9.2 million. Payment includes a 40% deposit seven days after sale with remainder 60% settled within two months. All ground floor apartments (25%) have been sold. This is only one of many housing projects initiated in Yangon satellite cities in the last decade and the construction of 1496 apartments (Ye Lwin, 2004).

taxes, and toll charges. For example, according to the Burmese magazine (*Myanmar Wealth*, August 2003), the toll charges for a truck load of goods for a round trip from Mandalay to Rangoon (384 miles) was 103,680 Kt in 2003. These charges were collected by 7 private companies. Each year toll charges increase and new innovative forms of taxing emerge.

International investment may contribute to development of open societies. In Burma, foreign direct investment (FDI) perpetuates the rule of a repressive junta. Full foreign ownership of companies operating in Burma is forbidden. Almost all large investment in Burma is carried out through joint ventures with the military regime directed through companies owned and operated by the Ministry of Defence, the Union of Myanmar Economic Holdings Ltd (UMEH) and its branch, Myanmar Economic Corporation (MEC).

**FDI (approved) by sector in Burma, US \$/million
(February, 2003)**



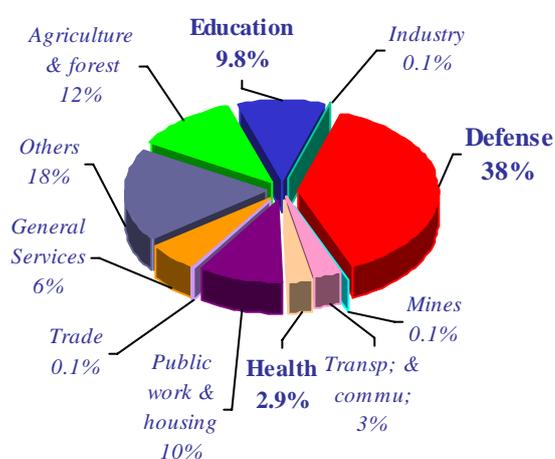
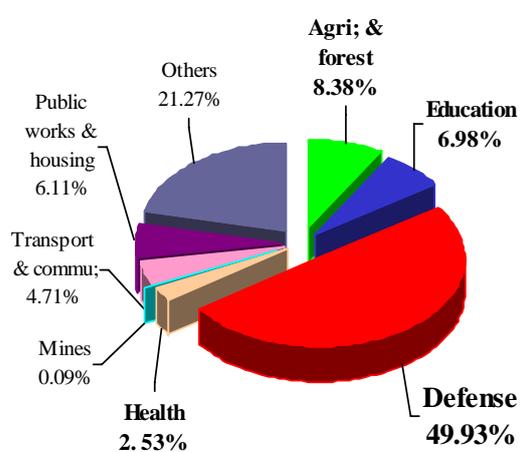
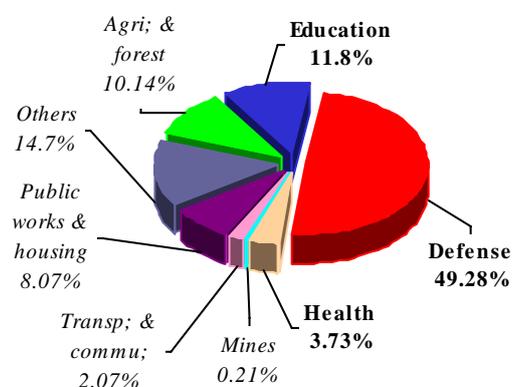
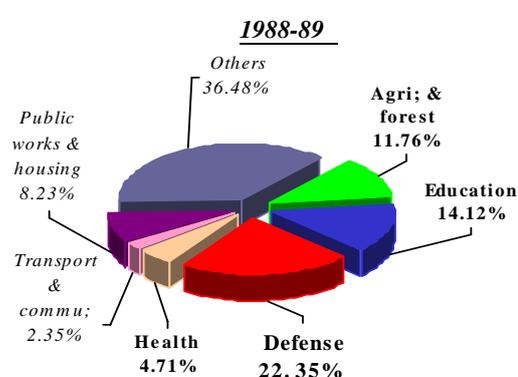
Source: *Statistical Yearbooks, 2001 & 2002*, CSO, Ministry of National Planning and Economic Development, Sein Htay, 2004, *Economic Report on Burma 2003/4*, FTUB: Bangkok.

Singapore, UK and Thailand (56.89 % of FDI in February, 2003) are the largest investors in Burma. As of March 2002 five ASEAN countries (Singapore, Thailand, Malaysia, Indonesia & Philippines) were investing in Burma, committing US\$ 3911.84 million in 169 projects. This represents 52.15 % of the total permitted amount of FDI. Infrastructure for the tourist

and oil and gas industries has been developed with extensive use of forced labour and displacement of people from their land. Fees and profits from tapping Burma's natural gas resources go straight to the generals. Some hotel projects are also in partnership with the generals, and front companies reportedly run others for major heroin dealers who collaborate with the generals.

State expenditure by sector in Burma

1994/95



1998/99

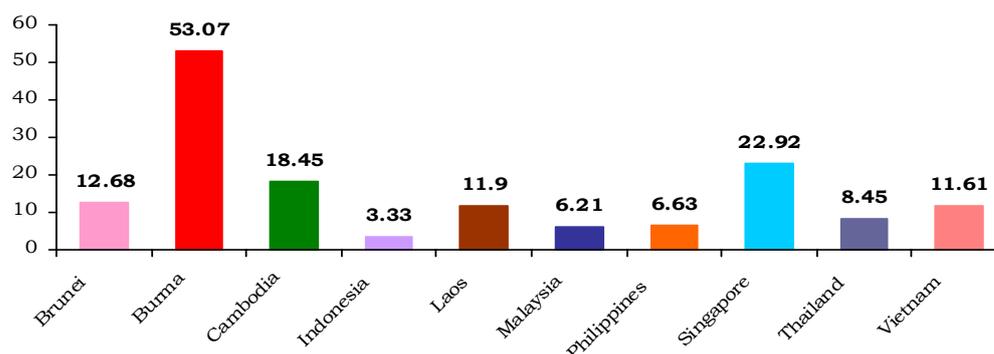
1999/00

Source: Sein Htay, 2004, *Economic Report on Burma*, Bangkok: FTUB

According to Burmese anonymous economists and FTUB sources, military expenditure is about 60% of total state expenditure in Burma. The junta spends heavily for military purposes in the Ministry of Defense but in the Ministry of Home Affairs and Ministry of Progress of Border Areas and National Races and Development Affairs. There are differences of official foreign exchange rates and market exchange rates.

Military Expenditure in ASIAN Countries - 2002

As % of Total Expenditure



Source: *The World Fact Book*, 1 August 2003, CIA (US).

Defense Budget 2003-2004, Union of Myanmar, Printing & Publication Enterprise, Yangon, 2003 April.

Note: Calculated estimations based on *Statistical Yearbook 2002* (state administrative organizations), Central Statistical Office (CSO) Yangon & *Defense Budget 2003/04*, Economics & Research Dept, 2004, FTUB.

For decades various military regimes have forced people from their villages as one way to deny support and shelter for the armed groups resisting rule by the military junta. These relocations continue during dry season offensives especially along the Thai/Burma border and to a lesser extent along Burma's western borders. The SPDC escalated military operations seeking to eliminate all remaining opposition destroying more than 2,500

villages and more than 600, 000 people displaced by the military regime since 1996. About half of these people have been put into military controlled 'relocation centres' and the remainder 250, 000 eke out a living in hiding within Burma. This practice of removing people from their homes and livelihoods was most pronounced in Shan, Kayah, Karen States and in parts of Mon State and Pegu Division. Traditional villages are often burned to the ground. In SPDC 'settlements' people are tightly controlled with no access to their land. Villagers who have escaped into hiding have even less access to food, security and are more apt to be exposed to landmines. In 1997, the SPDC ordered all regional commanders to meet the needs of their military units. This has made sustaining life even more difficult for local residents forced to give building supplies, food, money, and labour to the units. As Burma is geographically divided into twelve battalions, military commands, every place is negatively affected by this change in

In 1997 over 1,000 acres of land between Kayon Taung and Kaw Bwee Taung villages, Kyeikmaraw Township, Mon State were confiscated by the South-eastern military Commander. The land was allocated to the military Battalions under the command of government departments, the Navy and the police force for self-reliant agricultural projects and the villagers of these areas to cultivate for them. As the civilians also have their own land to work for their survival, the village headmen collected money and hired people who were able to work on the military run projects. Each village tract spends approximately 300,000 Kyats every year for hiring people and other expenses. In early 1999, SPDC troops of IB 245 confiscated 60 acres of rice fields from the Shan villagers of Wan Pawm, Tin Thaat and Waeng Sun villages in Kaeng Taung, Shan State. The troops forced the villagers in the area to lease the land to grow rice at the rate of 2,000 Kyats per acre per year or for one harvest (SHRF, 2002). In July 2003, the Burmese army and the Democratic Karen Buddhist Army (DKBA) launched a military campaign against the Karen National Union (KNU) and by mid-October, over 500 civilians had been displaced from their homes. People unable to flee to safety were used as labourers for the military.

Chin State

The SPDC has 10 battalions in Chin State with about 7,000 soldiers under command of the North-West Division. In Hakha, the average wage for a

doctor is 8,000 Kyats per month. At exchange rate of 1000 Kt per 1 \$US, this is a low salary. Yet, many essentials are required for survival in Chin State. Each person must buy an identity card (10, 000Kyats). Construction of a home requires a permit costing 88,000 kyats. Financial contributions are necessary during construction. In one town a road was being built. The residents were required to supply the materials. Households were asked to donate 200,000 Kyats. Those who could not pay this sum were punished. The owners of houses destroyed during construction of the road were not compensated and most families cannot build another house as they have no funds (CSW-UK/Australia, 2004).

Displacement after independence

Burma was granted independence from British rule in 1948. An active process of nationalization began. The governmental administration and public sector institutions employed a high number of individuals of Indian origin, who had migrated to Burma under British colonial patronage. All these Indians were pushed out of their jobs. As they were not granted citizenship in Burma, between 1948-49, most moved to India as refugees (Chakravarti, 1971; Singh, 1984). The next movement of Indian refugees occurred in 1960s, after the dismissal of U Nu's democratic regime by the military regime under General Ne Win's rule. This military regime nationalized a variety of economic establishments, depriving sources of livelihood to many people of Indian origin, who worked as middle-men and money lenders since British times. The government of India demonstrated disapproval with the new military rule in Burma, and the rulers in Rangoon acted ever more harshly against the Indian people. As security became tenuous, people vulnerable, and livelihood was impossible, an estimated 150,000 people went to south Asia where they had past roots (Weiner, 1993: 1738).

Rohingya Muslims not granted citizenship fled to Bangladesh losing their property, land, and business establishments. In 1978, the Burmese army moved into the Arakan region to fight insurgency and to check for 'illegal' migrants. Approximately 200,000 Rohingyas, with no citizenship papers, sought asylum in Bangladesh. The Bangladesh and Burmese governments agreed to repatriate these refugees and most were involuntarily returned to

Burma by 1980 with about 20,000 settled in Bangladesh. During 1989-90, the Burmese regime again began to displace Rohingyas, in an attempt to suppress the democracy movement and control 'ethnic' opposition. Between December 1991 and March 1992, about one quarter million Rohingya Muslims fled from Arakan State as the military cleared villages and established bases (Amnesty International, 1992; Asia Watch, 1992). Fear of refugees about the continued oppression by Burmese military prevented them from returning despite the agreement for repatriation between governments in Dhaka and Rangoon (World Refugee Survey, 1994). Several thousands of people returned to Arakan starting in 1994 with UNHCR monitoring reintegration. Despite this United Nations presence, there were reports of forced labor, arbitrary taxation, and confiscation of Muslim property (Human Rights Watch, 1996). Burmese military regime continues to put pressure on the Muslim people of Arakan State (MSF, 2002).

Established Means for Housing, Property, or Land Restitution

There are no established means for restitution of housing, property or land in Burma. In some parts of the country where cease fire agreements have been declared between the resistance armed groups and the military regime, people have begun to return to their villages and re-build their lives (Ratana Tosakul-Boonmathya, 2002). The ceasefire agreements with Mon and Kachin groups in the 1990s resulted in slight improvements in the life of people returning from hiding in these states.

Best Means to Document Housing and Property Ownership

The best means to document housing and property ownership is to acknowledge the goal of registration. The property right regime needs to reflect and express the many estates, rights and interests within the social context of Burma. The property regime in Burma presently does not recognize the rights and interests of individuals. There is no legal basis for transfer of land ownership from one person to another. Registration of ownership becomes an integral part of the creation of the right. The introduction and implementation of a reformed property rights regime would need to be accomplished in stages. The goal of a reformed property system is to award property rights or rights of ownership of assets such as land and houses to people within as short a period as possible. The perceived wisdom

is that registered land is fairer than unregistered, because many people may not appreciate the need to register their rights if they are in occupation of land affected. Land titling and registration if approached solely as a legalistic process and only from a technical-engineering position of GIS, MIS mechanisms and frameworks, ignores the extra-legal informal sectors and democratic participation, and will definitely fail. Democratic participation in creation of a property rights regime by citizens of Burma will ensure viability sustainability.

I agree with Hernando de Soto (2000) in his argument that property creation programmes will continue to fail as long as governments think that creating property only requires getting acquainted with physical things, measurements, surveys, and electronic inventories of the physical assets. This is not the only information needed to issue property titles. Photographs and inventories only inform authorities of the physical state of the assets; they offer nothing towards understanding who really owns those assets, or how people have organised the rights that govern them. Mechanistic inventories in the world cannot tell what local rules enforce these rights or what networks of relationships sustains them.. As important are maps and inventories are to measure and locate the physical assets to which property is anchored. These data do not inform national governments how to build the national social contract that will enable them to create widespread legal property.

Informal property transactions have always been a feature of property relations in Myanmar. Through successive histories, Burmese monarchy, British Empire-Imperial Rule and the various post independence state and governments, people in Burma have reconstructed different property traditions and customs in relation to the diverse regions and ecological-geographical-natural zones. The tributary areas, under Burmese Kings/Crown, and presently the land of the- indigenous /ethnic nations in the non-Burman peripheral territories were not registered for central State land taxation. Informal-customary ownership and use of land was allowed under Frontier Area Administration jurisdiction. Under the post Independence *Land Nationalisation/ Land Acquisition Acts* and The Transfer of Property Acts, customary ownership and use of common land and resources was not recognized. Customary privileges were granted. All states and divisions, even the newly created autonomous areas, such as Shan

State Division 4 and the Wa Autonomous Regions are governed and administered by the Myanmar State. The State declares Ordinances, Decrees, Orders, and Laws in relation to these peripheral regions. The State claims to give special considerations and weights to indigenous customary laws. But the delineation of property rights in land, such as ownership/possession is for use only (usufruct rights). Certain rights are granted-bestowed to collectives/clans/groups for certain local/tribal activities, like hunting, fishing, food/fruit gathering. but only occupancy use rights. The absolute owner is the Myanmar State. Land, forestry, water are all owned by the Myanmar State. The concept of property as "a bundle of rights" is accepted but the composition of the "rights bundle" is determined unilaterally by the state authorities with some devolution to tribal national ethnic authorities who act as agents to the principal, central Myanmar State. It is this complex dynamic of ownership and use of land within ecological sustainable boundaries which needs to be recognized and considered in creating property rights.

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) adopted in 1966:

- Requires States parties to take steps- to the maximum of their available resources- to achieve progressively the full realisation of the rights recognised in this Covenant (Article 2 (1));
- Prohibits discrimination of any kind as to race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status (Article 2 (2));
- Obliges the States Parties to “undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant” (Article 3);
- Recognises the right to adequate housing (Article 11 (1) states: the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions...

This Covenant entered into force (3/1/1976) and by 2002, 145 States had become parties. Myanmar State has acceded only to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 21

August, 1997 and the Convention on the Rights of the Child (CRC) 14 August 1991. It is recommended that the new democratic government be signatories to the international covenants and embed them into national legislation. The restoration of property and housing rights will be extremely complex within a nation which has survived by not trusting the government. The undercurrent of life has been not been the explicit reality. A level of trust, participation and encompassing of variety of views will take time to create the most sustainable, just and equitable system of property rights.

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