

Property, Citizenship, and Invisible Dispossession in Myanmar's Urban Frontier

Myanmar's systematic dispossession of religious and ethnic minorities is well-documented as a tool for counterinsurgency through territorialisation. However, the specific contours of the relationship between minorities, territorialisation, and urban dispossession remain underexplored. The article argues that legislative changes linking identity, property, and belonging led to widescale invisible dispossession of minorities, through the mechanisms of law, citizenship, and bureaucracy. Such dispossession gave birth to multiple urban frontiers – temporal spaces that break down existing property relations and create new ones through territorialisation. This article explores one such moment in Myanmar's largest city and former capital, Yangon, through the lens of Islamic pious endowments, or *waqf*. By positioning Yangon's post-1988 landscape as an urban frontier, the article shows how legislative changes serve to actively create frontiers in urban centres through legal dispossession and the transformation of property relations. The article develops the concept of the urban frontier as inextricably tied to territorialisation and dispossession, exploring how a frontier, as a spatialised moment in time, can exist at geographical centres as well as peripheries.

'The government thinks all the land is theirs – even the soil in the flower pots.'
– Muslim property owner, Yangon, 2016

As the country's largest city and the former capital of both British Burma and independent Burma/Myanmar, Yangon's¹ history as a cosmopolitan metropolis contrasts greatly with contemporary media depictions of the city as 'southeast Asia's new boomtown' (Symington 2017) and the country as 'Asia's final frontier' (Dunne 2018), the 'last investment frontier', (Passeri 2019) 'Asia's last frontier market' (Yi 2019), or simply 'the last frontier' (Kent 2012). While enthusiasm over Myanmar's so-called transition has waned in recent years, particularly following the violence perpetrated against the Rohingya in 2017, depictions of Myanmar as a frontier, particularly for tourists and investors, have continued.² This article addresses the land and urban development laws and policies from across historical periods, religions, political ideologies, and institutions that have allowed for the cyclical emergence of urban frontiers in Yangon; linking the spatialised, temporal, and legal frontierisation of Yangon to perceptions of identity and belonging.

As Sarma and Sidaway (2019) have recently shown, from the British conquest to the current 'transition', multiple moments in Yangon's history are recognisable as urban frontiers. Sarma and Sidaway (2019, 2) maintain that 'interactions between gentrification, imperial histories and globalization and the interface between states, nature and capital' suggest a multitude of ways of exploring and thinking about urban frontiers, calling for further studies of the reconfiguration of the urban through frontier processes.

Frontiers are home to processes where 'a space previously territorialized, with structures of effective recognized claims, becomes one where these claims and their

¹ 'Yangon' has undergone several name changes in its history (Dagon, Rangun, Ukkalapa, Rangoon, Yangon). Most recently, the military junta changed the name of the city from the colonial 'Rangoon' to the more appropriately transliterated 'Yangon' in 1989. I refer to the city as Rangoon during the period in which it was called Rangoon and as Yangon following 1989. There are similar issues with the terms 'Burma' and 'Myanmar'. While the Burmese language name of the state remained the same, the English name was changed from Burma to Myanmar by the military junta in 1989. Due to debates over the legitimacy of the military government and the junta's right to change the name, many exile groups and pro-democracy activists and foreign governments continue to call the country Burma, while the United Nations recognises Myanmar. I use Burma until 1989 and Myanmar afterwards.

² Sarma and Sidaway (2019, 8) provide a great description of the invocation of 'frontier' in marketing Yangon. See: Imamura, M. 2014 for a description of Myanmar's frontiers in various media outlets.

governance are suspended or ignored' (Lund and Rachman 2018, 419). Frontiers are relational (Barney 2009), recognised as spaces where social relations are transformed, indicative of 'both exploitation and creation' (Sivaramakrishnan 2019, 133). In many ways, Yangon's urban history mimics frontier dynamics (Rasmussen and Lund 2018; Lund and Rachman 2018) and territorialisation (Sack 1986; Vandergeest and Peluso 1995; Peluso and Lund 2011) more often found on resource frontiers, although these processes are occurring in the centre of a long-settled urban area (cf. Lund and Rachman 2017; Safransky 2014; Simone 2011; Smith 1996). Yangon of the 1980s and 1990s experienced legal frontierisation following deregulation and non-enforcement of property registration. The promulgation of new legislation altering existing property regimes and pathways to citizenship, facilitated the emergence of a new resource frontier ripe for territorialisation in downtown Yangon.

Peluso and Lund (2011, 673) describe states' 'managerial practice' of claiming and restricting access to territory, as 'territorialisation.' But in order to have territorialisation, there must be a frontier on which to enact it. The creation of frontiers is defined by Lund and Rachman (2018) as frontier dynamics:

Frontier dynamics is a shorthand for the destruction and elimination of existing social orders, property and citizenship rights, and other social contracts. Frontier dynamics names a process that obscures and dismisses previous resource use and disenfranchises those who hitherto have benefited from resource access (Lund and Rachman 2018, 419).

Rasmussen and Lund (2018) remind us that 'frontier dynamics are intimately linked to their seeming opposite: territorialisation. Frontier dynamics dissolve existing social orders – property systems, political jurisdictions, rights, and social contracts – whereas territorialisation is shorthand for all the dynamics that establish them and re-order space anew' (Rasmussen and Lund 2018, 388). Yangon's history over the past two centuries could be viewed through a frontier-territorialisation lens marked by cyclical dispossession.³ Myanmar's periods of political change or rupture were all marked by some form of dispossession, furthering the legal and spatial erosion of previous orders and claims.⁴ The British conquest of Rangoon in 1852, independence in 1948, the 1958-1960 caretaker government, the years following Ne Win's 1962 coup, and the post-1988 embrace of free

³ While I chose the British conquest of Rangoon as a starting point to discuss the intersection of urban frontiers and post-colonial property, citizenship, and minority rights, a frontier-territorialisation lens may be helpful for illuminating pre-colonial dynamics as well. After the First Anglo-Burmese War in 1826, 'Rangon', the town comprised primarily of a stockade settlement along the riverbank, was insecure, prompting the Burmese monarch, King Tharrawaddy, to move his government buildings and all Burmese residents to higher land. Tharrawaddy founded the young town of 'Ukkalapa' about a mile north of the river and left the European and other non-Burmese residents in the low-lying stockade. Prior to the final conquest of Pegu by the Burmese in 1757, 'Rangon' was known as 'Dagon', and the Shwedagon ('Golden Dagon') Pagoda was raised nearly to its current height by the Mon Queen Shinsawpu.

⁴ While the time period analysed in this article ends prior to Myanmar's current 'transition', I am by no means suggesting that the frontier dynamics of Yangon in the 2010s should be understood as outside of this cycle. In fact, in the years before and after the 2010 elections, a privatisation frontier was active in Yangon as the military government sold off hundreds of government properties ranging from cinemas and cooperative shops to large tracts of urban government land in a 'fire sale' to cronies and other government insiders. 317 government properties in Yangon were sold in sealed auctions in the 2009-2010 fiscal year alone (Rhoads 2019; Htar Htar Khin 2010). With large plots of property with clear title readily available when the country opened up to increased foreign investment in 2012, regime-linked secret auction winners were prime candidates for joint ventures with foreign firms looking to invest in Myanmar, particularly in real estate and tourism development. For more on dispossession and urban frontiers in post-2010 Myanmar, see: Rhoads and Wittekind 2018; Sarma and Sidaway 2019.

market capitalism during the military government's transition from a socialist planned economy all reordered property regimes in some way.

State-led efforts at urban territorialisation in frontier moments attempted to create new property relations, overwriting the old. However, the history of property in Myanmar is one not only of repeated erasure but of coexistence, as new property forms and relations arise and various individuals, groups, and governments make claims to the resource of urban space (cf. Rasmussen and Lund 2018, 393). New legislation exists alongside the old (Mark 2016); informal property relations exist in 'formalised' registered, taxed, serviced spaces; the municipality attempts to develop city land and contract with developers; and residents use a mixture of informal and formal institutions and arrangements to lay claim to property (Rhoads 2020).

Urban Frontiers and the Making and Unmaking of Belonging in Yangon

Previous studies of urban frontiers have focused on peri-urban spaces (e.g. Hirsch 2009), 'bordering' (e.g. Sassen 2012), partitioned or border cities (e.g. Pullan 2011), 'greening' (e.g. Safransky 2014), 'rent gaps' (Smith 1979, 1986, 1996), and security (e.g. Sarma and Sidaway 2019), invoking broader debates over gentrification and global capital flows or planetary urbanism (Brenner and Schmid 2012). The focus is often on the spatial centre-periphery or border dynamic rather than on the temporal element of frontier-making. While recent scholars have drawn attention to the temporality of frontiers (Tsing 2003; Blomley 2003; Rasmussen and Lund 2018; Cons and Eilenberg 2019), when the centre is portrayed as a frontier, it is often portrayed through the analytical lens of gentrification (e.g. Safransky 2014 and 2017; Sarma and Sidaway 2019; Smith 1986, 1996).

By contrast, focusing on the Yangon of the late 1980s and early 1990s, I follow Ghertner's (2015, 552) assertion that 'gentrification, as an analytic, renders unthinkable and invisible the regulatory and legal changes that underpin the most violent forms of displacement.' While the post-1988 Yangon frontier was a frontier of conquest, expansion (Turner 1893; Smith 1986, 1996), and dispossession, it was not a process of gentrification as much as a process of revanchist (Smith 1996) re-territorialisation. From the late 1980s onwards, state institutions enacted a program of 'invisible dispossession' by expropriating private land from alleged foreigners without evicting the owners or heirs.⁵ The land was then re-territorialised by converting confiscated land to municipal or ministerial property and granting development rights to private contractors. While closely linked to capitalist processes, the intersections of property, citizenship, and belonging explored here also embody other equally salient genealogies and trajectories (e.g. Cons and Eilenberg 2019).

Erasure of property rights through invisible dispossession also impacts and is impacted by other claims – such as those to belonging and citizenship. As Rose notes: 'By virtue of its durability, land invites an intricate layering of rights over time' (Rose 1998, 614). Since Burma became independent from the British Empire in 1948, the country has had three Constitutions, an intentionally weakened judiciary,⁶ and multiple waves of legislation redefining both eligibility for citizenship and the state and citizens' relationship to land and property. As residents of Burma moved from subjects of the British Empire to residents or citizens of the new nation state, legal regulations related to citizenship and residency created new categories of belonging in independent Burma. Initially opting for a citizenship regime that allowed for naturalisation regardless of place of origin, and both *jus soli* (by birth in a

⁵ While there were large-scale forced evictions occurring in the city during this time (see: Rhoads 2018; Seekins 2011), the case study presented in this paper is on dispossessions effected through legislation, which are different in practice, law, and effect from the 1989-1990 forced evictions of squatter populations across Myanmar.

⁶ See explanations of this in: Crouch 2014a and 2014b, Cheesman 2011, 2015.

territory) and *jus sanguinis* (by descent) paths to citizenship, by the 1980s *jus soli* paths to citizenship were severely weakened and naturalisation was all but completely abolished.⁷ Legislation of belonging had a disproportionate impact on communities of South Asian and Chinese descent. This article explores one facet of this impact through the lens of property relations and urban frontiers.

As Keenan describes, ‘Property’s power to shape spaces that hold up some relations of belonging and not others makes it a powerful tool in reshaping spaces and governing subjects’ (2013, 491). Urban frontiers are important in their ability to remake spaces and erode previous institutions and relations of belonging. While belonging alone does not automatically confer rights to property, not belonging may foreclose opportunities to legitimate or make property claims (Lund 2011, 74). Immovable property itself and the ways in which it is legislated, used, and controlled can be used as a tool of governance, determining how space is used and who belongs in which spaces (Keenan 2015; Lund 2011; Safransky 2017). Put simply, property consists of ‘spatially contingent relations of belonging’ (Keenan 2015, 93). Property, following Keenan’s (2015) definition, is thus a considerable tool at the disposal of both the state and residents in (re)shaping the relationship between citizens and the state, including, who is and is not a citizen, who does and does not belong, who can and cannot have rights, and which rights or claims can be fulfilled or legitimated (e.g. Lund 2011 and 2016).

At various junctures the Myanmar state incompletely and unevenly dissolved existing property relations through nationalisations, confiscations, and legislation linking citizenship and property and delinking certain identities from national belonging and access to citizenship. Like other urban frontiers, over the years, Yangon’s formally regulated spaces became unregulated and governed by informal understandings, erasing past uses, relations of belonging, and institutions of urban governance (cf. Leaf 2015; Rasmussen and Lund 2018; Safransky 2017). Sometimes changes in property relations evolved over time, other times state actors and institutions instigated rapid changes to property relations through violence or the threat of violence, legislation, or breathing new life into long ignored laws or policies (cf. Hall, Hirsch and Li 2011; Rasmussen and Lund 2018; Peluso and Lund 2011).

The resulting ‘fuzzy’ property (Verdery 1998) matters, as messiness, overlapping claims, and uncertainty are not neutral, but have real life consequences that serve the interests of some and work to dispossess others. In Yangon, incomplete unmakings and remakings of property relations and relations of belonging were punctuated by state attempts at accumulation by dispossession (Harvey 2003), particularly following the 1988 uprising and again in the months surrounding Myanmar’s 2010 elections. During these periods of uneven ‘transitions’ from a planned economy and military rule (Rhoads and Wittekind 2018), territorialisations of Yangon’s urban frontiers, provided new “opportunities for capital” (Hirsch 2009, 130) as frontier zones have been known to do elsewhere (e.g. Kelly and Peluso 2015).

Conversely, however, in Myanmar, legal messiness and uncertainty also served to *preserve* property relations that the state no longer recognized; the opacity of relations, complexity of claims, and passage of time often meant that unravelling individual claims required too much effort and the *status quo* often prevailed. Simone (2011, 386) argues that in urban contexts frontiers can develop from uncertainty, particularly during economic or

⁷ The only exception is Section 45 of the 1982 Citizenship Act which allows for naturalisation of spouses of Burmese citizens holding Foreign Registration Certificates (FRCs) prior to the enactment of the law if they have resided in Burma continuously for 3 years; are of sound mind and good character; are over 18 years of age, and are the only spouse (although at the time Burmese law permitted polygamy). The law does not allow for naturalisation of spouses holding FRCs obtained after the enactment of the law. This section is now largely irrelevant due to the ages of those eligible.

political transformations, in domains ‘where the bulk of institutional and financial attention is placed on other issues or places within these systems – leaving particular domains off the radar.’ For much of the city’s post-independence history, the political and economic focus of the state was not on urban property relations, but focused on trade, smuggling, insurgencies, agriculture, and natural resource extraction. While these activities were imagined as taking place in ‘frontier’ areas far from the urban centre, state and scholarly attention to ‘frontiers’ as perceived sources of unrest and instability obscured the frontier processes occurring in Myanmar’s then capital.

Due in part to its post-2010 ‘frontier’ status, Yangon’s land values are on par with some of the most expensive cities in the world (Wainwright 2016), and Yangon’s plurality of land tenure and property ownership has received increasing attention from developers, heritage conservationists, and academics (e.g. Waldie n.d.; CDIA 2016; Ney 2017; Astolfo and Boano 2020; Sarma and Sidaway 2019). Increased investment and interest since 2011 made Yangon the site of new negotiations, interventions, and exacerbations of social conflicts. Informal and tenuous relationships governing ownership, tenancy, and access to property are challenged and erased by not only the passage of time, but increased urgency to open up opportunities for capital investment through practices of privatisation, investment, and law reform (Astolfo and Boano 2020; Rhoads and Wittekind 2018; Rhoads 2020). As the state and other actors work to integrate Yangon into the global economy, formal and informal property relations are unmade and new forms of exclusion emerge (cf. Hall, Hirsch and Li 2011; Harms 2016; Rasmussen and Lund 2018; Peluso and Lund 2011). Myanmar’s transitional context since 2011 has re-opened what Rose has termed ‘ownership anxiety’ or ‘anxiety over the foundations for existing distributions’ (1998, 605). At this current transitional juncture, I return to examine previous distributions through an exploration of the process of legal frontierisation of urban Yangon and its continuing legacy.

Methodology

This article responds to Sarma and Sidaway’s (2019) call for further empirical, historically attentive, grounded work on urban frontiers, by exploring Yangon’s post-1988 urban frontier through the lens of Muslim pious endowments, or *waqf*. It develops the concept of the urban frontier as inextricably tied to territorialisation and dispossession, meaning that a frontier, as a spatialized moment in time, can exist at the centre as well as the periphery. Burmese state institutions at various levels from the *Tatmadaw* (military) to municipalities made repeated attempts to systematically dispossess religious and ethnic minorities since independence. One of these attempts, the dispossession of ‘suspected foreigners’, particularly Muslims and others of South Asian ancestry, is documented in this article. Responding to calls for increased research into the local contexts and specific processes of urban dispossession (Gillespie 2016, 75), I focus on the transformation of property relations, citizenship, and relations of belonging.

Legal geography as a mode of inquiry has encouraged scholars to pay closer attention to how the legal and the spatial are co-constituted, how law is ‘worlded’ and space is ‘inscribed with legal significance’ (Braverman, et al 2014, 1). This study takes an interdisciplinary legal-geographic-historical approach combining fieldwork in Yangon with extensive archival work in Yangon and London. Research is based on extended interviews with 25 lawyers, property developers, religious leaders, heritage specialists, Muslim property owners and *waqf* trustees conducted in Yangon over 8 months from 2014-2018. With three exceptions, interviewees were interviewed at least twice, with each interview lasting 1-3 hours.

Interview data is supplemented by analysis of legal and archival materials collected from the Myanmar National Archives, British Library India Office Records, and the United Kingdom National Archives at Kew over four months from 2014-2020. Archival material on Myanmar is scant and patchy from 1962-2011, as the government has not released much in the Myanmar National Archives and there is likewise a dearth of collections covering this period in international archives due to inaccessibility. Other than announcements in state newspapers, which none of the accessed archives had full coverage of during the period under study (roughly mid-1980s-early 2000s), there are few if any documents detailing state rationale for enacting legislation or the process of implementation. Thus, this research triangulated newspaper reports, interviews, legislation, available archival material, and transect walks of downtown Yangon to piece together the frontier of the 1980s and 1990s.⁸

Immigration, Emigration and Urban Property

Property's role in shaping and reshaping spaces and relations of belonging is evident in Yangon, where the city's property regime was created by a colonial legal system which privileged certain types of buildings, land uses, and bodies over others (cf. Bhandar 2018). Prior to the Second World War, Rangoon was by all accounts an Indian city (e.g. Baxter 1941, 36; Osada 2011), built by Indian capital and labour (Chakravarti 1971; Jaiswal 2014, 915; Kaur 2006), and shaped by Indian property-ownership (Chakravarti 1971).⁹ As Roberts (2014, 44-45) notes, 'other than the imposing buildings erected by the British, Indian merchants have left a more enduring mark on Rangoon's built environment than any other population.'

The built and social environments of the city have changed considerably since the colonial period, largely due to changes in property regimes during transitional periods that encouraged emigration of particular groups and shifted possession and ownership of their properties to others. Yet, such demographic, social, and material shifts are not uniform or universal, and do not obliterate all forms of previous structures or property relations (Lund 2016; Rhoads and Wittekind 2018). While property is closely tied to citizenship and belonging (Keenan 2013; Lund 2011 and 2016; Safransky 2017), many deemed to exist outside of the categories of belonging in Yangon continue to enjoy considerable access to property based on previous property relations and understandings of belonging. For example, Indian landowners may retain access to their ancestor's land from the colonial period, when Rangoon's Indian population were major landowners (Chakravarti 1971; Brown 2013; NAM 1930; Thompson and Adloff 1955) and Indian property ownership was seen as *status quo*.

Between 1840 and 1940 approximately 15 million people migrated from India to Burma; for many this was a circular migration (Amrith 2011, 239). Colonial laws relating to labour, land, migration, administration, and city finances led Rangoon to become a very

⁸ To protect the identities of informants and in order not to draw further attention to contemporary Muslim neighbourhoods and properties, I have chosen not to include maps of transect walks of downtown Yangon here. I used transect walks of neighbourhoods to identify the years buildings were built and the contractors or developers who built them, as well as previous *waqf* properties through the built markers still visible on many downtown buildings. These built environment observations were triangulated with maps, interviews, and archival materials.

⁹ Rangoon was administratively part of India since the conquest and annexation in 1852, and British Burma officially became a province of British India ten years later in 1862. However, 'Indian' was also a marker for difference – in customs, religion, language, dress, etc. as well as a catch-all for a wide swathe of people. 'Indian' encompassed an elite upper class of propertied merchants; government clerks and police officers enmeshed in colonial 'law and order' and bureaucracy; much of the workers in the transport sector (boats, railroads, etc), public works, and sanitation; and a frequently disparaged low-income, mobile 'mass' of coolies and migrant laborers in the country's rice mills, dockyards, agricultural sector, and other industries (Amrith 2011 and 2013; Jaiswal 2014; Mazumder 2013; Osada 2016; Siok-Hwa 1965, 134).

Indian city in terms of population and wealth. From 1901¹⁰ to the onset of the Second World War, Hindus and Muslims made up over 50 per cent of the population of Rangoon (Richell 2006, 272). By 1931, 53 percent of the city's population were Indian, with 'immigrant races' (Europeans, Indians, Chinese, etc.) accounting for 66 percent of the city's total population (Chakravarti 1971, 20; Baxter 1941: 10). While Hindus accounted for the largest share of Rangoon's Indian population, a large percentage were migrant workers, not permanently settled in Rangoon but housed there *en route* to and from employment in rural districts (NAM 1930, 84-85).

Rasmussen and Lund remind us that 'Frontier spaces are where the often violent destruction of previous orders takes place, and the territorialisation of new orders begins' (2018, 396). In the 1930s and 1940s, major political and social upheavals including Burma's separation from India in 1937,¹¹ occupation by the Japanese during the Second World War in 1942,¹² and Burmese independence from Britain in 1948, severed the administrative and migratory ties between Burma and India, ushering in, as Amrith (2011, 238) describes 'the hardening of borders, and the advent of new, more exclusive notions of citizenship and belonging.' Beginning in the 1960s, nationalisation, demonetisation, and military rule significantly impacted the property holdings of Muslims and others throughout the country. The Revolutionary Council targeted the 'foreign' middle class and elites by demonetizing currency notes,¹³ nationalising industry and domestic trade, nationalising private schools, banning cultural associations,¹⁴ and dismissing foreign teachers – all of which disproportionately affected Chinese and Indian communities. The conflict and political ruptures of the 1940s-1960s caused emigration by those who could afford to leave,¹⁵ and spurred legislative changes that linked property holding to citizenship for those who remained.¹⁶

Emigrants from the Indian community, many, if not most of whom were amongst the business and landed elite (Brown 2013, 209), left behind thousands of properties in Burma. Due to the relative permanence of settlement of Indian Muslims when compared with Indian Hindus, and that Muslims were not as likely to be involved in money lending due to the religious prohibition on usury, Muslims invested their capital in immoveable property,

¹⁰ This is not an exact year, but the colonial government made a census every decade and the 1901 census is the first that marks Hindus and Muslims as over 50 per cent of the population of Rangoon.

¹¹ Egreteau (2014, 142-143) credits the Indo-Burmese Immigration Agreement of 1940, negotiated following Burma's political separation from India in 1937, with a wave of wealthy emigrants from Burma to India.

¹² While true numbers remain unknown, an estimated 450,000 evacuees travelled by foot from Myanmar to India in 1942. An unknown number died along the way, somewhere between 10,000 and 100,000 (Egreteau 2014, 143-144). Some evacuees returned to Burma following the war, but by the 1953 census, Indians made up 19 percent of Rangoon's population, down from 56 percent in 1911 (Government of Burma, 1953; Pearn 1939, 286).

¹³ Demonetization of Kyat 100 and Kyat 50 currency notes occurred in May 1964. Brown (2013: 155) notes that 'The primary target of the 1964 demonetization was, in the Revolutionary Council's own words, the "indigenous and foreign capitalists who have for many years unfairly accumulated the people's money with which they now oppose the Burmese Way to Socialism'. In 1987, another major demonetisation occurred. Section 36(e) of the 2008 Myanmar Constitution states that the Union government shall 'not demonetize the currency currently in circulation.'

¹⁴ In 1964 associations were banned except for those engaged in solely religious activity under The Protection of National Solidarity Law (Law No. 4 of 1964).

¹⁵ Many of those of Indian ancestry who could not afford to leave were supported in funded 'repatriation' efforts by the Indian state from the mid-1960s into the late 1980s (Egreteau 2014). See also a description of the repatriation efforts in Beyer (2016, 146-147). At no point was an expulsion order issued. While numbers are unclear, Egreteau (2014, 174) notes that only about one-third of the Indian population left during the Ne Win period, with two-thirds remaining in Burma.

¹⁶ See: Transfer of Immovable Property (Restriction Act), 1947; Transfer of Immovable Property (Restriction) Act, 1987.

becoming significant landowners (NAM 1930, 81, 97).¹⁷ Thus, a substantial percentage of emigrant properties were Muslim-owned.¹⁸ Yet, the violent destruction of previous orders is almost always incomplete – many who emigrated retained control over their properties and many other Indian Muslim and Hindu families remained in Rangoon. As Lund reminds us, ‘...most new orders combine with the institutional debris of the past’ (2016, 1204).

An elderly Muslim informant relayed how fluid and informal property transactions followed emigration:

We lived on 32nd street, but the British opened boats to India for refugees during the war...and provided boats to come back...after the Japanese left, houses were destroyed, the face of the city changed. People just went into houses and stayed there. Lots of people came into the city and started to live in vacant places. When we came back to the house I was born in after the war there was a Chinese family living there... We didn’t ask for it back – we just moved to another house down the street. The house my husband lived in was gifted to his brother by a wealthy Indian. He was arrested by the Japanese and said if you help get me out [of jail] I’ll give you this house...The house taking happened twice – first Japan and later in Ne Win’s era with nationalisation. It was very cheap to get houses then because Muslims left.¹⁹

Following wartime emigration and rounds of nationalisations in the 1960s,²⁰ General Ne Win encouraged Burman occupation of Indian and European owned buildings, but in many cases the land legally remained in the hands of the pre-nationalisation or pre-war owner (Chakravarti 1971, 178). Thus, while ownership of flats changed, Indian, and particularly Muslim ownership of freehold land in and around the central business district (CBD) did not change greatly after nationalisation – at least on paper. As only commercial entities and agricultural land were nationalised – not residences or non-agricultural, non-commercial properties, many of the freehold properties remained officially out of Burman hands.²¹

Islamic Endowments in Yangon

Many who emigrated found ways to dispose of their immovable property by sale, gift, inheritance, or set up a trust with their religious community – temples, churches, or mosques – for property management.²² Often, Muslims and non-Muslims who remained in Burma controlled properties of those who emigrated (e.g. Kamdar 1999). Documentation of the relationships between émigrés, their properties, and those who remained in Burma were often complicated or non-existent, making the relationship appear ‘fuzzy’ (Verdery 1998) to

¹⁷ This was also seen as a cause of Muslim property investment in Singapore (Brown 2008, 383). A large percentage of Hindu residents in Burma were regarded as cyclical migrant laborers (Amrith 2011, 239), staying in Burma for a few years at a time, while Muslims were more likely to settle permanently, buy property, and have families. Hindus who were long settled in Burma often became landlords as well.

¹⁸ This is not to say that all Muslims in Rangoon were Indian. Nor that all or even most Muslims emigrated. There are a multiplicity of Muslim identities in Myanmar and this article should not be seen as homogenising Myanmar Muslim identities. It primarily discusses Yangon Muslims with ancestral ties to the Indian subcontinent, and those who are perceived as having such ties (though they may not actually have such ties or may not consider themselves to have ties to the subcontinent). For more on Muslim identities in Myanmar see: Yegar 1972; Nyi Nyi Kyaw 2015; Crouch 2016; Beyer 2016.

¹⁹ Burmese Indian Muslim homeowner 2017.

²⁰ General Ne Win nationalised property following his 1962 coup, but as the nationalisations in theory only affected commercial properties, a considerable proportion of properties were not confiscated.

²¹ One major exception to this are the Burmese freeholders in Dagon and Mingalar Taung Nyunt townships.

²² Even the American Baptist Mission did this, transferring their property to the Burma Baptist Church to avoid nationalization (Topping 1963).

outsiders. A considerable portion of properties escaping nationalisation were held in the form of an Islamic endowment or charitable trust known as a *waqf*.²³ The following section will briefly examine how Islamic property law and property systems evolved in urban Burma and how the Burmese state has interacted with these types of property.²⁴

An Islamic endowment or *waqf* is unique in its ability to take property out of market circulation in perpetuity, as once designated as a *waqf*, the property belongs to *Allah* and can no longer be transferred. *Awqaf*²⁵ have been used and recognised in Muslim communities for over a millennium (Sait and Lim 2006: 147). Wherever there are communities of Muslims, historical and/or contemporary *awqaf* will be found (Kozlowski 1985: 2; Sait and Lim 2006: 147). *Awqaf* in colonial Rangoon are managed by trustees (*mutawalli*) on behalf of the beneficiaries.²⁶ As one *waqf* trustee in Yangon explained: ‘No fortune, nobody can claim it. They have no right. Once donated it can never be taken back. Nobody can sell, nobody can dissolve until judgement day.’²⁷ Due to Islamic law prohibitions on the amount of property that can be bestowed through one’s will, *awqaf* became a way to circumvent the Islamic law principle of dividing two-thirds of one’s property amongst one’s Qur’anic heirs.²⁸ *Awqaf* could be created during an individual’s lifetime, securing livelihoods for beneficiaries who are not Qur’anic heirs, or allowing the majority of the estate to remain undivided (Kozlowski 1985).

There are three kinds of *awqaf*, found in Myanmar, the private family *waqf* (*waqf-alal-aulad*), or scheme *waqf*, the public *waqf* (*waqf khairi*), or non-scheme *waqf*, and a mixture of public and private (Hooker 1984).²⁹ The family *waqf* has named beneficiaries (often the founder, their family, and descendants), and appointed trustees (*mutawalli*), usually one of whom is from the founder’s family, traditionally the founder’s son, but founders can also serve as *mutawalli* during their lifetime (Hooker 1984). Trusteeship in a private family *waqf* is inherited and usually reserved for males. This practice was codified in the 1913 Mussulman Wakf Validating Act, which legally recognised in British India (including the

²³ In Indian legislation and practice *waqf* was often written as *wakf* and pluralized as *wakfs*. I have followed the Arabic transliteration in the text, but some legislation uses *wakf*.

²⁴ Burma, like other former British colonies, used personal law governing inheritance, marriage, succession, etc. that differs based on the religious affiliation of the parties. As such, in family law cases, Islamic law continues to be recognised.

²⁵ *Awqaf* is the plural of *waqf*.

²⁶ For a legal explanation see: *Daw Ein and others v. Daw Chan Tha and Others* (1940) RLR 139.

²⁷ Interview, *waqf* trustee, Yangon, 2018.

²⁸ Shares of inheritance are prescribed in the Qur’an, depending on whether or not the deceased has surviving parents or spouses, and if there are sons or daughters. In certain cases, Qur’anic heirs may also be grandchildren or siblings, and the exact prescription of shares and heirs depends on the family of the deceased at the time of death, and the *madhhab* (school of jurisprudence) of the deceased.

²⁹ In Myanmar this was often referred to by informants as ‘family’ *waqf* and ‘*lilla*’ *waqf* or charitable *waqf* (See also: *Ma Bi & Ors. v. Ko Ba Yin & others* (1962) BLR (H.C.) 80). Kozlowski (1985) argued that the division between ‘private’ and ‘public’ endowments was something devised through the British Indian courts, as the courts’ interpretation of charity did not allow for beneficiaries to be members of the founder’s family. In practice, however, most *waqf* deeds were blended, with properties used for both family and charitable beneficiaries (Kozlowski 1985, 60). An example of a blended *waqf* in Rangoon is found in *D.I. Attia and another v. M.I. Madha and others* (1936) ILR 14 (Rangoon) 575. In this case, the *waqf* is used for: supporting a school; maintaining a water works in a village in India; maintaining a public dispensary in the same village; support of poor relatives; support of other poor; support of any Muslim organization in need of funds and, setting aside one quarter of earnings from the *waqf* annually as a ‘reserve fund’ (1936, 578). See also: Hooker 1984: 67-8; *Ma Bi & Ors. V. Ko Ba Yin & Ors.* [1962] Burma Law Repts. 80.

province of Burma), the private family *waqf* as practiced by Hanafi Muslims.³⁰ The law was retroactive in effect, validating all pre-existing *awqaf*. The public *waqf* or non-scheme *waqf* is the more common form of *waqf*, similar to a bequest to a madrasa, mosque, orphanage, hospital, government, or other non-profit institution. Usually the property is donated to the institution and the board of trustees of the organisation manages the *waqf* properties.

Kozlowski (1985) found that *awqaf* in British India were often created in times of uncertainty or transition, in order to secure immovable property. He argues that it was the British Indian state itself that increased the use of family *waqf* in India. British property law made land the object of status and value to be passed down by Indian aristocracy to their children, whereas previously nobles had a less permanent attachment to land, as a place at court was the best status marker that could be passed on to their progeny (Kozlowski 1985, 40). As the British 'made land itself worth owning,' property-owning Muslim families saw the British Indian courts' interpretation of inheritance in Islamic law as too stringent. The uncertainty and reduction in individual or community control over inheritance led them to create endowments during their lifetimes (Kozlowski 1985, 40). Kozlowski's (1985) findings were echoed in my interviews with Muslim property developers, property owners, *waqf* trustees, and lawyers in Yangon. It seems that many Muslims who fled Rangoon during the difficult periods of war and nationalisation made their immovable property into *awqaf* prior to emigrating as a way to safeguard their property during times of uncertainty.³¹

In Burma, uncertainty over *awqaf* properties remains. Unlike India following partition, Burma did not systematically use legislation and courts to resolve problems arising from properties owned by emigrants and evacuees (Rashid 1978). Crouch (2016, 91) notes that since the 1960s, Islamic personal law cases heard by the Supreme Court have mainly concerned inheritance or *waqf*. Crouch comments that this highlights the importance of property as a store of wealth in Myanmar, a country with an unreliable banking system. Yet, cases on *waqf* in the Supreme Court also highlight the continued complications and uncertainty regarding property relations in the Muslim community, compounded by Myanmar's failure to enact legislation or implement policies to regulate *awqaf* and other property left behind by émigrés until 1987.³²

In areas with historically high levels of Indian ownership, particularly the central business district, there are continuous property disputes related to tenancy and ownership. The majority of Indians and others emigrating in the 1930s and 1940s, and during nationalisation in the 1960s never returned. Most of the Indian-owned plots were laid out and original buildings (many still standing) built pre-Second World War and the documentation of ownership, including deeds, receipt of sales, wills, and powers of attorney were often lost

³⁰ In Tanintharyi division, Muslim communities do not have private *awqaf*. They follow the Shafi'i school and primarily use *waqf* for cemeteries, mosques, orphanages and madrasas or properties with other religious or communal purposes. Thus, while *waqf* as an institution is found across Myanmar wherever there are Muslim communities, not all Muslims in Myanmar follow the scheme/non-scheme *waqf* system, particularly if they are not Hanafi.

³¹ Interview, Muslim lawyer, Yangon 2015.

³² A case reported in 1972 described that many private properties had been made into trusts managed by trustees and that the properties should be transferred into the trustees' names. If it is government land that is managed by a trustee, a grant in their name should be created. *U Htwe/A.E. Madha and 5 others v. E.N. Sultan* (1972) BLR (C.C.) 32. While *waqf* are often found on freehold land due to the particular historical development of landholdings in Rangoon (Maxim 1992; Pearn 1939; Rhoads 2018), in some parts of Rangoon and outside of Rangoon, they were also created on grant land, which is ostensibly government owned. See for example: *H. Talukder and two others v. The Special Collector, Akyab* (1961) BLR (H.C.) 377.

in the war (Union of Burma 1953, 9).³³ Furthermore, *waqf* were not required to be made by dedication (in writing) but could be created by oral declaration.³⁴ This poses issues for the heirs and *waqf* trustees living in or managing the buildings, as it is difficult to prove ownership. In recent years, property relations have been further complicated by rumours of owners ‘returning’ from India to claim their property,³⁵ or people claiming to be the successors or heirs of the last recorded property owner and using this connection to make claims on freehold properties.³⁶ In some cases, claims are controverted or lack critical documents, as many buildings are without clear title chains. In this milieu, even legitimate owners or heirs are often viewed with suspicion and confusion by post-colonial Myanmar governments as well as tenants, as there is a widely held misunderstanding that all Indian property was nationalised in the 1960s (Rhoads and Wittekind 2018).³⁷ The uncertainty due to the lack of documents creates a situation that is easily abused and manipulated by con artists and simultaneously serves as a convenient way for state institutions to ignore property claims that are inconvenient, or otherwise difficult for legitimate owners or heirs to prove (cf. Waldie n.d., 11-12).

Registration and Confiscation of Foreign-Owned Property

Post-independence, like other states in the region (e.g. Hall, Hirsch and Li 2011), the Burmese state began to link citizenship and property, narrowing the possibilities of citizenship and residency, and linking property rights to personhood. Citizenship, naturalisation, and eligibility for citizenship were redefined through the promulgation of the 1982 Citizenship Act, severely eroding the citizenship rights of religious and ethnic minorities.³⁸ Five years later, the property ownership and inheritance rights of those deemed

³³ Leigh (2014) gives an example of the destruction of the raw data from the 1941 census by Japanese bombs. Records lost during the war had to be ‘reconstructed’ in the courts through copies and affidavits. See a brief description in: *Abdul Majid and fifteen others v. M. Kundu (1951) BLR (H.C.) 139*. The case suggests that if the property was not contested, transferred, mortgaged, or involved in a court dispute there would be no need to reconstruct the documents related to the property, meaning many likely remained without documents.

³⁴ *Daw Ein and others v. Daw Chan Tha and others (1940) Rangoon Law Reports 136; Ma E Khin and others v. Maung Sein and others (1924) ILR 2 Ran. 495*. However, if a *wakfnama* (*waqf* deed) is made in writing, it is required to be registered in accordance with the Registration Act as an instrument conferring interest in immoveable property.

³⁵ Interview, heritage specialist, Yangon 2014.

³⁶ This also happened during the Second World War, as detailed in a 1950 case concerning the Mulla Hashim Family Endowment *Waqf* in Rangoon. A non-beneficiary, non-trustee applied for ownership papers for one of the *waqf* properties in the charge of the Official Receiver of Rangoon, claimed to have renovated it, and then requested payment for the renovations. He was found to have no lawful interest in the property and the case was dismissed. *The Official Receiver, Rangoon v. M.M. Mulla, (1950) BLR (H.C.) 320*.

³⁷ One interviewee in Yangon noted how government officials have begun referring to trustees as ‘trust *lu-myo*.’ ‘*Lu-myo*’ is literally a type of person, usually referring to race or ethnicity.

³⁸ In 1982, the Union Citizenship Law and the Union Citizenship (Election) Law of 1948 were repealed and replaced with a new law. While there is not space in this paper to go into detail about the Act, there are some elements of the Act that should be noted. Under the 1982 Citizenship Law full citizenship was reserved solely for *taingyintha* (‘national races’) or ethnic groups whose ancestors made their home in the area now known as Burma prior to British colonialism (which was set at 1823, the year prior to the First Anglo-Burmese War). Following the 1982 Citizenship Law, a list of 135 nationalities was used in the 1983 Census (Cheesman 2017, 8; Ferguson 2015, 15). The 135 number began to be popularized by military officers in 1990 following the 1988 coup that brought Myanmar’s military junta, the State Law and Order Restoration Council (SLORC) to power (Cheesman 2017, 8). Ethnic groups not found on this list were not considered to be full citizens of the country by birth (unless their parents and grandparents were already citizens), and instead were categorized as associate citizens, naturalized citizens, or foreigners. While the list’s origin is murky (Ferguson, 2015; Taylor, 2015; Cheesman 2017, 8), it continues to be in use today, and is frequently cited as a means of revoking Rohingya

'non-citizens' were limited through the Transfer of Immovable Property Restriction Act (TIPRA) in 1987. TIPRA prohibits all transfers of immovable property involving foreigners (buying, gifting, selling, pawning, etc.) and restricts leases of immovable property involving foreigners to no more than one year in duration. Foreigners, including those living outside of Burma but owning property in the country, must register their property with the township authorities. Most importantly, following mandatory registration of foreign owned property, TIPRA establishes the right of the government to confiscate the property or allow for inheritance on the occasion of the foreign owner's death, deportation, or permanent departure from Burma (Sections 3; 6 (a-b)). If property is sold to foreigners, leased to foreigners for a duration of more than one year, or the foreign ownership has been concealed, the act allows for confiscation of the property by the state. Lastly, punishment for concealment of foreign owned property and sale to foreigners also includes imprisonment (1-3 years for concealment and 3-5 years for sale to a foreigner).

Given Myanmar's history of emigration, this legislation may seem to be a prudent solution to the problem of absentee landlordism and a growing housing crisis (UNCHS 1984).³⁹ TIPRA was announced in the state mouthpiece, *The Working People's Daily*, as correcting the 1947 Act of the same name (repealed by the 1987 Act) as the previous act 'did not say how the houses, land and other immovable property of those who had left the country for good should be managed' (*Working People's Daily* 1987), confirming that this remained an issue in Myanmar. The 1987 law was not new but was drawn largely from the 1947 Act. However, its implementation relied heavily on already problematic post-1982 Citizenship Act classifications of citizens and foreigners and based ownership and inheritance decisions on the aforementioned messy state of deed registrations. While the previous 1947 law expressly allowed for inheritance, regardless of citizenship status, the 1987 law crucially bureaucratizes inheritance, impacting homes, succession, and family law.

The 1987 law is an example of the use of institutional bricolage (Douglas 1986; see also Rasmussen and Lund 2018) in Burma, in which an existing law is mostly maintained but recast to disproportionately impact a select group of people and properties. With legislation following independence barring foreigners from transferring property except through inheritance, and changes in citizenship legislation in 1982, the 1987 Act builds upon the existing idea that foreigners should not have access to property. But, as the criteria for citizenship narrowed, the categories of real or potential foreigner expanded. In this way, the law appears as primarily a bureaucratic change rather than a mechanism for mapping real or perceived foreigners through mandatory registration of foreign-owned properties, leading to urban land-grabbing and disenfranchisement of particular groups (cf. Rasmussen and Lund 2018).

The insider-outsider dichotomy created by the 1982 Citizenship Law and the 1987 Transfer of Immovable Property Restriction Act, coupled with the 1988 student uprising and subsequent military coup, created a new urban frontier in Yangon. Rather than simply

claims for recognition as a 'national race' (UNHCHR 2018). For the purposes of this paper, it is important to note that several groups of Indian and Chinese origin that include significant Muslim populations were not included on the list, including: Panthays, Burmese Indians, Anglo-Burmese, Pakistanis, Bengalis, Malays, and Rohingyas (Ferguson 2015, 16).

³⁹ This is not to suggest that absentee landlordism only became an issue after widespread emigration of the South Asian community. On the contrary, the practice of ownership of land and property in Rangoon by absentee landlords managed via power of attorney through their agents in Rangoon dates back at least to the end of the 19th century, if not well before. See: *Ismail Mussajee Mookerdum v. Hafiz Boo (Lower Burma) [1906] UKPC 16 (21 March 1906)*.

vacating ‘previously ordered spaces in order to allow for extraction and commodification to occur beyond the usual regulatory frameworks’ (Rasmussen and Lund 2018, 391) by dispossessing ‘potential foreigners’ and subsequently deregulating the construction sector, the military government actively worked to create a frontier dynamic. From 1988 onwards, the municipal government cooperated with the Ministry of Home and Religious Affairs (MoHRA) to scrutinize ‘foreign’ owned properties, scanning registered deeds for non-Burmese sounding names. While technically those classified as foreigners after the 1982 Citizenship Law could keep their properties, they had to go through mandatory registration with the Ministry.⁴⁰ Following registrations of foreign-owned properties, the Ministry scrutinized owners’ documents and existing registrations on file with the Registration Office and the municipality, and decided if the non-citizens, or holders of properties registered to non-citizens, could retain ownership or stewardship of the properties.⁴¹

As in most cases foreign owners of non-commercial, non-agricultural property were not summarily dispossessed when the country became socialist; in 1987 there were still a considerable amount of properties that were on paper, ‘foreign’ owned. Owners dying before receiving citizenship certificates,⁴² or those who purchased property prior to becoming a naturalised citizen or electing for Burmese citizenship⁴³ had no official documentation to prove citizenship status under the 1987 Act and 1982 Citizenship Law. Their property would likely be classified as foreign owned. If deeds were never registered following locally recognised transactions based on mutual agreement and understanding (*nalehmu*),⁴⁴ or transfers via power of attorney (Waldie n.d., 13), inheritance, or creation of trusts or *awqaf*, properties may have remained legally owned (at least according to government records), by unregistered, deceased, foreigners, and eligible for confiscation under the 1987 law. Such ‘fuzzy property’ (Verdery 1998) allowed for both flexible accommodations and *nalehmu* arrangements with family members, officials, or neighbours, as well as a lack of clarity that enabled the state or state officials to selectively enforce law on the books and confiscate property (cf. Hall, Hirsch and Li 2011, 12).

If the owners or *waqf* trustees wanted to upgrade the property or do any construction on the site they would have to apply to the municipality – the Yangon City Development

⁴⁰ From 1962-1992 the Ministries of Home Affairs and Religious Affairs (MoHRA) were merged, as the Ministry of Home and Religious Affairs. In 1992 they were separated, with registration remaining under the Ministry of Home Affairs (MoHA).

⁴¹ Interviews: Muslim developer and property owner, Yangon, 2016; heritage lawyer, Yangon, 2014, 2015, 2016; Muslim lawyer, 2015.

⁴² Prior to 1982, Union Citizenship Certificates were issued under the 1948 Citizenship Act to those who claimed Burmese citizenship based on residency and/or birth rather than ethnic identity.

⁴³ Those who ‘elected’ for Burmese citizenship under the 1948 Citizenship Election Act had until the end of April 1950 to apply. While a 1952 amendment to the 1947 Transfer of Immoveable Property (Restriction) Act made sales to foreigners void only after declared void by the President following conviction under the Act, transfers following promulgation of the act and prior to the amendment were void *ab initio*. In *Ko Aung v. Abdul Latiff (1958) BLR (H.C.) 216*, the court held that a sale to a foreigner who has applied for a citizenship but has not yet received a Union Citizenship Certificate is void under the 1947 Transfer of Immoveable Property (Restriction) Act prior to 1952. The 1952 amendment left a gap in processing transfers involving foreigners (including gifts), so the 1956 Transfer of Immoveable Property (Restriction) Rules were issued and a Collector was appointed in each district to flag suspected cases and submit them for prosecution.

⁴⁴ Literally “understanding” (noun), *nalehmu* refers to an abstract idea of understanding and can be used to refer to a range of informal relationships based on mutual understanding from corruption to sharing space in an apartment or not bothering your neighbour’s religious practice. In property transactions, a *nalehmu* arrangement may include trappings of a formal sale like a contract, exchange of money, and involvement of property brokers or lawyers, but without registration of the deed of sale and payment of stamp duty, the transfer remains legally incomplete.

Committee (YCDC)⁴⁵ – for permission. The YCDC then sent the case to the Ministry if the property or *waqf* was not properly registered. The MoHRA reviewed the documents of the unregistered *waqf* and could recommend confiscation if it found that the deceased foreign owner or founder had left no heir or if the document trail was incomplete or less than credible. The government requested that current trustees show strong links to both former trustees and those listed on any relevant documentation (particularly registered deeds), in order to prove their relationship to the property.⁴⁶

An inspection by a government ‘Enquiry Committee’ carried out in Pabedan Township in January 1988 drew attention to the resurgence in the importance of documentation brought about by the 1987 law and the consequences of not being able to produce it. The committee found ‘in some cases owners did not live in their places; that their addresses were not correct, and that relevant documents could not be produced....All such owners must produce documentation in full within 21 days or the buildings will be designated as ownerless’ (*Working People’s Daily* 1988a).

A further complication found particularly with *waqf* properties and pre-war buildings in general, is that these properties often date from before the Second World War, mostly from before Burma separated from India in 1937. Thus, not only were the original purchases and later *waqf* deeds drawn up in a very different time and legal regime, the documents attached to these properties often experienced damage or loss due to bombing and evacuation during the war, and subsequent emigration by Indians in particular. While pre-independence property owners were legally obligated to register their deeds at the Registration Office, many of these deeds, particularly *waqf* deeds, were unregistered. Of greatest significance to the relationship between citizenship and property in Burma is the fact that the owners and those endowing property for a *waqf* were subjects of the British Empire not citizens of Burma or India.

As Sally Falk Moore has argued, ‘universality is often a myth. Most rules of law, in fact, though theoretically universal in application, affect only a limited category of persons in a limited number of situations’ (1973, 734). The idea of law’s universality is also challenged by how law interacts with space. As Keenan (2015, 17-18) has noted, ‘legal geography poses a challenge to liberal understandings of law as universal’, particularly by ‘bringing the spatial turn to law.’ The ways in which space, law, and identity interact have heterogeneous not universal effects (e.g. Bhandar 2018; Blomley 2003 & 2020; Keenan 2015; Moore 1973). Regardless of whether it was intentionally targeting the institution, the 1987 Transfer of Immovable Property Restriction Act particularly affected Muslim property, including *waqf* property.

Property Confiscations as Urban Development

Liberalisation of the socialist economy following 1988, and with it the emergence of a private construction sector brought significant changes to the property market. Previously, properties had little market value as very few people could conduct valid transfers due to inconsistent or missing paperwork. Aging buildings were difficult and expensive to maintain due to lack of materials and capital. Formal land transactions from 1962 onwards were

⁴⁵ YCDC is the name of the municipality of Yangon. It is the body responsible for municipal services, taxes, and licenses, amongst other tasks.

⁴⁶ Heritage lawyer, Yangon, 2014, 2015, 2016; Muslim developer 2016.

limited to the point of being almost non-existent in the downtown area (UNCHS 1984, 13).⁴⁷ Following 1988 these buildings could be redeveloped due to liberalisation and the emergence of the private construction sector. This gave property – no matter how rundown – growing value in a rapidly changing economic and regulatory environment.

Beginning in August of 1988 the Construction Corporation (a government body under the Ministry of Construction) began to allow private contractors to carry out projects under the Corporation (*Working People's Daily* 1988b).⁴⁸ Under the Ministry of Construction's Department of Human Settlement and Housing Development (DHSHD), Urban Development Housing Scheme contracts were given to private contractors to construct buildings 'in the vacant plots of the downtown areas of the Yangon City, with their own monies' (GOM 2010, 179).⁴⁹ The available vacant plots – bombed out lots from the Second World War, or plots recently cleared of squatters in 1989-1990 – were quickly exhausted, causing the growing construction sector and the municipality to look for other sources of building land.

There were three primary routes for accessing more land: demolition of 'dangerous' buildings, confiscation of 'foreign-owned' and 'ownerless' property, and temporary stewardship of the property by YCDC. When the document chain of a freehold property – land owned outright by the owner with no encumbrances on sale or lease – is unclear or disputed, YCDC can act as the temporary owner to make a land-use deal with a developer.⁵⁰ Once the developer has built on the site, YCDC locks several units until the true owner emerges or an existing claimant can prove adverse possession.⁵¹ In the short term, the developer can make an investment, YCDC can gain revenue from taxes and building permits, and flats can be auctioned, used by the owner, or sold by YCDC once rights are scrutinized.

A similar dynamic occurs when YCDC declares a building dangerous. A 'dangerous building' designation permits a demolition order to be obtained,⁵² allowing the landowner to make a land-use deal with a developer. Following the promulgation of the TIPRA in conjunction with scrutinizing *awqaf* and other suspected foreign-owned properties, some 200-300 pre-war buildings were declared dangerous by YCDC and demolished (Figures 1 and 2).⁵³ A 1987 newspaper article discussed Rangoon City Development Committee's (YCDC's predecessor) formation of township inspection committees to inspect suspected dangerous buildings and serve tenants of dangerous buildings with eviction notices. The committees reported 115 buildings as dangerous and declared that 97 of these must be

⁴⁷ Formal property transfers likely ceased due to lack of documentation necessary to register sales and inability to pay stamp duties necessary to formalize property transfers. See: Scherer 2015.

⁴⁸ National newspapers, beginning in 1987 and peaking in the early 1990s, are full of comments and commentary on shoddy private contractors and poorly built apartments (MacDougall 1988a; 1992). One cartoon found in the state-run newspaper reads: "Father, you return from Yangon. What is in abundance in Yangon?" Father's reply: "Buildings constructed by contractors are in abundance in Yangon" (MacDougall 1992).⁴⁸

⁴⁹ The DHSHD was the successor of the colonial era Rangoon Development Trust. Functions of the Trust were assumed by the Housing Board, then the Housing Corporation and later the Housing Department. As of 1990 it became the DHSHD under the Ministry of Construction. Much of the DHSHD remit overlaps with the YCDC. A general difference is that YCDC administers privately owned land and DHSHD administers union government owned land (Nippon Koei Co. Ltd. et al. n.d., 2-138-140). DHSHD has now been revamped as the Department of Housing and Urban Development (DHUD). At this time the DHSHD also initiated a 'huts to apartments' scheme that allowed select squatters to receive flats in the new builds once they had been cleared from the land (Seekins 2011, 168).

⁵⁰ Muslim lawyer, Yangon, 2015.

⁵¹ Heritage specialist, Yangon, 2015.

⁵² Yangon City Development Committee, Ordinance 9/1999, The State Peace and Development Council.

⁵³ Interviews with foreign and local heritage specialists, Yangon, 2016; Muslim developer, Yangon, 2016.

completely demolished and 18 others partially demolished (*The Guardian* 1987). The newspaper reported that the Building Engineer Department of the Rangoon City Development Committee took action by requesting ‘owners and others who occupy the buildings in dangerous state to move out and giving notice for eviction of the dwellers of ownerless and *illegally owned* [emphasis added] buildings’ (*The Guardian* 1987).⁵⁴

Existing residents were given flats in the new building (which was often several stories higher than the demolished building).⁵⁵ Usually in this sort of arrangement the owner receives a portion of flats in the new building (often up to half of the building or the ground floor retail units and penthouse apartments), with the developer taking the remaining flats (e.g. GOM 2010, 179). In cases where there is no owner, YCDC or DHSHD can take the owner’s share of the flats in the new development and auctions or leases them to tenants, thereby creating revenue for YCDC. Flats owned by YCDC or DHSHD were given to high-ranking officers or government pensioners or auctioned with the profits going into a government fund.⁵⁶ This policy unfortunately gives the municipality a monetary incentive for losing, falsifying, or challenging ownership paperwork and declaring old buildings to be dangerous or ‘ownerless’ (e.g. Waldie n.d., 14).

Whether or not a structure is deemed dangerous, when freehold plots are confiscated by the government, or deemed ‘ownerless’, they lose their freehold status and become grant land – or state-owned land that can be leased to firms or individuals.⁵⁷ Plots are auctioned as 30 or 60-year grants, requiring upfront payment for the grant, which is usually a minimum of several thousand dollars. While grants are almost always renewed, the grant holder must pay quarterly fees to the municipality, YCDC.⁵⁸ In the majority of cases property was not confiscated for public purposes but granted to private contractors to build taller buildings on the sites, allowing contractors and the municipality to profit from the sale or rent of the increased floor space.

As one *waqf* trustee relayed, a large *waqf* property on a major downtown Yangon thoroughfare was declared a dangerous building following a small fire. The YCDC advertised the dangerous building notice in the newspaper which the *waqf* trustee did not see, and the property was then demolished and given to a construction company which built a ten-story apartment building in its place in the 2000s. The property was purchased using an unregistered deed of sale, which did not effect a legal transfer, although the *waqf* have been paying property tax on the building. While a lower court ruled that the *waqf* is the owner, the judgement did not require the return of the property to the *waqf*. Even if the property were to be returned, it would likely not generate much income for the *waqf*, as the individual

⁵⁴ In 1994-95 a survey identified 1,667 ‘dangerous’ buildings in Yangon, with 1,557 of these demolished or renovated by 2019 (Yee Ywal Myint 2019). It is not clear what time period these buildings were from. With multiple recent cases of the collapse of *contract daik* (contract buildings – referring to apartment buildings built by private contractors), and the fact that private contractors in Yangon were not licensed until May 1992 (*Working People’s Daily* 1992), it is possible that there are more ‘dangerous’ buildings today and that some of the 1,667 included post-war buildings.

⁵⁵ A Housing Department/UNCHS/UNDP (1984, 21) report notes that most Central Business District (CBD) buildings are 4 stories high with 12-24 units.

⁵⁶ Muslim developer, 2016.

⁵⁷ Burmese Law Firm, Yangon, 2016.

⁵⁸ One such grant of confiscated land reviewed by the author had a quarterly fee of 5,549 MMK (or less than \$5 at the time of fieldwork), payable to YCDC from the grant holder.

apartment units have already been sold and the land changed from freehold to grant land – meaning it is no longer held in perpetuity by the *waqf*.⁵⁹

Prior to demolition or confiscation, the Ministry of Home Affairs seemed to have researched particular properties where there were incomplete documents, or gaps in the chain of *waqf* trusteeship, or other documentary issues, like the case above. These cases were often lacking in evidence of ownership or a clear chain of inheritance or trusteeship, and the government was able to confiscate these properties with little resistance.⁶⁰ Downtown Yangon residents reported significant fear of authorities, particularly amongst minorities who had already experienced the demonetisation and nationalisation events of the 1960s.⁶¹ As the confiscations followed the 1988 student uprisings and violent crackdown that brought the State Law and Order Restoration Council (SLORC) military government to power, many families and *waqf* trustees were not in a position to resist. Municipal governments across the country were carrying out squatter clearance programs through forced evictions in 1989-1990, meaning the post-1988 setting in which confiscations took place was already rife with violence and dispossession (Rhoads 2018).

Invisible Dispossession

Post-1988, urban dispossession emerged as ‘dangerous’ buildings joined the ranks of other ‘ownerless’ structures that were confiscated and demolished under the military government. In the newly vacant lots new buildings were quickly built. Estimates by lawyers and developers working on downtown property transactions put the number of properties confiscated by the state after mandatory registration with the Ministry of Home and Religious Affairs at 40-50% of all registered ‘foreign-owned’ properties.⁶² One-third of structures in downtown Yangon’s current built environment are pre-Second World War, one-third are post-war, and the remaining third are more recent additions – buildings erected post-1990 (Figure 3).⁶³

Some property owners chose to demolish their properties of their own accord and build apartment buildings in their place, but other post-1990 buildings were built on plots previously declared vacant, ‘ownerless’, ‘dangerous’, or confiscated. These properties often had people living in them and would have remained nationalised plots or buildings with little use to the government that seized them and little change in their day-to-day function, were it not for multiple legislative changes in the late 1980s and early 1990s. The combination of the 1987 enactment of TIPRA, the 1988 uprising and subsequent military coup, the promulgation of the 1990 YCDC Law,⁶⁴ and the deregulation of the construction sector during the military government’s cautious embrace of a free market economy, dramatically reshaped the built form of the city. The urban frontier this created allowed for unregulated, speedy, high-rise

⁵⁹ Interview, *waqf* trustee, Yangon, 2018.

⁶⁰ Heritage lawyer, Yangon, 2016; Muslim property developer, Yangon, 2016.

⁶¹ Interviews: Burmese Indian Muslim homeowner, Yangon, 2017; Muslim developer and property owner, Yangon, 2016; heritage lawyer, Yangon, 2016.

⁶² There is no way to independently verify this estimate as land records are paper and cadastral maps and ownership information are kept in separate repositories. Furthermore, there is no mandatory registration of government owned land or leases on government owned land.

⁶³ Interviews with foreign and local heritage specialists, Yangon, 2016.

⁶⁴ The new legislation gave additional powers to the municipality, including transferring key sectors such as land administration, planning, construction and demolition of buildings, and land development from the Housing Department (UNCHS 1991, 67-68). See also: YCDC 2014, 20.

construction with emerging property developers capitalising on the new resource of urban space.

Kelly and Peluso (2015, 473) have explored how ‘practices, institutions, and laws that expunge local rights and claims to land and replace them with state rights have been fundamental to the creation of “new” frontiers.’ Yet, their discussion is primarily framed around processes of formalisation, and state claiming of untitled land. The Yangon case demonstrates how local government entities dispossessed formal property owners in a context of shifting definitions of citizen and foreigner and changes in legislation regulating foreigners’ access to property. Municipal classifications of urban property as vacant, ownerless, or wasteland amounted to state claims on that property, converting valuable privately-owned property to municipal and ministerial control.

Although a significant percentage of *awqaf* and Muslim-owned property were seized, the beneficiaries, landowners and heirs were often allowed to continue living on the property. As the municipality and related government ministries were mainly interested in confiscation of downtown buildings on freehold or grant land, claims of adverse possession to individual flats did not stop authorities from confiscating land or entire buildings. This meant that long-term tenants and owners were often able to keep their flats, as the ownership rights to the property changed hands, not the occupancy rights. But it also meant that the erstwhile owners of a building or a large plot had their property rights equated with long-term tenants, and were no longer able to collect ground rent on their land from the other units in the building, depriving them of both an immediate income stream and future investment in the land or building.⁶⁵

In this way, the confiscation of *awqaf* and ‘foreign-owned’ properties by the government were cases of *invisible* dispossession. There were few evictions; in most cases what neighbours or passers-by witnessed was the demolition of an old colonial-era building and the construction of a modern apartment building in its place. While across the city 200,000 squatters were evicted and resettled in Yangon’s outskirts (Rhoads 2018; Seekins 2011), downtown Muslims were dispossessed of the homes their grandparents built without fanfare. The municipality and government ministries were interested in the rights to the property – ownership and development rights – not the physical property itself. If buildings were demolished to make new developments, former owners, *waqf* trustees and beneficiaries were rehoused in the new apartment buildings, while their control over their property was wrested from them. As owners/trustees/beneficiaries remained ‘in place’ the dispossessions were less noticeable to those outside the affected communities and barely commented upon in the contemporary press or human rights publications. The dispossession of ‘rights’ by a state that did not guarantee them (Prasse-Freeman 2015) seemingly did not warrant attention.

Conclusion: Legal Frontierisation, Urban Frontiers, and Urban Geopolitics

Recent scholarship on urban geopolitics has called attention to the contested nature of cities due to the coalescence of growing inequalities, segregation, mobility, and a surge in nationalist identity politics (Rokem and Boano 2017, 5; Rokem et al. 2017). Yangon’s urban frontier dynamics of the 1980s and 1990s illustrate this ‘contested urbanism’ (Rokem and Boano 2017, 5) in postcolonial and ‘transitional’ cities, as new economic policies worked in tangent with legislation narrowing eligibility for citizenship, tying understandings of property

⁶⁵ Interviews, Muslim former owner of a confiscated property, 2018; *mutawalli* of a confiscated *waqf* property, 2018.

rights and citizenship more closely together. The historical disenfranchisement of Myanmar's religious and ethnic minorities was furthered by legal frontierisation. In postcolonial cities where belonging is contested and fluctuating, the frontier-territorialisation cycle operates through law and dispossession to redesign and redistribute the resource of urban space.

Yangon's urban frontiers work by delegitimising previous claims (Rasmussen and Lund 2018: 392), silencing histories of belonging, and re-territorialising urban space and property relations. Invisible dispossession of 'foreign' owners destroyed previous property relations, forms, and actors, subsequently allowing for new acts of territorialisation to be enacted on those spaces (e.g. Rasmussen and Lund 2018, 388). New classifications of downtown property as 'ownerless' or 'left behind by its owner', created an urban frontier through legal erasure of previous property relations and claims to citizenship. With owners' ties to property severed due to citizenship status or lack of paperwork proving their claims, these 'ownerless' buildings could be destroyed, and the vacant plots could be 'freed up' for new property forms and relations (cf. Rasmussen and Lund 2018). Conversion from private to state-owned property created a high value renewable resource, as urban property can be recast and reinvigorated easily via legislation, creating a new property regime with each new governing authority (cf. Lund 2016).

Seen through the lens of Yangon property relations, law is not universal in its effects, application, nor implementation (as scholars have long argued, e.g. Moore 1973; Darian-Smith 2010; Keenan 2015). Spatial-legal tools like cadastral surveys and land registries used to uphold individual property rights, cannot account for discursive and legal shifts in who has the right to have rights. Yet, the tools of territory simultaneously enable such shifts by representing complex property relations on seemingly neutral, tradeable, paper instruments (e.g. Blomley 2003 & 2020). When some groups are inherently excluded, either progressively or initially, the 'neutral' and technocratic tools of the rule of law serve to obstruct more than they enable. Legal geography as a mode of enquiry serves to pull back those obstructing layers and illuminate the ways in which space and law interact (e.g. Keenan 2015; Braverman et al 2014). In the Myanmar case, legal geography exposes the exclusions inherent in 'liberal understandings of law as universal' (Keenan 2015, 17-18) highlighting how multiple legislative changes disproportionately impacted Muslim communities and *waqf* holdings by furthering dispossession – not only of citizenship, but of property and belonging. As states generally reserve particular rights for citizens, the illiberal application of law and construction of property regimes in Myanmar may not be anomalous to liberal orders, but indicative of their inherent exclusions (e.g. Bhandar 2018; Blomley 2003).

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Figure 1



Figure 2



Figure 3



Figure Captions

- 1) A downtown building with laundry hung out over the ‘dangerous building’ sign hung by the Yangon City Development Committee calling for immediate removal of occupants. Photo credit: Author, 2016.
- 2) A downtown colonial-era building with a ‘dangerous building’ notice sandwiched between two post-1990 apartment buildings. Photo credit: Author, 2019.
- 3) A view of Yangon showing city hall and the high court, with rows of colonial buildings interspersed with post-1990 construction. Photo credit: Author, 2019.
- 4) Timeline of important dates.

Figure 4: Timeline

