The Elements Necessary for the Development of a Free Market Economic System in Burma

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1. The Rule of Law and an Impartial Judiciary

For a market economy system to succeed, it must be based on the rule of law and protected by an impartial judiciary. To a large extent, a successful market economy depends on the trust the market participants have in the legal system to uphold their rights and fairly adjudicate their disputes. There must be an efficient, just and affordable judicial mechanism to resolve disputes, including the disputes involving governments. The mechanism must have strong, enforceable safeguards to ensure that the parties are treated fairly. Disputes must be adjudicated based solely on the facts and the law, not on the identity of the party or the relationship the party has to the government. For example, if a business enters into a contract to purchase goods, it must know that it can obtain a legal remedy if the supplier fails to deliver the goods. Businesses justifiably avoid markets that lack fair, efficient and unbiased courts because of the risk of uncompensated loss. In the Yaung Chi Oo case in Burma, for example, a private Singapore company made a joint venture with the Burmese government to manufacture beer. The government attempted to nationalize the company before the expiration of their contract. When the parties went to court, the judge ignored the Singapore company's arguments and unjustifiably used its broad discretion under the law to rule for the government. A free market economy cannot succeed in such an environment. The almost complete lack of a judicial system means that domestic and foreign companies must negotiate directly with the government to resolve disputes.

2. Good Governance

A properly operating market economy system requires good governance. Good governance means an efficient, independent, accountable and open government without corruption and dedicated to the public good. Good governance focuses on four main areas: accountability, accessible information, transparency and a legal framework for development.

(1) Accountability

Accountability means holding government officials responsible for their actions. The laws must clearly provide for this accountability. A healthy market economy also needs strong anti-corruption laws that unambiguously prohibit the improper receipt of gifts and money. There must be clear regulations for lobbyists so that powerful groups cannot have an unfair advantage in policy making. Impartial and fair treatment by the government is critical for attracting investments and maintaining a fair business environment. Government officials must not accept gifts and other incentives from business that might lead to favoritism or even the appearance of impropriety.

Economic failures are to some extent caused by a lack of transparency, cronyism, and corruption. The World Bank in its 2007 Worldwide Governance Indicators ranked the Burmese government as the lowest in the world. In Burma, there is no accountability, transparency, or independent judicial system. Corruption is widespread. Economists and businesspeople consider corruption the most serious barrier to investment and commerce in Burma. Very little can be accomplished, from the smallest transactions to the largest, without paying a bribe. As inflation increases and investment declines, this problem appears to be worsening. Since 1948, corruption is officially a crime that can carry a jail term. However, the ruling generals apply the anti-corruption statute only when they want to take action against a rival or an official who has become an embarrassment. For instance, in October 2004, the SPDC arrested then-Prime Minister General Khin Nyunt and many of his colleagues and family members for corruption. Most citizens view corruption as a normal practice and requirement for survival.

(2) Accessible Information

Information about economic conditions, markets, and government policies must be reliable and accessible to all. For instance, information regarding the government's use of public funds must be available promptly and economically. The government must promulgate laws that require public companies to periodically release important financial information and to make clear to their investors the risks involved in investing.

To keep the people informed, the government must also publish and distribute the financial budget of the country, the decision record of the parliament and the decisions made at different levels of the federal government relating to the development of the country. The information must be clear, accurate, understandable and complete.

Official statistics released by the SPDC indicate that Burma has experienced double-digit growth since 1999, making it the fastest-growing economy in the world. Releasing this type of false information is one of the characteristics of the current government, undermining the market's ability to accurately assess business needs. In Burma, official statistics are notoriously unreliable (and sometimes even deliberately misstated), and collecting data is difficult. Burma does not publish data on its spending or unemployment.

(3) Transparency

Transparency is a call for open government that results in greater accountability, limited corruption and a dialogue between government and private interests over policy development. The government's actions must not be hidden from the public. A market economy and democracy are founded on citizen participation and decision making. The government alone does not drive the focus and future of a country; citizen input is critical to guide the government's path. Meaningful citizen input and participation are not possible however, without a well-informed public, which means that the government must make available as much information as possible. The people must also be able to contribute to the lawmaking and decision making process through a comment and question procedure. In many democratic countries, the public is given a generous time period to review administrative regulations and provide insights that the government may not have. For instance, comments from companies can provide the government with a business perspective while private individuals may be able to identify ways in which their rights may lack protection under a new law.

Burma lacks regulatory and legal transparency. All existing regulations are subject to change with no advance or written notice at the discretion of the regime's ruling generals. The country's decision-makers appear strongly influenced by their desire to support state-owned enterprises, wealthy friends, and military-controlled companies, such as the Myanmar Economic Corporation and Myanmar Economic Holdings, Ltd. The government often issues new regulations with no advance notice and no opportunity for review or comment by domestic or foreign market participants. The regime rarely publishes its new regulations and regulatory changes; instead they communicate new rules verbally to interested parties and often refuse to confirm the changes in writing.

(4) A legal framework for development

A legal framework for development means a structure of rules and laws that are clear, predictable and stable. The laws must be applied impartially and fairly to all and provide a conflict resolution mechanism through an independent judicial system. This concept is explained more fully in Element 1 above.

3. Economic Freedom

(1) Minimizing government interference

The government must guarantee economic freedom that is protected by laws. A free market is based on minimal government interference. The government must reduce its role in a market system and should facilitate, rather than participate, in the system. Market participants must provide the direction and fuel for the market, reacting to the supply and demand of goods and services. While the government must at times step in to ensure that the market treats everyone fairly and the public good is not jeopardized, the times it chooses to interfere must be kept to a minimum. Under no circumstances should the government seek to dominate the market or unnecessarily participate in the free flow of products.

In Burma, under the State-Owned Economic Enterprises Law, state-owned enterprises have the sole right to carry out some of the country's major economic activities. The Myanmar Investment Commission (MIC) can make exceptions to this law "in the interest of the State". The MIC has granted some exceptions in the areas of banking (for domestic investors only), mining, petroleum and natural gas extraction, and air services, but as with all major political and economic decisions, this discretion lies solely with the Cabinet and senior generals of the ruling junta.

In its 2007 Index of Economic Freedom, the Heritage Foundation ranked Burma as the fifth most repressed economy in the world. Burma's economy is 40.1% free, which makes it the world's 153rd freest economy out of 157. Burma is ranked 29th out of 30 countries in the Asia-Pacific region.

(2) Protecting Intellectual Property

The government must facilitate the work of innovators by passing intellectual property laws. The rules of the marketplace must be established so that new products or processes are not pirated. Small inventors and large companies will only invest effort and money in research if they know that they will be financially rewarded for their good ideas. In Burma, there is almost a complete stifling of economic innovation by the SPDC. The few instances of innovation are subject to government corruption in the form of forced payments to officials and are often threatened with expropriation or nationalization. Burma's patent, trademark, and copyright laws are all deficient in regulation and enforcement. An intellectual property rights law, first drafted in 1994, still awaits government approval and implementation. Burma has no trademark law, although trademark registration is possible. There is no legal protection in Burma for foreign copyrights.

(3) Antitrust law

An antitrust law must be enacted to prevent companies or organizations from monopolizing the entire economy. This law must be established to (1) prohibit agreements or practices that restrict free trade and competition between business entities; (2) ban abusive behavior by a business dominating a market, or anti-competitive practices that tend to lead to such a dominant position; and (3) supervise the mergers and acquisitions of large corporations. Antitrust law prevents abusive manipulation of the economy by big market participants that seek to hinder competition. It is a critical component of a market economy that keeps the economy running fairly and properly.

(4) Facilitating the lawful transfer of currency

The government must not prohibit the lawful transfer of money and properties that are legally owned, whether the transfer originates from inside or outside the country. Every citizen and foreigner living legally in a country must have the right under law to hold and exchange domestic and foreign currency. The unrestricted transfer of legally owned money and property keeps a market economy moving. Quick and cheap transfers lead to more efficient business transactions. A government that attempts to unnecessarily control or even prohibit the movement of money and property hinders business. While some restrictions are reasonable, such as preventing immediate withdrawal of suspicious transfers in order to prevent money laundering, unnecessary government interference must be avoided. In particular, international transfers of money and property must not be unnecessarily delayed.

Holding currency is a prerequisite to participating in a market. There must be no restrictions on any citizen or foreigner that restrict their right to legally obtain, possess, and utilize domestic currency. Additionally, every person must also have the unfettered right to exchange their domestic currency into foreign currency, and vice versa. Today's market is increasingly international. Exchange restrictions harm a country's commerce.

(5) The Central Bank and monetary controls

The free formation of financial and monitoring institutions must be protected by law. Moreover, a central bank must have the capacity and authority to ensure the well-being of a free market economy. A central bank, reserve bank or monetary authority, is in charge of establishing monetary policy. Its primary responsibility is to maintain the stability of the national currency and money supply. The central bank may also control subsidized-loan interest rates and assist the banking sector through loans during a financial crisis. The central bank should also have supervisory powers to ensure that banks and other financial institutions do not behave recklessly or fraudulently.

In Burma, the Central Bank of Myanmar devotes a great amount of effort to lending to the government. Although monetary policy in Burma is formally the responsibility of the Central Bank, the Bank actually has almost no influence over monetary conditions for the following two reasons. First, as of 2006 Burma had in place interest rate controls that cap lending rates at 15 per cent per annum and do not allow deposit rates to fall below 9.5 per cent per annum. Given that Burma's inflation rate was estimated at a little over 20 per cent in 2005 (and in 2002, in excess of 55 per cent per annum), putting money in the bank results in an automatic loss. The regime has set these rates to minimize the interest rates paid on government debt. Furthermore, the Central Bank does not have operational independence from the state, and thus has no credibility. It also has little power, as was evidenced during the 2002-2003 banking crisis, when the authority to handle the crisis was given to an obscure brigade commander instead of the Central Bank. The small amount of government bonds held by the general public (much less than one per cent) of indicates the lack of confidence the citizens have in state-created financial assets.

The exchange rate of the Myanmar Kyat is another problem that undermines the effectiveness of the Burmese economy. Burma has a fixed-exchange rate policy that officially links the Kyat to the U.S. Dollar at K6.1:$US1. The only relevant exchange rate to the people on the streets in Burma, however, is the black market rate, which stands at around K1,280:$US1, over two hundred times below the official standard. The black market rate changes daily and sometimes hourly depending on the perceptions of the country's prospects. Instead of engaging in currency reform, the SPDC simply tries from time to time to arrest well-known foreign exchange dealers.

4. Macro-Economic Stability

Macroeconomics deals with the broad and general aspects of an economy, such as income, output, and the interrelationship among diverse economic sectors. When government spending expands too far, large deficits, excessive borrowing, monetary expansion and problems in the financial sector often result. In turn, these are followed by inflation, overvaluation of the currency, and a loss of export competitiveness. Excessive borrowing can also lead to domestic and external debt problems and crowding out of private investment.

The Burmese macro-economic policy-making has been characterized as arbitrary, often contradictory and ill-informed. Under the military administration, the country has faced macroeconomic instability such as high inflation, a persistent fiscal deficit largely financed by the central bank, a low savings rate, a widening trade deficit, a drastic fall in foreign investment, and a widening gap between official and free-market exchange rates. Burma's macro-economic policy is dominated by the SPCD's constant demand for the country's output, which far exceeds the regime's ability to raise tax revenue. Consequently, the state finances its spending by selling government bonds to the central bank. This policy, i.e. printing more money to satisfy the government's demands, seriously harms the functioning of the market economy.

Burma's macroeconomic policy-making has been called capricious, arbitrary, selective and sometimes illogical. For instance, in October 2005, the SPDC suddenly announced an eight-fold increase in the retail price of gasoline. In 2004, to slow the rise of domestic prices, the SPDC announced a ban on rice exports, when just a year earlier the SPDC had tried to implement measure to increase rice exports. The SPDC made several announcements in 2005 that exporters and importers in Burma had to use the Euro rather than the US dollar in their transactions.

To ensure the stability and development of the country's economy, a Commission for Economic Observation should be formed comprising legal academicians, government representatives, and economists. The commission should be represented by members from different economic interest groups as well as neutral members. This body will advise the government on economic policy based on their observations of growth, obstacles, opportunities and remedies.

5. Private Ownership Rights

Private ownership rights must be protected by law. Citizens and foreigners must be assured that their legally obtained possessions will not be arbitrarily seized, and that they can obtain a legal remedy before a neutral, independent judiciary if the government disregards this law. The government cannot nationalize businesses or seize private property except in rare circumstances where the public good is at risk and where adequate compensation is paid. The Burmese Foreign Investment Law (FIL) guarantees that no foreign company shall be nationalized during the permitted period of investment. However, the Burma government has forced a number of foreign companies in various sectors to leave the country because it has not honored the terms and conditions of investment agreements. In the late 1990's, two large Japanese firms voluntarily left Burma after they found they were not able to operate according to earlier investment agreements. Additionally, there have been several cases where the government seized the assets of foreign and local investors without compensation when the investment turned out to be very profitable.

6. Infrastructure Development

The government must promote the basic infrastructure of the country. The infrastructural industries, such as electricity, water supply, communication, and transportation, must be used primarily for the development of the people. Infrastructure is vital to a successful market economy. For instance, many goods are transported on highways, transactions are made over the phone and cable lines, companies depend on reliable energy sources, and everyone needs clean water to live. The government must use its resources to improve the country's infrastructure with the aim of helping the people's living conditions and economic prosperity. Pet infrastructure projects that are aimed to appease political favorites or business contracts that merely help friends must be avoided.

In Burma, the ruling regime has conducted a large program to improve infrastructure in the form of roads, dams, bridges, railroads, port facilities and buildings. Many have questioned, however, the choice of some of the construction, the priorities attached to the projects, the financial costs, the use of forced labor, and the neglect of other potential uses, such as increasing social services. Furthermore, the construction of infrastructure also allows the military more access to the outer areas of the country where they are seeking military control over ethnic minorities and where they intend to exploit natural resources. Thus, the increase in infrastructure appears to have a self-serving purpose.

7. Protecting Labor Rights and Minimum Wages

Citizens' labor rights must be protected by law, and all people must have the freedom to work and choose an occupation. First, everyone must have the right to work. Article 23(1) of the Universal Declaration of Human Rights provides that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." The laws must facilitate, rather than hinder, the opportunities of citizens to establish businesses, carry out their economic activities and invest their income in worthwhile endeavors.

A minimum wage that allows workers to cover their basic necessities in accordance with the present cost of living must be protected by law. Other labor laws must be enacted relating to worker rights such as same wages for the same work, proper work hours, leisure, job security, wages based on skill level, and allowance of the formation of labor unions. The U.S. Department of State reported in 2007 that the minimum wage in Burma is the miniscule amount of 500 kyat (roughly $0.40) per day and that an average worker in Burma earns about 500-1000 kyat (roughly $0.40 to $0.80) per day.

The fair and proper treatment of workers is a fundamental component of a successful market economy. Business rights must be balanced with workers' rights so that both groups can flourish and collaborate in a mutually beneficial relationship. The Universal Declaration of Human Rights provides clear standards for the protection of people's economic security:

a. Everyone, without any discrimination, has the right to equal pay for equal work. (Article 23(2))
b. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (Article 23(3))
c. Everyone has the right to form and to join trade unions for the protection of his interests. (Article 23(4))
d. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. (Article 24)

The government must ensure that labor laws make these rights a reality and that offending employers are adequately punished for violations. In Burma, independent labor unions are illegal. Workers are not allowed to organize, negotiate, or otherwise exercise control over their working conditions. Although government regulations set a minimum employment age, wage rate, and maximum work hours, many managers do not follow these regulations. The government uses forced labor in many areas of its work.

8. Freedom to Travel Abroad

The law must protect the right of every citizen to legally travel and live abroad. Countries that not only allow, but also encourage, their citizens to gain international experience reap the benefit in increased cultural understanding and networking opportunities which inevitably lead to economic advantages. In Burma, passports are difficult and expensive to obtain without government connections. Passports generally must be obtained through an agent and, since 1996, women under 30 have not been able to apply for work passports. Passports allowing overseas study are only issued if the applicant is officially sponsored by the government. The time that it takes to receive the passport can take between a few days and many months, depending on the applicant's age and the amount of bribes paid.

9. Human Resources Development and the Role of Technology

Every citizen must enjoy the opportunity to receive human resource development provided by the government. Safeguards must be in place to make certain that these services are accessible without discrimination. A strong market economy depends on the adequate development of a skilled workforce. The government must use sufficient resources to enhance the population's ability to contribute to the economy.

Every citizen must also have the right to study modern communication methods, such as internet and e-mail, and explore, collect and distribute information using these methods. Restrictions on technology inhibit market economies. Today's international markets depend heavily on modern communication methods for their efficiency, accuracy and reliability. Business opportunities on the internet are unparalleled in history. A society needs to know how to find these opportunities, take advantage of them and create the opportunities of tomorrow. The markets economies that do not keep up with the quickly changing technology in the business world remain narrow and experience slower growth.

10. Social Development, including Education, Health and other Social Services

The government must provide adequate education and health care services, regardless of race, class, nationality, or social background. Free education must be guaranteed by law in order to produce the skilled workers necessary for a market economy system. The government must also identify social goals such as poverty reduction, gender equality, reduction of infant mortality rates, improvement in reproductive health services and environmental preservation.

The long military rule and mismanagement in Burma have resulted in widespread poverty, poor health care and low educational standards. Extremely low spending on education and health have undermined the formation of a skilled workforce and reduced economic opportunities. Today the education system at all levels is crumbling because the regime has allocated minimal resource to public education. Of the national budget, over 40 percent is used for military forces while less than 1 percent is used for all civil education. Article 26(1) of the Universal Declaration of Human Rights provides: “Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.” The standard of these opportunities must be high enough to produce qualified employees who are able to contribute to their employers immediately and make a positive impact on the economy. Business leaders and government officials need to understand that a market economy depends on even the youngest and most vulnerable of society being well-educated. Future leaders come from the next generation.

Similarly, Burma’s health care system is a disaster due to inadequate budget allocations. International reports rate Burma’s health services the second worst in the world. There is inadequate medicine supply and medical equipment in public hospitals and patients must pay high costs under the cost sharing health system. Furthermore, Burma is close to an HIV epidemic. A high number of young girls at high risk of contracting HIV are being trafficked to Thailand and China to work in the sex industry. According to the UN and other sources, only about 40% of Burmese households consumed calories at or above the recommended daily allowance, and only 55% consumed enough protein.

11. Regional Economic Development

The government must take steps to balance economic development between rural and urban states and divisions. Urban areas naturally develop more quickly than rural ones as a result of population imbalances. While the government must not unnecessarily meddle in a market to force rural development when there is little demand, it must also formulate policies to ensure that all of its citizens are able to enjoy a reasonable standard of living. For instance, essentials such as electricity, water and transportation routes must be accessible by rural inhabitants even though a private company may not find it economically feasible to extend services to the area. In such a case, the government may need to intervene to make sure its rural citizens are able to participate in the country’s development. Similarly, development must be fairly spread throughout the states and divisions without favoritism. Currently the ethnic minority areas in Burma suffer from economic neglect. Furthermore, agriculture, which provides the livelihood for the majority of the Burmese people, is chronically (and, often deliberately) under supported.

12. Opening the Domestic Market to the International Economy

A country's laws must ensure participation in the international economy through trade, foreign direct investment (FDI) and Overseas Development Assistance (ODA). Nowadays, no country can develop without opening up to the international economy. Economic mismanagement by the SPDC means that Burma attracts little foreign investment. The little money that does arrive is strongly concentrated in the gas and oil sectors, and other extractive industries. Little employment results from these investments, and there is negligible technology and skill acquisition. To make matters worse, all of the revenues from Burma's exports of gas and oil are collected by the regime. Very little FDI makes its way to industry, and even less to agriculture.

Burma is regarded by the international business community as a high risk destination for foreign investment, and a difficult place to do business. In a recent report on economic freedom, the Washington-based Heritage Foundation ranked Burma third from the bottom (above only Iran and North Korea) with regard to restrictions on business activity. According to the Foundation, "pervasive corruption, non-existent rule of law, arbitrary policy-making, and tight restrictions on imports and exports all make Burma an unattractive investment destination and have severely restrained economic growth." Some investors report that their Burmese military partners make unreasonable demands, provide no cost-sharing, and sometimes force out the foreign investor after an investment becomes profitable.

To illustrate the importance in good policy-making, the Asian Newly Industrialized Countries (NICs) share an important common feature of having an open and outward-looking economic strategy. Evidence of this policy is demonstrated by their high export to gross domestic product ratios. A focus on exports has enabled them to raise their total productivity factor. In contrast, Burma has not exploited the advantage of international trade due to its closed door policy.

Moreover, the Asian NICs have depended on various forms of foreign capital flow to supplement their domestic capital formation. With a very low level of saving, Burma needs foreign investment and foreign aid to fill both its savings-investment gap and foreign exchange gap. The actual FDI into Burma has been slow compared with China and Vietnam as a result of frequent changes in rules, import restrictions, and other restrictions on the movement of goods and services or trade practices. Dealing with the different ministers causes further delays and operational costs.

The Minimum Elements Necessary in a Constitution for the Development of a Country's Economy Based on a Market Economy System

(1) For a market economy system to succeed, it must be based on the rule of law and protected by an impartial judiciary.

(2) Private ownership rights must be protected by law. Moreover, an antitrust law must be enacted to prevent companies or organizations from monopolizing the entire economy.

(3) The government must not favor one company over another. The government must establish a conflict resolution office or other judicial mechanism related to the economy to resolve disputes fairly between companies and employees, governments or local authorities.

(4) The free formation of financial and monitoring institutions, including a central bank, must be protected by law. The amount of money used in the country and the printing and production of the money must be operated by a central bank.

(5) The parliament must independently manage the country's budget, deciding how much income is obtained from taxes and other methods and how much money is spent, and release this budgetary information to the public.

(6) The government must not confiscate the legally owned property of citizens, whether moveable or immovable, or land leased and property owned by foreigners, without paying fair market value.

(7) In order to develop a country's economy, the law must protect the citizens' ability to freely produce goods and trade domestically and internationally from interference by other businesses and organizations.

(8) The law must protect the right of every citizen to make a living and choose an occupation, as well as to legally travel and live abroad for work and study purposes.

(9) Every citizen must have the right to study modern communication methods, such as internet and e-mail, and explore, collect and distribute information using these methods.

(10) No one shall prohibit the lawful transfer of money and properties that

are legally owned, whether the transfer originates from inside or outside the country.

(11) Every citizen and foreigner living legally in a country must have the right under law to hold and exchange domestic and foreign currency.

(12) The government must promote the basic infrastructure of the country. The infrastructural industries, such as electricity, water supply, communication, and transportation must be used primarily for the development of the people. Every citizen must enjoy the same opportunity to receive human resource development promoted by the government, including an education and health care services, regardless of their race, class, nationality, or social background.

(13) A properly operating market economy system requires good governance, including transparency, accountability, and restraint from corruption. The government must reduce its role in a market system and should facilitate rather than participate in the system.

(14) To keep the people informed, the government should annually publish and distribute the financial budget of the country, the decision record of the parliament and the decisions made at different levels of the federal government relating to the development of the country. The people must have the right to access information related to the government's performance and activities and provide comments and questions.

(15) Everyone shall have the same job opportunities based on their level of education and skill. Free education must be guaranteed by law in order to produce the skilled workers necessary for a market economy system.

(16) A minimum wage that allows workers to cover their basic necessities in accordance with the present cost of living must be protected by law. Labor laws must be enacted relating to worker rights such as same wages for the same work, proper work hours, leisure, job security, wages based on skill level, and allowance of the formation of labor unions.

(17) To ensure the stability and development of the country's economy, an agency such as a Commission for Economic Observation should be formed by law comprising legal academicians, government representatives, and economists.

(18) The government must facilitate domestic and foreign competition, inventors, skilled workers, and research relating to economic development.

(19) To operate a market economy system properly, the government must restrain itself from interfering in and prohibiting economic activity. The government must try to balance the economic development between rural and urban states and divisions.

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