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Myanmar Update Report

AUGUST 2012 REPORT

This report seeks to provide an overview of the developments in July 2012 that relate to the status of human rights in Myanmar. It also reviews the response of the international community to the Myanmar's current situation, in particular status of sanctions regime.

I.	International Community and Sanctions.....	2
A.	Targeted Easing by the U.S.	2
B.	Developments in the Broader Sanctions Community	3
II.	Governance and the Rule of Law.....	3
III.	Ethnic Violence.....	4
A.	Rakhine State	4
1.	Domestic Response	4
2.	International Response	5
B.	Kachin State	6
IV.	Political Prisoners	6
V.	Codification and Implementation of Civil, Political, Economic and Social Rights	7
A.	Media Freedoms	7
B.	Economic Reform	8
B.	Other Significant Developments	9

I. International Community and Sanctions

Extraordinary democratic reforms have swept across Myanmar since President Thein Sein came to power in March 2011. In response to Myanmar's reform efforts, a wave of nations have eliminated or relaxed sanctions against the impoverished Southeast Asian nation, providing Myanmar an opportunity for greater diplomatic and economic engagement. While the Myanmar government has taken promising steps towards democracy, including the initiation of ceasefire talks with ethnic militias, the release of hundreds of jailed political prisoners, and dialogue with the National League for Democracy (NLD), recent events demonstrate the fragility of Myanmar's reform process.¹

A. Targeted Easing by the U.S.

In the wake of President Obama's move last month to allow U.S. companies to invest in Myanmar and provide financial services there, there has been an outpouring of bipartisan concern for continuing human rights issues. U.S. Ambassador to Myanmar Derek Mitchell this month reiterated ongoing concerns relating to government complicity in human rights violations, ongoing ethnic violence, opaque policy-making, and possible military ties to North Korea.² Senate Republican Leader Mitch McConnell, a driving force behind the original import ban and the annual renewals, hailed the "historic changes on the ground in Myanmar" but said there were significant challenges that still need to be addressed. "Hundreds of political prisoners remain behind bars. The constitution still has a number of undemocratic elements. And the regime's relationship with North Korea, especially when it comes to arms sales with Pyongyang, remains an issue of grave concern," McConnell said.³

With these concerns in mind, the U.S. Congress voted on August 2nd to extend a 2003 ban on imports from the Southeast Asian nation for an additional three years. The import ban is authorized by the Burmese Freedom and Democracy Act (BFDA) of 2003. The Congressional resolution extended authorization for the BFDA import ban to July 2015. The ban can be renewed for another year via Congressional resolution before July 2013.⁴

The reauthorization bill also grants President Obama the ability to terminate the ban "upon request of a democratically elected government in Myanmar" and when certain statutory conditions have been met. These conditions include making progress on human rights issues, the release of all political prisoners, protection of freedom of speech and the press, freedom of association, peaceful exercise of religion, democratic governance, and removal of Myanmar's current designation as "a country of interest" for narcotics trafficking.⁵ If the President concludes that these conditions have been met, he must submit a formal report to Congress detailing bilateral and multilateral efforts to promote human rights and democracy in Myanmar, the effectiveness of the trade sanctions on improving conditions in Myanmar and furthering U.S. policy objectives towards Myanmar, and the impact of the trade sanctions on national security, economic, and foreign policy interests of the United States.⁶ The import ban

reauthorization ostensibly gives the Obama administration continuing leverage to push for additional economic, political, social reforms.

Other U.S. sanctions that remain in place include a ban on jewelry imported from any country that is made with rubies and jade mined in Myanmar and a requirement that the United States oppose loans to Myanmar from lending institutions such as the World Bank and the International Monetary Fund. The Obama administration has said that they are prepared to ease these remaining sanctions on an "action for action" basis as Myanmar makes additional reforms.⁷

B. Developments in the Broader Sanctions Community

The World Bank this month released a draft summary Interim Strategy Note (ISN) to govern its reengagement with Myanmar over the next 18 months.⁸ ISNs are standard planning tools used by the World Bank in countries reengaging after extended periods of time, or going through significant political or economic change. The purpose of an ISN is to provide a framework for the Bank's engagement in a country until a full-fledged strategy can be adopted.⁹ The final ISN for Myanmar is not expected to be released until the end of October, but the draft summary makes clear that much of the bank's initial work over the next year-and-a-half will revolve around assessments, evaluations and capacity-building.¹⁰

In conjunction with the release of the draft ISN, the World Bank, along with the Asian Development Bank, also reopened offices in Yangon this month. This marks the first formal engagement between the World Bank and Myanmar in 25 years, as well as the first ever entry of the International Finance Corporation (IFC), the World Bank Group's private-sector arm.¹¹

The World Bank has also proposed a plan to provide a restructuring loan to help Myanmar clear \$397 million in arrears, the clearing of which is a threshold condition for restarting official World Bank loans.¹² "I do want to emphasize we're not forgiving the debt to Myanmar. We're just clearing the back interest payments and Myanmar will resume paying its debts to the World Bank and the ADB," said Pamela Cox, the World Bank's vice-president for East Asia and the Pacific. The World Bank is also considering \$85 million in grants to Myanmar for community-based projects, subject to approval by its board and shareholders (including the United States, which as of this writing officially opposes any such loans).¹³

While these developments are promising, some local organizations have expressed concerns. On August 7, just prior to the ISN release, four dozen Myanmar NGOs sent a letter to the World Bank's headquarters, expressing their anxiety that "the Bank's re-engagement activities in our country ... have been rushed, secretive and top-down. While there have been some informal meetings with World Bank staff and some civil society networks ... there was never any mention of the ISN, let alone formal consultations," the letter states.¹⁴

II. Governance and Rule of Law

On August 27th President Thein Sein announced a major cabinet reshuffle that appears to centralize power in his office, puts his closest allies in key positions and sidelines hard-line

ministers left over from the days of military rule. The President's reshuffle calls for the replacement of nine cabinet ministers and 15 deputy ministers.¹⁵

Three of President Thein Sein's top lieutenants have been transferred to the office of the president. Among them is the railways minister, Aung Min, who has led peace negotiations with the country's alienated minority groups. The other two transferred to the president's office are the minister of national planning and economic development, U Tin Naing Thein, and the minister of industry, U Soe Thein, who has led efforts to attract foreign investment and set up special economic zones.¹⁶ The centralization of these economic specialists illustrates the President's desire to move forward on economic reforms, especially the crucial law on foreign investment which is being considered in Parliament.

The reassigned ministers include many who are widely regarded as hardliners, and who have resisted expanding reforms such as new freedoms for the country's closely monitored press.¹⁷ "The fact that four ministries that are key to reforms are becoming key posts in the presidential office is a positive sign for the country's democratic transition," Min Thu, a lawmaker from the National League for Democracy party, said in an interview. "It's also notable that a lot of the reshuffle has been around economic positions. That shows the focus the president has on reforming the economy."¹⁸

III. Ethnic Violence

A. Rakhine State

Violence in Rakhine State between Muslim Rohingyas and Buddhist Rakhines continued this month. As we reported last month, the violence stems from attacks in May against Buddhists that were attributed to Muslim Rohingyas. The attacks since then have been "primarily one-sided," with Buddhist Rakhines and police forces attacking Muslim Rohingyas, according to Amnesty International researchers.¹⁹ While the exact figures are uncertain, reports suggest that the attacks have left dozens dead and resulted in the displacement of nearly 90,000 Rohingyas.²⁰

I. Domestic Response

Following heavy pressure from rights groups and the international community, the Myanmar government moved this month to form an internal commission to investigate the sectarian violence in the western part of the country.²¹ The 27-member commission, which includes religious leaders, artists and former dissidents, will "expose the real cause of the incident" and suggest ways ahead, reported the state-controlled *New Light of Myanmar*. The newspaper said the commission's remit is to establish the causes of the violence, the number of casualties on both sides, and recommend measures to ease tensions and find "ways for peaceful coexistence".²² The commission is expected to call witnesses and be granted access to areas most affected by the violence, which saw villages razed and left tens of thousands in government-run camps.²³

In response to the international community's primary focus on the plight of the Rohingyas, on August 19 an estimated 1,000 Rakhine Buddhists gathered in Yagon to protest alleged discrimination against Buddhists by the U.N. and other international NGOs responding to the conflict. The protesters argued that international aid groups have unfairly portrayed the Rakhine as the aggressors in the conflict and on that basis have discriminated against the Rakhine in the provision of aid. The demonstration took place near a regional parliament building, with protesters holding banners saying: "Stop Creating Conflicts" and "Don't Bring Terrorists To Our Land."²⁴

Domestic actors are not the only ones suffering the consequences of the growing unrest. Humanitarian groups operating in Myanmar report that at least 12 local staff members have been detained by the government since June for suspected involvement in the conflict. Last week, Doctors Without Borders reported that two of its employees were still being held, while the U.N. refugee agency said two Myanmar nationals on its staff were also in custody.²⁵

While the fate of those aid workers remains unclear, a local court this month sentenced two United Nations staff members to prison terms. The punishments were handed down on August 24, according to a U.N. spokesman based in Myanmar. U.N. officials assert that they were never provided with any details on the official charges, but the Myanmar independent Weekly Eleven newspaper reported that the staffers – all believed to be from the local Muslim community – were charged with various crimes, including promoting hatred between Buddhists and Muslims and participation in arson attacks. The paper cited anonymous court sources in its report, and said the sentences ranged from two to six years.²⁶

Fortunately for these two U.N. workers, President Thein Sein issued official pardons on August 28th. The President's website announced the pardons, but gave no explanation for their issuance.²⁷

2. *International Response*

On August 17th the Association of Southeast Asian States (ASEAN) released a statement on behalf of the foreign ministers of its member states which expressed encouragement at Myanmar's official efforts to investigate the conflict, and offered its assistance in addressing the humanitarian needs of the affected persons and communities.²⁸

United Nations Secretary-General Ban Ki-moon also applauded the establishment of the investigatory commission. "[The commission] will be integral to any reconciliation process... The United Nations stand ready to provide assistance in a constructive spirit to Myanmar's reform and reconciliation efforts, and to help that country overcome its imminent challenges," he said in a statement.²⁹

Unfortunately, the international community is not united behind pledges to support victims of the conflict. This month Bangladesh ordered international humanitarian groups to cease providing aid to ethnic Rohingya refugees who have fled the violence in Rakhine State to the east.³⁰ Muslim Aid UK, a humanitarian group, reported that Bangladeshi officials ordered

them to stop their “illegal” services in the area because they were “encouraging an influx of Rohingya refugees” from Myanmar.³¹

Diderik Van Halsema, a spokesperson for Doctors Without Borders, noted that his organization has also been ordered to suspend services to the Rohingya along the border with Myanmar. “At [Doctors Without Borders] we do confirm that we have received a letter from the Bangladeshi authorities requesting us to stop our activities at our project in Cox's Bazaar district in Bangladesh. We are currently discussing this matter with the Bangladeshi authorities, so obviously we don't want to influence those conversations.”³²

B. Kachin State

An estimated 10,000 ethnic Kachins have sought refuge in the southwestern Chinese province of Yunnan since fighting between the Kachin Independence Army (KIA) and Myanmar's government flared up in the middle of 2011 following a 17-year truce. During the week of August 19, in the midst of ongoing peace talks between the Myanmar government and the KIA, Chinese authorities forcibly returned at least 1,000 Kachin refugees to Myanmar's northernmost state. Human Rights Watch reports that China plans to deport another 4,000 refugees imminently.³³

The KIA is setting up new refugee camps in territory under its control, but the camps are still inadequate. There are already over 85 camps for internally displaced people in Kachin State, housing an estimated 75,000 people. All camps in KIA-controlled territory are inaccessible to U.N. agencies, however, because of security-related restrictions imposed by President Thein Sein's office.³⁴ While local Kachin organizations have attempted to fill the gap – providing food, clothing, shelter, and medicine – additional aid is desperately needed.

In addition, the fact that the forced returns come during the height of the rainy season has only complicated already difficult transportation and humanitarian aid delivery efforts. “Adding thousands more Kachin to the camps in Myanmar will only compound the crisis for internally displaced people in Kachin State,” said Human Rights Watch's Refugee Program Director.³⁵

IV. Political Prisoners

Since President Thein Sein took office in March of last year, more than 650 political detainees have been freed, according to the Assistance Association for Political Prisoners (Burma), a group that collects information on prisoners.³⁶ The releases were a key factor in the U.S. decision last month to lift some investment and financial sanctions, but the United States, other Western governments, human rights groups and the opposition parties in Myanmar continue to demand an amnesty for all political detainees remaining in the country.

Many activists are still detained under draconian state security laws that remain in force despite the flurry of recent legal changes in Myanmar. Others were jailed for more innocuous offenses, such as owning a computer or a fax machine.³⁷ The National League for Democracy estimates that at least 245 political prisoners remain in Myanmar but concedes that it is

impossible to know.³⁸ Many are held in remote prisons, and the government has maintained strict secrecy in terms of who they are and what exactly they may have done in some cases.

The new U.S. ambassador in Yangon said this month that the U.S. would like to see progress on making prison and court records public alongside a formal consultation process with political parties, Myanmar's many ethnic groups and families of prisoners. "Ultimately, we want the government to establish a structured, credible process to resolve disputed political-prisoner cases and close the book on this issue definitively," he said.³⁹

V. Codification & Implementation of Civil, Political, Economic and Social Rights

A. Media Freedoms

The government of Myanmar announced on August 20th that it would no longer censor private publications. The statement, which was posted on a government web site, noted that "All publications in Myanmar are exempt from the scrutiny of Press Scrutiny and Registration Department."⁴⁰ Until now, private media companies were banned from publishing daily newspapers, which was the preserve of the state media. According to U Tint Swe, a top official in the Press Scrutiny and Registration Department who has been a vocal proponent of press deregulation, government censorship of the press is now coming to an end after 48 years and 14 days.⁴¹

U Thiha Saw, who is the editor of two private weekly publications and vice president of the Myanmar Journalists Association, sees media freedom as a "barometer for the reform process" in the country.⁴² He said he is optimistic that a series of changes, including a new press law expected to be presented to parliament within weeks, would allow Myanmar a level of press freedom unimaginable during the days of military rule. "We won't be as free as the Philippine press or the Thai press," Mr. Thiha Saw said, "but we will be much more liberal than Cambodia, Vietnam or Singapore."⁴³

U Maung Myint, president of the Burma Media Association, which advocates media freedom, made clear this month that he believes the government wants to maintain a measure of control over the press. "It is too early to say that this is a genuine reform because there are still quite a few media-unfriendly laws remaining in place that could send a journalist to prison," he said.⁴⁴ Among the most repressive laws in the country is the Electronic Transactions Law, which carries a prison sentence of up to 15 years for distributing information in digital form that is deemed "detrimental to the interest of, or that lowers the dignity of, any organization or any person." This law, which has been used by the military government to jail dissidents, is still in force.⁴⁵

While journalists in Myanmar certainly welcome the President's pronouncement, the news media, while testing limits, must still exercise self-censorship on issues such as military affairs, ethnic conflicts, and corruption. One prominent example of the potential consequences of failure to self-censor is the upcoming court decision regarding a major defamation case against The Voice Weekly magazine, which in March claimed that the Office of the Auditor General had

uncovered corruption in six government ministries, including the Ministry of Mines.⁴⁶ The Voice article cited a report submitted to the Public Accounts Committee by the Union Auditor General's Office. The report said half the shares for a copper mine in the northeast were illegally sold to the military-owned Union of Myanmar Economic Holdings for \$100 million. The Voice also claimed that the Ministry of Information pocketed more than \$2.5 million when it sold off government newspapers.⁴⁷ Myanmar's Committee for Press Freedom is gearing up for rallies in the coming weeks to protest the government's heavy-handed prosecution of The Voice.

B. Economic Reform

Another key concern prompting the U.S. Congress's reauthorization of its import ban on products from Myanmar is the Myanmar government's failure to finalize a much-touted foreign investment law. The saga has dragged on for more than eight months, since President Thein Sein promised a liberal new foreign investment regime late last year, followed weeks later by his industry minister's release of initial draft at the World Economic Forum in Davos.

That initial document has been progressively watered down as restrictions have been introduced both to address the legitimate concerns of local businesses, as well as to appease established "cronies" with a vested interest in the status quo. Among the recent amendments are a \$5 million minimum requirement on foreign investment, a 49% maximum for foreign equity in joint ventures and restrictions on foreign investment (including curbs in some cases of 35%) in designated sectors such as agriculture, certain services, food processing, and livestock and fisheries.⁴⁸

Sean Turnell, an economics professor at Australia's Macquarie University who has studied Myanmar's economy and investment environment, this month said: "I have watched this law become less and less liberal, less and less open, with each draft. The new law is fast becoming the 'No Foreign Investment Law.'" ⁴⁹ Even Soe Thane, the industry minister, has criticized the draft law: "This \$5 million requirement is very discouraging for SMEs (small to medium enterprises), and SMEs are the only investors interested in Myanmar now," he told local media.⁵⁰

While progress toward a new foreign investment law remains fraught, not all investors are deterred by the uncertain legal landscape for foreign businesses operating in Myanmar. For example, Myanmar's government agreed to a deal with a Japanese consortium to jointly develop a special economic zone on the edge of Yangon as part of an effort to expand industry and bring in much-needed investment.⁵¹ Mitsubishi Corp, Marubeni Corp and Sumitomo Corp will team up for a 49% share in the 2,400-hectare (5,900-acre) estate in Thilawa, close to a deep-sea port. "From the Myanmar side, we will set up a public consortium so that the general public can invest there," Win Aung, chairman of the Union of Myanmar Federation of Chambers of Commerce and Industry, said in an interview.⁵²

A revised law governing economic zones is in the works, but Japanese firms have shown themselves eager to get in early and expand their footprint in an underdeveloped country strategically located for their businesses. The Japanese government waived 303.5 billion yen (\$3.72 billion) of Myanmar's debt and agreed to restart development loans during a visit by President Thein Sein to Tokyo.⁵³ Japan is expected to invest in some of Myanmar's other planned

economic zones as well, such as Kyaukphyu on the Bay of Bengal and Dawei, a \$50 billion project on the southern peninsula with access to the Indian Ocean and mainland Southeast Asia.⁵⁴

Also this month, U.S. Undersecretary of State Robert Hormats expressed encouragement at Myanmar's recent decision to join the Extraction Industries Transparency Initiative (EITI), which monitors industry practices and revenue flow, in order to increase transparency and reduce corruption.⁵⁵ The fact that the state-run Myanmar Oil and Gas Enterprise (MOGE), which controls all of Myanmar's oil and gas assets, is notoriously opaque and corrupt has been of particular concern to U.S. legislators administering the sanctions regime. Some important EITI standards include:

- Regular publication of all material oil, gas and mining payments by companies to governments and all material revenues received by governments from oil, gas and mining companies;
- Credible, independent audits of payments and revenues, applying international auditing standards; and
- Civil society actively engaged as a participant in the design, monitoring and evaluation of the reporting/audit process.⁵⁶

C. Other Significant Developments

Myanmar's government announced on August 27 that it plans to remove 2,000 names from an infamous blacklist that has blocked many dissidents and journalists from entering the country. The motive behind paring back the list, the existence of which authorities had previously denied, is believed to be to lure more exiles and foreign trained expatriates back to the country after decades of military rule.

The announcement in the *New Light of Myanmar* said the blacklist contained a total of 6,165 people, meaning roughly 4,000 people are still technically banned from entering Myanmar for reasons that remain unclear.⁵⁷ Their identities are also a mystery, as are the identities of those who are now officially permitted to return. Some exiles say they were able to confirm they were on the list only through back-channel discussions with Myanmar diplomats or senior officials in Naypyitaw, while others just assumed they were blacklisted because of their past participation in political protests or after being rejected for visas when applying at embassies around the world. The government said only that 2,082 people were removed from the blacklist "after scrutinizing them in conformity with the current policies."⁵⁸

While this latest move is an encouraging step in line with Myanmar's other efforts at reform, many believe it is little more than a public relations-motivated half measure. "There is no clear indication how you can find out whether or not you are on [the list]," said Soe Aung, a Thailand-based Myanmar expert at the Forum for Democracy in Burma. "This is another attempt to avoid declaring a general amnesty as any democratic government would do when they come to power," he said.⁵⁹

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⁵⁶ Extractive Industries Transparency Initiative, EITI Requirements: <http://eiti.org/eiti/requirements>

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