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## Myanmar Update Report

### MAY 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.

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## **I. International Community and Sanctions**

Extraordinary democratic reforms have swept across Myanmar since President Thein Sein came to power in March 2011. Remarkably, only four months after the passage of laws allowing opposition parties to participate in the political process, Myanmar held parliamentary by-elections that resulted in the election of 44 members of Myanmar's opposition pro-democracy party, the National League for Democracy (NLD). Free and fair parliamentary by-elections were a nearly universal precondition to increased engagement with Myanmar for much of the international community, and the April by-elections were generally well-received.<sup>1</sup>

In response to Myanmar's efforts toward democratic reform, the international community has moved quickly to reward and encourage further progress.<sup>2</sup> Over the past two months, 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.

### **A. Targeted Easing by the U.S.**

On May 17, President Obama announced that the United States would ease sanctions in response to the promising steps that the Myanmar government has taken towards democracy, including the initiation of ceasefire talks with ethnic rebels, the release of hundreds of jailed political prisoners, and dialogue with the National League for Democracy (NLD), lead by Nobel Laureate Aung San Suu Kyi.<sup>3</sup> Noting the importance of greater engagement for "supporting reformers in government and civil society, facilitating broad-based economic development, and bringing Myanmar out of isolation and into the international community," the Obama administration suspended the ban on new U.S. investments in Myanmar, as well as the ban on the exportation of financial services.<sup>4</sup> Restrictions on trade with Southeast Asia's fourth-smallest economy, however, remain in place.

The Obama administration has emphasized that Myanmar's "political opening is nascent, and [the U.S.] continue[s] to have concerns, including remaining political prisoners, ongoing conflict and serious human rights abuses in ethnic areas."<sup>5</sup> The U.S. government has also expressed concern about Myanmar's ties to North Korea.<sup>6</sup> Consequently, while policy makers are cautiously optimistic, the President's easing via executive order can easily be reversed should reform stall or backslide.<sup>7</sup> Despite this "insurance policy," Secretary of State Hillary Clinton has announced that the government's "commitment is to move as rapidly as [it] can to expand business and investment opportunities."<sup>8</sup> The Obama administration, which has demonstrated a preference to rescind executive orders, is unlikely to ask Congress to lift the Jade Act or other legislative sanctions while certain conditions for repeal remain unsatisfied.

While American companies will now be able to compete with their Asian, Australian, Canadian and European counterparts in industries such as mining, energy, agriculture, finance and tourism, investment into companies that are run by or maintain strong ties to the military is prohibited. However, the U.S. government will not impose any binding guidelines or standards of corporate social responsibility on companies investing in Myanmar.<sup>9</sup> Instead, the Obama administration has announced that the U.S. government "will work to establish a framework for responsible investment from the United States that encourages transparency and oversight, and helps ensure that those who abuse human rights, engage in corruption, interfere with the peace

process or obstruct the reform process do not benefit from increased engagement with the United States.”<sup>10</sup>

The U.S. Department of the Treasury, which oversees much of the sanctions regime, will continue to maintain a list of persons with whom Americans are prohibited from dealing, known as the Specially Designated Nationals and Blocked Persons List (SDN). Senior administration officials have emphasized that the SDN list “will be regularly updated” and continuously “refined” to ensure that increased investment does not exacerbate human rights abuses or undermine recent developments.<sup>11</sup> To the dismay of many human rights activists and non-governmental organizations, however, the SDN has not been updated in the past three years, and was not updated prior to the recent thawing of sanctions.<sup>12</sup> Despite this shortfall, the administration has asserted that “[s]anctions and prohibitions will stay in place on individuals and institutions that remain on the wrong side of [Myanmar’s] historic reform efforts.”<sup>13</sup>

Notably, the Obama administration’s recent steps toward liberalization have received bipartisan support in the U.S. Congress. Republican Senators John McCain and Mitch McConnell issued a statement lauding the suspension as “an appropriate balance between encouraging the process of reform now unfolding in Myanmar, while maintaining sufficient leverage to continue pressing the Burmese government for additional progress.”<sup>14</sup> Democratic Senator John Kerry called the thaw a “logical step forward.”<sup>15</sup> Senators Jim Webb (Democrat) and James Inhofe (Republican) also demonstrated support for the recent measures.<sup>16</sup> Nevertheless, Senator Webb, who has visited Myanmar three times during the last three years, urged the United States to “be more proactive” and called on President Obama to “lift all economic sanctions” against Myanmar.<sup>17</sup> Senator McCain, a powerful voice on the issue of sanctions, has demonstrated support for the suspension of all sanctions except the arms embargo and provisions targeting actors that obstruct Myanmar’s democratization efforts.<sup>18</sup>

Despite bipartisan support from some of Congress’ most powerful voices, not all have supported the United States’ recent policy changes. Republican House Representative Ileana Ros-Lehtinen expressed concern amid the fact that “serious questions remain about Myanmar’s journey toward democracy, as hundreds of political prisoners remain jailed and repression still exists.”<sup>19</sup> House Representative Joe Crowley has lauded the U.S.’s decision to respond to political change in Myanmar, but spoke out against eliminating the sanctions regime.<sup>20</sup> His main concerns are that “[f]ar too many political prisoners are still locked behind bars, violence continues against ethnic minorities and the military dominates not only the composition but the structure of the government.”<sup>21</sup>

Aung San Suu Kyi, who went from house arrest to parliamentary opposition leader in less than two years, expressed support for recent U.S. decision-making. However, she warned that Myanmar’s progress was not “irreversible” and that the United States must proceed cautiously.<sup>22</sup> Though Suu Kyi said she would not oppose a freeze on sanctions in their entirety, she admitted that she “sometimes feel[s] that people are too optimistic about the scene in Myanmar.”<sup>23</sup>

Most human rights groups, including the U.S. Campaign for Burma and United to End Genocide, have expressed dismay at easing sanctions vis-à-vis continuing human rights abuses, such as the imprisonment of political dissidents and ethnic violence.<sup>24</sup> Human Rights Watch (HRW) and other organizations have raised concerns such as the “weak rule of law and a

judiciary lacking independence, the military's extensive involvement in the economy as well as its use of forced labor and other abusive practices in connection with providing security for business operations, poor regulation and enforcement of labor and environmental laws, widespread corruption and the mismanagement of public funds."<sup>25</sup> The Conflict Risk Network recently published a paper, *Not Open for Business*, warning potential investors of the high risks posed by Myanmar's economic and political landscape.<sup>26</sup>

Human rights groups are also wary of the impact that a flood of foreign investment will have on Myanmar's stability and development, particularly in light of the fact that the United States shows no desire to impose binding rules of social responsibility on companies planning to invest.<sup>27</sup> John Sifton, Asia Advocacy Director at HRW, has warned that "[h]uman rights problems in Myanmar are way too serious for self-regulation," arguing that it is too soon in the reform process to reward the government with "an unregulated business bonanza."<sup>28</sup> Similarly, Tom Malinowski, HRW Director, expressed concern that Myanmar's "gold rush" would occur without the necessary institutional reform.<sup>29</sup> The ASEAN Inter-Parliamentary Myanmar Caucus (AIPMC) articulated similar sentiments in early May, calling on the U.S. to maintain sanctions and warning that "a gold rush in the Southeast Asian nation could fuel further human rights abuses, risk fragile ceasefires and arrest ongoing democratic reforms rather than bolster them."<sup>30</sup>

On the other hand, the International Crisis Group has supported the elimination of sanctions, noting in April that maintaining sanctions could "undermin[e] reformers and embolden[] more conservative elements, rather than keeping up the pressure for further change."<sup>31</sup> United Nations Secretary-General Ban Ki-Moon, who visited Myanmar in late April, also encouraged the suspension and elimination of sanctions.<sup>32</sup> Most U.S. business interests, active in encouraging the administration to lift economic sanctions, are undoubtedly pleased.<sup>33</sup> Businesses such as General Electric, Co. and Caterpillar, Inc. are already engaged with the Myanmar government.<sup>34</sup> However, not all businesses supported the Obama administration's recent decision. In a May 11 letter to President Obama, a group of investors and businesses urged the U.S. to retain economic sanctions, noting that "Myanmar presents a context where investment can exacerbate human rights problems and undermine broad-based development, especially considering that the most attractive areas for investment are precisely the areas in which rights violations are ongoing."<sup>35</sup>

In addition to easing various sanctions via executive orders, the Obama administration recently appointed Derek Mitchell as ambassador to Myanmar.<sup>36</sup> Mitchell's appointment signals significant political reengagement with the once isolated nation. There has not been an American ambassador to Myanmar in 22 years.<sup>37</sup> In response, Myanmar has appointed Than Swe, its permanent representative to the United Nations in New York, as Myanmar's U.S. ambassador.<sup>38</sup>

The U.S. government has also begun to permit visits by certain government officials. In May, Foreign Minister Wunna Maung Lwin visited Washington. At a joint press conference—"a scene unthinkable a year ago"—U.S. Secretary of State Hillary Clinton pledged political, diplomatic and economic support.<sup>39</sup> In response, Wunna Maung Lwin emphasized Myanmar's commitment to reform and the continued release of political prisoners.<sup>40</sup>

Additionally, the U.S. government recently announced its intention to allow more aid and non-profit groups to operate in the country, and to increase the number of people-to-people exchanges.<sup>41</sup>

## B. Developments in the Broader Sanctions Community

Shortly after the April 1 by-elections, the European Union announced a one-year suspension of sanctions, with the exception of its arms embargo.<sup>42</sup> Canada and Switzerland followed suit, while also maintaining a ban on arms deals.<sup>43</sup> Also in April, Australia removed economic sanctions on Myanmar, while Foreign Minister Bob Carr and Trade Minister Craig Emerson announced that the country would normalize bilateral trade relations.<sup>44</sup>

In May, Myanmar parliamentarians made their first visit to the European Parliament, highlighting Myanmar's increasing engagement with the international community.<sup>45</sup> Martin Schulz, President of the European Parliament, recognized that "[t]he recent impressive democratic opening of the country gives [parliamentarians] much hope and optimism."<sup>46</sup>

In another sign of improving foreign relations, South Korean President Lee Myung-bak travelled to Nay Pyi Taw to meet with President Thein Sein this month. Lee praised Thein Sein's efforts to democratize, and pledged to increase financial assistance and lending to the impoverished Southeast Asian nation.<sup>47</sup> Lee also "agreed to help Myanmar develop human resources, build a think tank and invite Burmese students to South Korea in an effort to share its successful experience of economic development."<sup>48</sup>

During their meeting, Thein Sein admitted that Myanmar had, over the past twenty years, purchased conventional weapons from North Korea and assured Lee that Myanmar would no longer engage in such transactions.<sup>49</sup> Although many suspect nuclear cooperation between the two ostracized nations, Thein Sein denied these allegations during his meeting with Lee.<sup>50</sup> The United Nations is currently investigating potential weapons-related deals executed between Myanmar and North Korea.<sup>51</sup>

On May 10, the Japanese Ministry of Foreign Affairs issued a press release describing a call from Khin Aung Myint, the Speaker of Myanmar's Upper House of Parliament, to Prime Minister Yoshihiko Noda. On the call, Noda welcomed recent democratization efforts, economic reform, and national reconciliation, while expressing hope for further progress in Myanmar.<sup>52</sup> The Japanese Prime Minister reiterated his country's ongoing support through Japan's new assistance policy, which Noda announced in April.<sup>53</sup> Under the plan, Japan will forgive Myanmar's 303.5 billion yen (\$3.7 billion) debt and resume aid to the underdeveloped nation, including a pledge to finance ports, bridges and roads.<sup>54</sup> This month, Japan donated \$10.6 million to U.N. efforts to fight hunger in Myanmar.<sup>55</sup> Japan is currently negotiating an investment agreement with Myanmar that would grant Japan most-favored nation status.<sup>56</sup>

On May 28, Myanmar signed a \$500 million credit deal with India, Myanmar's fourth largest trading partner, as well as eleven other bilateral agreements.<sup>57</sup> The credit deal aims to strengthen economic ties and development in the Myanmar-India border areas.<sup>58</sup> Thein Sein and Indian Prime Minister Manmohan Singh also signed a Memorandum of Understanding outlining several development projects along the border, including schools, health centers and trade

complexes.<sup>59</sup> On May 29, Singh met with NLD leaders, including Suu Kyi.<sup>60</sup> Singh extended an invitation for Suu Kyi to visit India and to give the next Jawaharlal Nehru memorial lecture.<sup>61</sup>

Another significant development is Norway's recent pledge of roughly \$66 million to rehabilitate parts of eastern Myanmar ravaged by ethnic conflict, relocate civilians to safer areas, create community development committees, assist the opening of liaison offices and prepare for the return of internally displaced persons.<sup>62</sup> A pilot program of the Norwegian Peace Support Initiative (NPSI) is underway in Karen State, and will soon expand to other parts of eastern Myanmar.<sup>63</sup> Norway, which eliminated sanctions against Myanmar last month, is financing the program through government-approved NGOs and civil society groups, instead of official channels.<sup>64</sup> Norway's Deputy Foreign Affairs Minister, Torgeir Larsen, is meeting with KNU leaders during the last week of May.<sup>65</sup>

Also of note this month, the IMF completed its annual assessment of the Myanmar economy, entitled *Myanmar Set for Economic Takeoff with Right Policies*, which the government agreed to make public for the first time.<sup>66</sup> The report notes that GDP has grown in the past year and predicts "strong growth if [Myanmar] pursues the necessary reforms to take advantage of its rich natural resources, young labor force, and proximity to some of the world's most dynamic economies."<sup>67</sup> The IMF concludes that, amid recent reform and the country's current trajectory, "Myanmar's new government faces an historic opportunity to jump-start economic development, and lift living standards."<sup>68</sup>

The leaders of the G-8 recently praised Myanmar's reform efforts during their Camp David summit, while pledging their support.<sup>69</sup> The G-8 leaders "stress[ed] the need to cooperate to further enhance aid coordination among international development partners of Burma/Myanmar and conduct investment in a manner beneficial to the people of Burma/Myanmar."<sup>70</sup>

## **II. Elections, Political Participation and Questions of Secession**

The impact of the April 2012 elections was mainly symbolic, as fewer than 10% of the seats in Myanmar's parliament were up for re-election. Although the results did not affect the existing balance of power, the opposition NLD can now engage in parliamentary debate, as well as national and international dialogue.<sup>71</sup> Although some worry that the recent elections will legitimize the government, the newly elected parliamentarians have not shied away from controversial issues.<sup>72</sup> Suu Kyi and other NLD members have remained critical of the government in many respects, including their brief refusal to participate in the swearing-in oath because it required them to uphold the existing constitution.<sup>73</sup> Furthermore, though the balance of power has not shifted, the NLD's landslide victory foreshadows the 2015 election. Consequently, the ruling party and ethnic parties, which perceive the NLD as "a party of the Burman elite," have become concerned about their own chances of increasing representation.<sup>74</sup>

Recent events in Myanmar have also raised questions about the health of President Thein Sein, who is 67 years old and suffers from a heart condition. The president was seen by military doctors in mid-May and, although specific details were not released and a leader's health is not typically discussed in any official manner, presidential advisor Ko Ko Hlaing told journalists that "[t]he president's health condition is not critical and there is nothing to worry about."<sup>75</sup> In

addition to concerns about his health, a top political advisor to the president has acknowledged that Thein Sein may step down in 2015, a move that would complicate the 2015 elections.<sup>76</sup>

The recent by-elections have also engendered discussion about the health of Suu Kyi and the impact of her “vast clout” on the NLD.<sup>77</sup> The founders of the party are aging—Suu Kyi is 66, Win Tin is 83, and Tin Oo is 85—and the health of Suu Kyi, who last month temporarily suspended her campaigning because she felt weak, may be in decline.<sup>78</sup> This raises concerns about how the NLD would function without Suu Kyi, who is often critical to consensus building.<sup>79</sup> The NLD, moreover, has had trouble recruiting bright young leaders. Although young politicians were recruited to run in the recent by-election, many lack the necessary education and professional training.<sup>80</sup> The NLD has been unable to attract young academics and technocrats who “in the face of the party’s ossified structure and operations...have preferred to undertake social and political activities independently.”<sup>81</sup>

### III. Ethnic Violence

The most difficult challenge for the government remains overcoming Myanmar’s longstanding ethnic divides. Since August 2011, peace talks have taken place between the government and eleven armed ethnic groups, including the Karen National Union, Kachin Independence Organization, Karenni National Progressive Party, New Mon State Party, Chin National Front, Democratic Karen Buddhist Army, and two armed Shan groups.<sup>82</sup> Nevertheless, many challenges remain, including Thein Sein’s lack of authority over the military, the continuing violence in Kachin State, the extreme fragility of ceasefire agreements and the importance of satiating underlying political grievances.<sup>83</sup>

Interestingly, some human rights organizations and minority ethnic groups have raised concerns that the recent easing of international sanctions against Myanmar may negatively impact the fragile ceasefire agreements that the government has reached with various ethnic groups and may ultimately remove an important source of U.S. leverage.<sup>84</sup> Specifically, human rights groups are concerned about the impact that new economic policies will have on ethnic conflict, as many of the ethnic communities are located in resource-rich areas. At the United Nationalities Federal Council meeting in early May, ethnic minority groups requested “the international community not to suspend or lift the remaining political, military, financial and economic sanctions but to wait and see if the [military] does not stop its transgression and military offensives in Kachin State by June 10, 2012.”<sup>85</sup> A recent report released by the Ta’ang Students and Youth Organization (TSYO), *Catalyst for Conflict*, highlights the link between foreign investment projects and the perpetuation of conflict and human rights abuses in resource-rich areas of Myanmar.<sup>86</sup>

Despite these concerns, the government has continued to pursue its existing three-phase peace plan. The first phase involves negotiating preliminary cease-fires, which allow both parties to set up liaison offices and travel unarmed through each other’s territory.<sup>87</sup> All but one of the ethnic armed groups have signed “stage 1” preliminary ceasefires with the government.<sup>88</sup> The second phase encompasses broader discussions oriented toward building confidence and addressing regional development tasks such as education, health and communication.<sup>89</sup> The government has reported that six groups are currently in the second stage.<sup>90</sup> The third phase is to sign an agreement “at the legislature.”<sup>91</sup> This stage, which has not yet commenced, is intended

to bring together representatives of all armed groups and other stakeholders to discuss the shape of a lasting political agreement on ethnic issues.<sup>92</sup> This would include issues such as constitutional change to provide greater autonomy, provisions for greater resource sharing with ethnic communities, and the future integration/demobilization of members of armed groups.<sup>93</sup>

Some have expressed concern that the new agenda is remarkably similar to the government's previous position, which faltered during past negotiations.<sup>94</sup> Specifically, the peace plan has been criticized for emphasizing economic development over political resolution.<sup>95</sup> The Kachin Development Network Group report, *Lessons from the Kachin "Development" Experience*, highlights the consequences of emphasizing economic progress over political solutions.<sup>96</sup> In Kachin State, economic development projects have benefited foreign companies and the Myanmar military, corrupt politicians and businessmen, while undermining ethnic Kachin society and destroying the environmental integrity of the region.<sup>97</sup> The report, released in May, stresses that "the Kachin experience should serve as a warning to other ethnic groups attempting peace through a similar process."<sup>98</sup>

The intractability of government demands with what ethnic groups are striving to achieve threatens to negate the negotiation and ceasefire process.<sup>99</sup> Whereas the government expects "the rebels to lay down their arms in a gradual approach under terms stipulated by central authorities," ethnic rebels are fighting for federalism, ethnic rights, and more regional autonomy.<sup>100</sup> For instance, only humanitarian concerns and existing laws are referenced in the recent 12-point agreement between the Myanmar government and Shan State, while the issue of autonomy is noticeably absent.<sup>101</sup> Similarly, Karen rebels were promised economic opportunities—but not constitutional reform—in exchange for peace.<sup>102</sup> Many assert that the government is "following the same dead-end pattern seen in the now failed Kachin ceasefire," warning that other ceasefires will eventually break down as ethnic groups confront issues critical to long-term peace, such as federalism and ethnic autonomy, that were not addressed by the peace process.<sup>103</sup>

The 2008 constitution, which prioritizes development and does not recognize federalism, serves as a central source of contention between the government and Myanmar's various ethnic groups.<sup>104</sup> Consequently, resolving the political issues that surround the 2008 constitution is critical for lasting compromise.<sup>105</sup> However, amending the constitution in any meaningful way requires support from at least 75 percent of the parliament.<sup>106</sup> Because at least 25 percent of the parliamentary seats are held by the military, constitutional change, such as increased regional autonomy or recognition of a federal system, is nearly impossible.<sup>107</sup> This complicated legislative process, combined with the government's three-step peace plan, threatens to dismantle any progress made vis-à-vis ethnic peace.<sup>108</sup>

In early May, Thein Sein announced a reorganization of Myanmar's peacemaking team, designed to establish permanent peace deals with ethnic armed groups before 2015.<sup>109</sup> The peace team is now divided into the Union Peacemaking Central Committee and the Union Peacemaking Working Committee.<sup>110</sup> President Thein Sein chairs the central committee, made up of twelve members, including Shwe Mann, Speaker of the Lower House of Parliament.<sup>111</sup> Vice President Sai Mauk Kham chairs the working committee, which has 52 members, including regional military commanders in Kachin and Shan.<sup>112</sup> Several senior government officials serve as working committee vice-chairmen.<sup>113</sup>



Notably, many current negotiators were excluded from the new committees, including Aung Thaung.<sup>114</sup> While there is speculation that he was excluded because he failed to secure a ceasefire with the Kachin Independence Organization (KIO), the government announced that a health condition prevents him from serving.<sup>115</sup> Myanmar's new arrangement replaces the "union-level peace discussion group," which successfully negotiated ceasefire agreements with the Karen, Shan, Mon, Karenni and Chin rebels, among others.<sup>116</sup> The impetus for this structural shift is purportedly the inability of Thein Sein, who is not Myanmar's commander-in-chief, to "rein in Myanmar's armed forces."<sup>117</sup>

Some have expressed concern that these changes are superficial, while others express hope that prospects for peace, particularly in Kachin State, have improved because Thein Sein is chairing the peace committee with other senior Myanmar officials.<sup>118</sup> The United Nationalities Federal Council (UNFC) welcomed the government's decision to create "one powerful peace negotiation team."<sup>119</sup> The UNFC had previously criticized the existence of two separate peace negotiation groups, which could result in varied outcomes.<sup>120</sup>

#### A. Shan State Army - South

On May 19, representatives from the Restoration Council of Shan State (RCSS) and the Shan State Army-South (SSA-S), the political and military apparatuses of the Shan, met with government representatives to negotiate the consolidation of a recently negotiated ceasefire arrangement signed last January.<sup>121</sup> The government delegation included leading members of the Myanmar army, which signified a new step in negotiations between the rebel fighting group and the government.<sup>122</sup> In all past negotiations, high-level officials were absent.<sup>123</sup> Since January, there have been 17 reported firefights between government troops and rebels, and the negotiations this month aimed to end this violence.<sup>124</sup> As a result of negotiations, the two sides agreed to territorial demarcations, safe areas for internally displaced persons (IDPs), a plan to eradicate narcotics, and a pledge by the government to prevent further fighting with the SSA-S.<sup>125</sup> Aung Min also reportedly encouraged the SSA to form a political party and participate in the 2015 elections.<sup>126</sup> The two sides agreed to continue meeting, as many topics, including RCSS autonomy, were not addressed.<sup>127</sup>

The Shan State Army, which enlists about 5,000 men, fights using guerrilla attacks, and controls only small pockets near Thailand, welcomed the arrangement.<sup>128</sup> Colonel Yawd Serk, Chairman of the RCSS, said that after "having the deputy commander-in-chief and the three regional commanders involved in the talks, the SSA-S and RCSS are confident that there will be no more clashes."<sup>129</sup> While many sectors were absent from the meeting, most notably women and the government's leading ethnic Shan officials, many journalists and observers attended.<sup>130</sup>

On May 23, gunfire broke out between the SSA-S and Myanmar army. The Myanmar army purportedly entered SSA-S territory while chasing after deserters and later described the fighting as the result of a breakdown of communication between superiors and their soldiers.<sup>131</sup>

#### B. Kachin Independence Organization

Despite multiple rounds of talks between the Kachin Independence Organization (KIO) and Myanmar government, no resolution has been reached. In April, the KIO rejected an offer to

engage in a fourth round of peace talks.<sup>132</sup> However, on May 21, Aung Min, a vice chairman of the newly created working committee, met with Major-General Sumlut Gun Maw, a Kachin Independence Army (KIA) vice chief of staff, for an informal discussion about the ongoing conflict in Kachin.<sup>133</sup> Although little progress towards a resolution seems to have been made, Aung Min will meet with Sumlut Gun Maw again on June 1 to address the possibility of reaching an agreement.<sup>134</sup> While fighting continues to intensify, the frequency of meetings between the government and KIA is viewed as a substantial step towards resolution.<sup>135</sup>

One major challenge is that the KIO wants political change before a ceasefire agreement, while the government wants the opposite.<sup>136</sup> Moreover, the KIO, concerned that the army wants to eradicate Kachin's largely Christian population, wants international monitors to oversee the peace process.<sup>137</sup> Amid these adamant demands, however, are reports that suggest KIA morale is faltering.<sup>138</sup>

Furthermore, the government continues to throw rhetorical punches at the KIO. In early May, state-run newspapers reported that it targeted civilians, an accusation it adamantly denied.<sup>139</sup> Most recently, state forces have blamed power shortages on the Kachin, who reportedly destroyed a portion of Myanmar's electricity grid while fighting.<sup>140</sup> While the KIA has denied these accusations,<sup>141</sup> there is no doubt that violence between the KIA and the Myanmar government is escalating. Mortar shells can now be heard throughout the night, the Myanmar army has seized three key positions and fighting is now less than six miles from KIO headquarters.<sup>142</sup> Recent reports indicate that the fighting has spread to Hpakant, a jade mining center.<sup>143</sup> While the government has alleged that the fighting is the result of a "breakdown of communication to remote areas," many describe the violence as the result of a larger divide between reformers and the military.<sup>144</sup>

Since fighting broke out last June after a 17-year ceasefire, over 75,000 ethnic Kachins have been displaced.<sup>145</sup> While many of the refugees are believed to have fled into western China to escape the ongoing violence, an estimated 45,000 have fled to 30 makeshift camps in KIA-controlled territory along the Myanmar-China border, where government authorities have denied access to international humanitarian aid.<sup>146</sup> On May 28, the U.N. announced that the Myanmar government gave aid workers clearance to enter Laiza.<sup>147</sup> However, the government has not given the U.N. permission to visit any other camps in Kachin State.<sup>148</sup>

The Chinese government, which has repeatedly deemphasized the violence and denied the existence of refugees in China, finally shifted its foreign policy position this month. For the first time, China has begun discussions with the KIO refugee committee about accepting refugees and relocating IDPs near Yinjiang.<sup>149</sup> The current proximity of the fighting to the Laiza camp has raised concerns that, if the fighting continues to encroach upon the camp, the only option for IDPs will be to cross into China.<sup>150</sup> There are already an estimated 7,000 to 10,000 refugees in China.<sup>151</sup>

There have also been reports that Chinese trafficking gangs, who abduct women and bring them to China, and trafficking agents, who dupe women to come to China by offering a dowry, have been operating in Kachin camps.<sup>152</sup> Because of funding shortages and the difficulty of resolving trafficking cases, many non-governmental and humanitarian organizations are unable to assist.<sup>153</sup>

The United Nationalities Federal Council (UNFC) supports the KIO, declaring in May that it “view[s] as correct the action of the Kachin Independence Army (KIA) and the Kachin people’s militia and their allied forces, which inevitably have to resist transgression of the hostile [state] forces.”<sup>154</sup>

U.N. Secretary-General Ban Ki Moon has described the Kachin conflict as “inconsistent” with Myanmar’s efforts to democratize.<sup>155</sup>

### C. The United Nationalities Federal Council

The United Nationalities Federal Council (UNFC), an association of eleven ethnic groups aiming to establish a federal union, met in March 2012 to prepare a unified stance on peace talks.<sup>156</sup> At this meeting, the UNFC emphasized political change and asserted that “[i]f political dialogue cannot be held or [there is a] failure to hold political dialogue [it] shall be taken as abrogation of the ceasefire.”<sup>157</sup> At a follow-up meeting in May, the UNFC issued a statement that encouraged the NLD, ethnic politicians, citizens and the international community to join their struggle through means of “rejection and opposition.”<sup>158</sup> The UNFC, which is largely controlled by members of the KIO and other ethnic hardliners, has been criticized for promoting positions that do not readily align with other ethnic political parties or the NLD.<sup>159</sup> In a recent policy paper, the Burma Centre for Ethnic Studies asserted that this misalignment puts the UNFC at a disadvantage and that “[t]he UNFC, if it wishes to remain relevant, needs to openly embrace other ethnic political actors in a reformed strategy and incorporate their ideas.”<sup>160</sup>

The UNFC, which emphasizes political change over ethnic development, has rejected the Myanmar government’s three-step peace plan. The UNFC criticizes the government’s three-step process, particularly its emphasis on economic development, characterized as “big businesses that lay waste to the environment and the people’s livelihood.”<sup>161</sup> In April, however, the UNFC announced that it was ready to meet with Aung Min, who reached out to the UNFC last December.<sup>162</sup> The UNFC has proposed an alternative plan to President Thein Sein’s three-step process that emphasizes dialogue outside of government channels and prioritizes political change.<sup>163</sup> In May, the UNFC declared that “it is impossible for us to accept President U Thein Sein’s proposal calling for the armed ethnic forces to set up political parties, contest the elections and carry out changes in the parliament according to majority decision and law, as it is not in the way of fair dialogue and negotiation.”<sup>164</sup> The UNFC continues to support an alternative solution to lasting peace that is negotiated outside of government channels and prioritizes political resolution.<sup>165</sup>

### D. Other Significant Developments

In April, a ceasefire agreement between the Karen National Union (KNU) and the government was signed. In May, the KNU announced that it would open a new liaison branch office to facilitate cooperation with the Myanmar army to implement ceasefire arrangement.<sup>166</sup>

However, in a recent interview with *The Nation*, General Htay Maung, chairman of the KNU, expressed concern about recent developments in Myanmar, particularly increasing foreign investment.<sup>167</sup> Htay Maung criticized the government’s efforts to “take all the natural resources of all our countries rather than allow other minority groups to rule themselves.”<sup>168</sup> The Karen

region is itself rich in diamonds and ores.<sup>169</sup> He also urged the government to stop the fighting in Kachin, which is particularly rich in jade and gold.<sup>170</sup> Others have blamed economic interests in resource-rich Kachin as a major impetus for the ongoing conflict.<sup>171</sup> Additionally, Htay Maung deflected recent accusations by the Thai government that a leader of an armed Karen group is involved in the drug trade, asserting that the Karen do not support any narcotics activities.<sup>172</sup>

Earlier this month, in preparation for Indian Prime Minister Singh's visit, the Myanmar army issued an order demanding that armed rebels in Manipur close their approximately 12 to 15 camps and training facilities by June 10.<sup>173</sup> The activity of these insurgents destabilizes the northeast border between India and Myanmar.<sup>174</sup>

During April and May, international NGOs and refugee advocacy groups, including the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), and the International Committee of the Red Cross (ICRC), met with Burmese officials to discuss IDP resettlement and refugee repatriation.<sup>175</sup> Other developments, such as the construction of three camps in Karen State to house repatriated refugees from Thailand and resettlement workshops, are ongoing.<sup>176</sup> While some voluntary repatriation has already occurred, human rights groups are adamant that repatriation remain voluntary, even as relations between the KNU and the central government improve.<sup>177</sup>

As we reported last month, hundreds of Rohingya men, women and children from Myanmar were living virtually on the doorstep of the United Nations High Commissioner for Refugees (UNHCR) at Vasant Vihar, India, seeking refugee status.<sup>178</sup> In mid-May, India refused the Rohingya refugee status, but did agree to grant long-term visas.<sup>179</sup> These visas permit the Rohingyas to stay in India until 2015 and allow Rohingya children to participate in public education.<sup>180</sup>

In late May, Amnesty International published an annual report on Myanmar that accused the government of committing crimes against humanity and war crimes vis-à-vis conflicts in Karen, Shan, and Kachin States, as well as smaller conflicts in Karenni and Mon States.<sup>181</sup> The human rights group, Network for Human Rights Documentation-Burma, or ND-Burma, recently reported 60 cases of forced labor, 86 cases of torture and 32 killings, among other documented human rights violations, between May 2011 and May 2012.<sup>182</sup>

#### **IV. Political Prisoners**

Since President Thein Sein announced the first of four prisoner amnesties in May 2011, approximately 659 political prisoners have been released.<sup>183</sup> Released prisoners have been able to lead relatively normal lives, and have generally not been subject to post-release intimidation or harassment.<sup>184</sup> Some have even resumed political activities, such as participating in the recent by-elections.<sup>185</sup> The State Department, in its Country Reports on Human Rights Practices for 2011, praised the release of political prisoners as a significant development for Myanmar.<sup>186</sup> However, the problem of political prisoners is far from resolved. In a press conference with Myanmar Foreign Minister Wunna Maung Lwin on May 17, Secretary Clinton noted that "[the U.S.] would like to see the release of any continued political prisoners."<sup>187</sup> European Commission President José Manuel Barroso expressed a similar sentiment in his May 11 meeting with the Speaker of Myanmar's Lower House of Parliament.<sup>188</sup>

The exact number of detained political prisoners is uncertain, with estimates ranging from 100 to 1000 prisoners.<sup>189</sup> Myanmar's government contends that the 125 political prisoners currently detained committed security offenses and violated immigration laws and, therefore, deserve to serve full prison sentences.<sup>190</sup> According to the newly created political prisoner list from Aung San Suu Kyi's National League for Democracy (NLD), however, there are approximately 280 political prisoners detained unjustifiably.<sup>191</sup>

Human rights organizations estimate that many more political prisoners remain in detention. The Assistance Association for Political Prisoners-Burma (AAPP), comprised of former prisoners living in exile, has confirmed that 471 political prisoners are currently detained.<sup>192</sup> Another 465 potential detainees are in the process of being verified.<sup>193</sup> A list by the Former Prisoners Network in Yangon, a human rights organization founded by former political prisoners, includes 445 political prisoners.<sup>194</sup>

Some activists remain wary of the Myanmar government's intention to release political prisoners. Zoya Phan, a political asylee and activist, believes that "[t]he government in Myanmar is very much worried about their international image. Although the government has released some political prisoners, they are only interested in international legitimacy and in removing economic sanctions."<sup>195</sup> Min Ko Naing, a leader of the 1988 student movement, similarly believes that government authorities' primary desire is to use prisoners as "bargaining chips" to convince the West to lift sanctions.<sup>196</sup>

On May 23, 2012, the AAPP issued a statement calling for the Myanmar government's release of three gravely ill political prisoners on humanitarian grounds; Phyo Wai Aung has advanced liver cancer, while Sunny and Mira Mauth suffer from diabetes and hypertension.<sup>197</sup>

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

In May, demonstrations and strikes in Myanmar tested the government's capacity to withstand the effects of democratic reforms, while local land disputes and media freedoms received significant international attention.

### **A. Strikes and Demonstrations**

As part of the recent wave of reforms, President Thein Sein signed the "Law Relating to Peaceful Gathering and Peaceful Procession" on December 2, 2011. Although the new law provides citizens with the right to peaceful assembly, demonstrators must seek permission five days in advance with their local police station or face criminal penalties for unauthorized assembly.<sup>198</sup> Human rights organizations have criticized the new law for dampening citizens' rights and breaching standards of international human rights.<sup>199</sup>

The government's commitment to abide by the new law has been tested in recent weeks, as rallies protesting chronic electricity shortages have spread throughout the country.<sup>200</sup> Approximately 75 percent of the Myanmar population lacks access to electricity and much of Myanmar's energy supplies are sold to neighboring China, engendering extreme discontentment.<sup>201</sup> While the government did not initially request that protesters register with

local police, government officials have begun urging protestors to seek permission or risk spending up to one year in jail.<sup>202</sup>

Demonstrations, which were first organized on May 20 in Yangon and Mandalay, have spread across the country and now involve thousands of protesters and onlookers.<sup>203</sup> These protests are the largest demonstrations since a 2007 pro-democracy demonstration by Buddhist monks was crushed by government forces, resulting in the deaths of dozens of protesters and the arrests of hundreds.<sup>204</sup> Consequently, ongoing demonstrations are a serious test of the government's strength as a budding democracy. Fortunately, neither the police nor the military have made major moves to violently restrain protesters.<sup>205</sup> Nevertheless, government officials have waived. The police reaction in one town was described as "a heavy-handed response reminiscent of the military junta."<sup>206</sup> Presidential adviser Ko Ko Hlaing offended many in the country by suggesting that the protestors should use the candles they were lighting to light their homes on fire.<sup>207</sup> And, as protests have intensified, there have been reports of arrests, detentions, beatings and police interrogations.<sup>208</sup> Protestors detained for questioning in cities such as Mandalay and Pyiwere, including several NLD party members, have been released unharmed.<sup>209</sup>

While Suu Kyi has demonstrated her support for the protests, she has also cautioned protestors to be "pragmatic" and to "protest within the law."<sup>210</sup> Suu Kyi has emphasized that "[t]he power blackouts today are the result of decades of mismanagement" and cannot be solved overnight.<sup>211</sup> On May 22, in response to protests, Myanmar's Electric Power Ministry issued a "Plea to the Public," explaining the reasons behind the shortages and blaming the KIA for disrupting the energy grid.<sup>212</sup> The statement, which was featured in three state-run newspapers, appealed for cooperation.<sup>213</sup>

On May 23, the Burmese government announced emergency measures to increase electricity supplies, and promised to rush in generators and gas turbines bought from Caterpillar, Inc. and General Electric Co.<sup>214</sup> These investments were made possible by the recent easing of sanctions by the Obama administration. Meanwhile, the Secretary-General of ASEAN has urged Myanmar authorities to "stay the course and resist any temptation to suppress dissent."<sup>215</sup> ASEAN has pledged to help Myanmar supplement shortages of water, food, and transportation.<sup>216</sup>

Though some expect that protests will subside when the rainy season begins and the hydroelectric dams fill up (within the next two weeks), others worry that discontentment in other areas will perpetuate the demonstrations.<sup>217</sup> In recent weeks, laborers in various factories in Yangon have gone on strike to demand better wages and working conditions. While most of the labor strikes have been small in scale and resolved relatively quickly, there are indications that factory strikes will continue and even grow.<sup>218</sup> The government has not yet issued any orders that permit force against the laborers on strike. Instead, the government, in its desire for stability, has strong-armed factory owners into meeting laborer demands because "[t]hey want to keep a lid on protests and end them as quickly as possible."<sup>219</sup> Steve Marshall, the ILO's liaison officer in Myanmar, has noted that "[i]t's the very early days of a new industrial environment. People are coming to grips with it, understanding new rights and responsibilities.... We will likely see some industrial disruption and that is part of the learning process."<sup>220</sup>

In spite of the protests, the government allowed the recently passed “Labor Organization Law” to take effect on March 9. The law provides laborers with the right to strike, as well as the right to form independent trade unions and employers’ organizations. The bill was drafted in consultation with the International Labor Organization (ILO) and is considered one of the most progressive of its kind in Asia.<sup>221</sup>

## B. Media Freedoms

Myanmar has made small strides in media freedom, as demonstrated by domestic and international coverage of last month’s elections and this month’s demonstrations. The Mandalay protests, which led to demonstrations across the country, were reportedly mobilized online.<sup>222</sup> Social networking sites have facilitated communication among protestors, while continued relaxation of media control by Myanmar’s Press Scrutiny and Censorship Board has led to wider coverage on the protestors’ activities and the government’s evolving reaction to the demonstrations.<sup>223</sup> As highlighted in this report, reporters were also invited to cover some of the recent peace process activities.

However, codification of the freedom of expression and press will have to wait. The publication of a new media law, expected for May, has been postponed until July.<sup>224</sup> Amnesty International has noted that “[w]hile the government did meet with international experts and local journalists and the law’s thematic chapter headings were disclosed earlier this year, the law itself has not yet been made public.”

In June, the Myanmar Press Council will be formed, conditional on Thein Sein’s approval. As a result, print publications may be published without clearance by a censorship board.<sup>225</sup> However, some are concerned that the proposed press council looks “disturbingly similar to the outgoing pre-publication censorship board.”<sup>226</sup> Others, including Reporters Without Borders, think the proposed council is neither a significant nor satisfactory overhaul of strict media laws.<sup>227</sup>

Myanmar, which was ranked 169 of 179 countries in Reporters Without Borders 2011-2012 Press Freedom Index, also faces structural hurdles to disseminating news.<sup>228</sup> The Asian Development Bank estimated in March that less than one percent of people in Myanmar have internet connections and only one in 30 people have a mobile phone.<sup>229</sup>

## C. The Unlawful Association Act

Section 17(1) of the Unlawful Association Act holds that “[w]hoever is member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association,” may be imprisoned and fined.<sup>230</sup> In the past, the Myanmar government has labeled political parties, lawyers, ethnic opposition groups, media outlets, and other staples of democratic society as unlawful associations.<sup>231</sup> Though the law is incompatible with international human rights standards and incongruous with Myanmar’s recent reform efforts, the Unlawful Association Act has not been amended or repealed.<sup>232</sup> In March 2012, a KNU leader and member of the United Nationalities Federal Council (UNFC), Mahn Nyein Maung, received a three year sentence under Section 17(1) of the act.<sup>233</sup> This sentence came as a

surprise to many because government negotiators had previously promised to release Mahn Nyein Maung as part of the reconciliation process.<sup>234</sup>

Ethnic rebel groups once branded as illegal organizations continue to operate under the illegal organization label.<sup>235</sup> In April, Aung San Suu Kyi met with Karen rebels and declared that ethnic reconciliation would be facilitated by a repeal of the law on banned organizations.<sup>236</sup> The Karen National Union submitted a proposal to the Myanmar government to operate legally in early April.<sup>237</sup> In response, President Thein Sein affirmed his commitment to remove the KNU from a list of outlawed organizations.<sup>238</sup> Nevertheless, KNU's removal from the list has not been reported.<sup>239</sup> The Shan State also remains on the list, although the 12-point agreement recently reached between Shan State and the Myanmar government states that "[t]he two sides will continue to build up mutual trust to enable the RCSS/SSA to be totally withdrawn from the list of unlawful associations."<sup>240</sup> No removal of any ethnic opposition group has been reported.

The Burma Lawyers' Council (BLC) was declared unlawful in April 2009, and there is no indication the Thailand-based organization has been legalized.<sup>241</sup> The BLC continues to call for the repeal of the Unlawful Association Act.<sup>242</sup>

In March 2012, the United Nations Human Rights Council's progress report on Myanmar criticized the "lack of progress on the review and reform of the laws previously identified as not in full compliance with international human rights standards," including the Unlawful Association Act.<sup>243</sup> The Human Rights Council noted that this law has been "systemically applied against prisoners and those opposed to the Government."<sup>244</sup> Moreover, the report stated that while the Attorney-General assured the Special Rapporteur that Myanmar "was taking serious and gradual steps to reform these laws," no target dates for repeal or reform had been set.<sup>245</sup>

#### D. Other Significant Developments

As countries begin to ease investment sanctions, Myanmar's small farmers have become increasingly vulnerable to land confiscation by politically connected domestic companies.<sup>246</sup> The lack of a clear legal regime to protect traditional land ownership rights has had a particularly negative effect on Myanmar's precarious political and economic landscape.<sup>247</sup> Land confiscation is of special concern near the south coast, in the Yangon region, around Mandalay and in northern areas close to the border with China.<sup>248</sup>

In early May, the Union of Myanmar Economic Holdings (UMEH), a firm with close ties to the military, is believed to have confiscated 7,500 acres of farmland illegally in the Sagaing Division as part of preparations for a copper mining project.<sup>249</sup>

On May 10, Zay Kabar, an industrial firm owned by Parliamentarian Khin Shwe, allegedly ignored a stop order by the local Mingalardon government and bulldozed land which the previous owners contend was acquired illegally.<sup>250</sup>

Some farmers have begun to take legal action against land confiscators. In early May, three farmers in Mandalay's Pyin Oo Lwin township took steps to file a lawsuit against High Tech Concrete, which is owned by military-linked businessman Aik Tun.<sup>251</sup> The farmers claim



that High Tech Concrete, along with the Bureau of Air Defense, illegally confiscated 39 acres of their land last year.<sup>252</sup> The farmers wish to recover their land and obtain compensation.<sup>253</sup>

Those who have brought legal claims are believed to face the risk of retribution. On May 17, 2012, five farmers in the Magwe Division who had sued UMEH and the Htoo Trading Company for confiscating their land to build a soda factory received prison sentences of 8 to 12 years for allegedly offensive comments, trespass and “violation” of the law.<sup>254</sup> These convictions arose from a successful countersuit pursued by UMEH.<sup>255</sup>

Reform of current land laws is ongoing. Two proposals, the Farmland Law and the Vacant, Fallow and Virgin Lands Management Bill, remain on the table. However, activists and academics note that these proposals, at least in their current form, do not sufficiently protect the traditional land ownership rights of small farmers. According to a January report published by academics at the Harvard Kennedy School, “[t]he proposed Farmland Law, along with the proposed Vacant, Fallow and Virgin Lands Management Bill, would legalize and extend many of these land acquisitions (or ‘grabs’ as critics call them) and create a large class of rural landless, both in lowland Myanmar and in upland areas of the country.”<sup>256</sup>

## **VI. Governance and the Rule of Law**

Weak rule of law continues to plague Myanmar and hinder the legal reform process. In a press release for its Myanmar Country Risk Report, published on May 18, 2012, Maplecroft, a global business risk and strategy consultancy, stated that “combined with Myanmar’s corrupt, inefficient and politicized system of public administration, the government is likely to find its ability to implement many of its reforms substantially hampered by a lack of institutional capacity.” Maplecroft noted that the situation is worse when public officials have a personal interest in maintaining the status quo. Further, risk assessors concluded that, in the short and medium term, “excessive state bureaucracy and uneven legal enforcement, as well as endemic corruption and a weak rule of law” are to be expected.<sup>257</sup>

As we have previously reported, the lack of judicial independence in Myanmar is of particular concern. While lawmakers in Myanmar’s Lower House of Parliament voted in April to bestow the Judicial Committee with the right to investigate bribery and corruption in the judiciary, an effective date for the vote has not been determined.<sup>258</sup> In a recent interview, NLD leader Suu Kyi noted, “[y]ou cannot have genuine reforms without judicial reforms, it is no use introducing [reforms] if we don’t have a good judicial system to make sure the laws are properly applied. I think without an established rule of law, there can be no real progress.”<sup>259</sup>

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<sup>7</sup> Bangkok Post, May 21, 2012: <http://www.bangkokpost.com/breakingnews/294461/clinton-myanmar-sanctions-to-stay>

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<sup>8</sup> BBC News, May 17, 2012: <http://www.bbc.co.uk/news/world-asia-18112380>

<sup>9</sup> U.S. Department of State, Background Briefing on Burma, May 17, 2012: <http://www.state.gov/r/pa/prs/ps/2012/05/190271.htm>

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<sup>25</sup> Human Rights Watch, May 15, 2012: <http://www.hrw.org/news/2012/05/15/usburma-don-t-lift-sanctions-too-soon>

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