

Status of Human Rights and Sanctions in Myanmar

MARCH 2013 REPORT

This report seeks to provide an overview of the developments in March 2013 that relate to the status of human rights in Myanmar. It also reviews the response of the international community to Myanmar's reform efforts.

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1. International Community and Sanctions

In March, Myanmar's President Thein Sein visited Brussels during a 10-day trip to Europe and met with European Commission President José Manuel Barroso, European Council President Herman Van Rompuy and EU foreign policy chief Catherine Ashton.ⁱ The EU doubled its pledged development aid to over €200 million in 2012-2013, offered to instate a preferential tariffs deal, and is exploring the feasibility of a bilateral investment treaty with Myanmar.ⁱⁱ European leaders also moved to fully lift EU sanctions against the country, which, save for an arms embargo, have been suspended since April.ⁱⁱⁱ The European Union will review the sanctions on April 22, 2013.^{iv} European advocacy and human rights groups have urged the European Union to delay lifting sanctions to avoid encouraging further human rights abuses by Myanmar's government.^v

Australia lifted some sanctions against Myanmar in March, allowing the two nations to cooperate in the development of a modern Burmese defense force and humanitarian and disaster relief.^{vi} Prime Minister Julia Gillard stated that the development of the defense relationship will proceed "carefully, on a step-by-step basis."^{vii} Australia's arms embargo will remain in place.^{viii} Australia will also double its aid budget for Myanmar to over \$100 million a year by 2015 to develop the nation's mining industry, support democratic institutions and promote human rights.^{ix} The moves are seen at least in part as an opportunity for Australia's mining and energy businesses to expand into the country.^x Australia will also post a trade commissioner in Yangon to strengthen business ties.^{xi}

Additionally, organizers of the World Economic Forum on East Asia ("WEF") announced this month that this year's event will take place in June in the capital of Myanmar, Naypyidaw. The event will focus on Myanmar's "transformation to an inclusive society and its integration into the region."^{xii} Shushant Palakurthi Rao, the head of Asia for the WEF, stated that the event will "touch on" the ongoing ethnic conflicts in the country^{xiii} and that its objective "is to support what we will call the creation of a moral economy," one that is "about responsible investing to benefit all stakeholders in Myanmar."^{xiv}

2. Civil and Political Rights

A. Election-Related Laws and Acts

Myanmar's Parliament agreed this month to set up a commission to review the pro-military 2008 constitution, "a process that could eventually change the political landscape and allow opposition leader Aung San Suu Kyi to contest the presidency."^{xv} The NLD has argued that the constitution is undemocratic because of provisions that allow the military to control a substantial percentage of the parliamentary seats, in turn disqualifying Suu Kyi from holding the presidency.^{xvi} The lawmakers that proposed the commission, however, say they are reviewing the constitution primarily in the hopes of changing provisions concerning state governments to allow ethnic minorities increased self-rule.^{xvii} President Thein Sein's rival for leadership of the Union Solidarity and Development Party ("USDP"), Shwe Mann, is a supporter of amending the constitution.^{xviii}

This month, Aung San Suu Kyi was re-elected as the leader of Myanmar's opposition National League for Democracy ("NLD") at the end of its first ever party congress. This was particularly important for identifying positions in preparation for the 2015 national elections which could, assuming changes to the Constitution, sweep the NLD into power.^{xix} Suu Kyi was unanimously elected by the NLD's central committee.^{xx} Founded in 1988, the NLD has been

defined by its opposition to military rule and Suu Kyi and other party members spent years in detention after winning a 1990 election.^{xxi}

B. Press and Media Laws/Restrictions

Beginning April 1, private newspapers in Myanmar will be able to publish dailies for the first time since 1964. Previously, state-owned newspapers were the only dailies allowed to print. These decades-long restrictions on private papers were put in place by the military junta to rule out any public dissent. This news was first announced in September, and privately owned newspapers have been awaiting the lifting of this restriction. Under the military regime, “[j]ournalists in Burma were some of the most restricted in the world, subjected to routine state surveillance, phone taps, imprisonment and censorship so intense that independent papers could not publish on a daily basis.”^{xxii} Indeed, “[e]ven photos of Aung San Suu Kyi were barred.”^{xxiii}

Additionally, at the end of March, the Associated Press became the first international news agency to open a permanent bureau in Myanmar since the country emerged from military rule. The office will be home to a staff of six full-time journalists, including award winning correspondent Aye Aye Wi.^{xxiv}

These positive developments for journalism in Myanmar, however, come on the heels of a newly proposed media law announced earlier this month. The bill would bar publishers from printing articles that oppose and violate the military-drafted 2008 constitution and articles that could undermine “law and order and incite unrest.”^{xxv} When this bill was announced, “journalists just getting used to their new era of freedom howled . . . [t]hen, in the latest of many moves that never would have happened under the country’s old military rulers, the government backed off.”^{xxvi} As a result of the backlash, changes in the media law won’t be considered until June, and even then only after government officials consult with members of the media. The current version of the proposed law would replace even tougher (though not enforced) media rules established in 1962 by the government of the late dictator Ne Win, which allow the government to revoke media licenses at any time and carries the possibility of a seven-year sentence for failing to register with the government.^{xxvii}

C. Official Corruption

In mid-March, Parliament’s Upper House Public Account Committee called on Parliament to investigate members of the former military regime suspected of tax evasion and illegal payments during the privatization of state assets in recent years. According to the Committee, state assets were auctioned for far below their value.^{xxviii} Specific examples include central Yangon’s Kandawgyi Hotel—an international hotel sitting on 5.507 acres of land—which was privatized for only \$3.3 million.^{xxix} The committee also expressed concerns regarding missing tax payments from formerly state-owned assets.^{xxx}

Official corruption continues to be a factor in Myanmar’s efforts to expand its telecommunications infrastructure. Even recently, for example, Telecommunications Minister Thein Tun was fired and put under investigation for corruption. In addition, another 50 staff in his department are also under investigation.^{xxxi} If this type of official corruption continues within the telecommunications department, it will be more difficult for foreign companies to work with Myanmar’s government to help to expand the country’s telecommunications infrastructure and network.

D. Miscellaneous

On March 30, Myanmar began planning this month to launch a pilot of its first national census in 30 years.^{xxxii} At the time of the last official census, on March 31 1983, Myanmar's population was 35.4 million.^{xxxiii} Today, it is estimated that the population has grown to well over 60 million, including 135 recognized ethnic groups.^{xxxiv} In the midst of planning for this census, however, there remain a number of logistical and security challenges. For one, it will be difficult to access the conflict-affected areas of the country, in particular those areas where conflict has been ongoing for decades. Additionally, census organizers will also have to work hard at overcoming some residents' longstanding distrust of the state. There are also concerns about politically-motivated meddling from President Thein Sein's political party, the USDP^{xxxv}

3. Political Prisoners

In February, the government announced the formation of the Political Prisoners Scrutiny Committee ("Scrutiny Committee").^{xxxvi} Its goal is to identify any remaining political prisoners and is chaired by President's Office Minister Soe Thein.^{xxxvii} Other participants include representatives of ministries, civic organizations and political parties.^{xxxviii}

Some activists, like Bo Kyi of the Assistance Association for Political Prisoners ("AAPP"), remain skeptical about the Committee's prospects, stating that the government only set up this committee because of pressure from the international community.^{xxxix} It is also the case that conflicts in ethnic areas and sometimes heavy-handed responses to democratic protests suggest to some that arbitrary arrests and convictions are continuing and will continue.^{xl}

Since the formation of the Scrutiny Committee was announced, a civic organization known as Former Political Prisoners ("FPP") has been urging families of people in prison to provide information to assist in drawing up a comprehensive list of remaining political prisoners.^{xli} The Committee met for the first time in the Peace Centre in Yangon on February 23.^{xlii} According to U Thet Oo of FPP, the group plans to submit the list to President Thein Sein.^{xliii} The civic organizations were set to meet with the Scrutiny Committee again on March 16.^{xliv} It is not clear when the president might act on the information provided.^{xlv}

The figures on remaining political prisoners vary by source. Mr. Oo further stated that according to the figures collected by FPP and partner organizations, there are 288 political prisoners around the country.^{xlvi} The U.N. estimates at least 250 remain, while the AAPP states that there are still 400 political prisoners locked up around Myanmar.^{xlvii} As it is hard to gather information from remote areas, FPP and other civic organizations have been appealing for people to come forward with information.^{xlviii}

Activists for political prisoners and lawyers were also set to hold a workshop on March 14 to draft a precise definition of the term "political prisoner."^{xlix} Activists hope that an exact definition could help prevent the arrest of people for engaging in political activities.^l The group will be presenting its definition to the next session of Parliament.^{li}

Even after their releases, former political prisoners continue to face hardships. One example of discrimination is in receiving passports, for which ex-political prisoners must go through a more stringent application process, including the requirement to submit additional documents and potentially being subjected to longer waiting periods.^{lii} Kyaw Moe, a senior official from the Myanmar Passport Issuing Office, stated that "we need to know what they were put in prison for, and we need to get permission from the government before we issue passports to former prisoners" but noted that "[i]f their cases are clear and not complicated, it will not take a long time."^{liiii}

Perhaps the most difficult problem faced by former political prisoners is finding a sustainable livelihood. On top of having missed out on opportunities for education and training, ex-political prisoners are shunned by society and companies for fear of repercussions.^{liv} Organizations like the AAPP, based in Thailand and run by former political prisoners that led the campaign to get prisoners released, are now also working to address the lives of former political prisoners after their release. For example, with the help of the AAPP, a group of friends, all former political prisoners, came up with the idea to run a taxi company and raised a small amount of deposit money for the first three cars.^{lv} The group has now expanded to five and they are setting aside money to bring in a dozen more former inmates by the end of the year.^{lvi} The AAPP has also established a team of counselors in Yangon and Mandalay to help former political prisoners, with support from experts at Johns Hopkins University in the United States.^{lvii}

Another key area of concern for former political prisoners is conditional release. Myanmar's criminal procedure laws allow the attachment of conditions upon release, such as the imposition of a remaining sentence if a condition of release is violated.^{lviii} Some former political prisoners have faced repeated detention since their initial release.^{lix} Recognizing these concerns, the United Nations Special Rapporteur on the Situation of Human Rights in Myanmar reiterated in a recent report (the "U.N. Report") that the release of prisoners of conscience must be without any conditions, and recommended that the Committee look into these issues and propose necessary legislative reforms.^{lx}

4. Economic Development

A. Developments in the Legal Framework of Economic Development

Following the foreign investment law ("FIL") passed in 2012, laws are currently being drafted to reform the country's financial sector. Current drafts would allow foreign banks to own up to 80% of joint ventures with domestic banks and, after two years, 100% direct ownership of local financial institutions.^{lxi} Such laws mirror to some degree the recent relaxing of U.S. sanctions against four major Burmese banks announced in February and discussed in the February 2013 report.

A long-anticipated development was the abolishment of Foreign Exchange Certificates ("FECs"), a U.S. dollar proxy currency.^{lxii} In the past, the government had required tourists to buy several hundred dollars worth of FECs upon arrival in the country and had required purchases of certain imported products to be made in FECs.^{lxiii} As these uses of FECs have not been mandated by the government in several years, and FECs may be legitimately exchanged for dollars, the termination of the currency is mostly a symbol—though one not unwelcome to economists^{lxiv}—of the country's economic reform.

B. Developments in Foreign Investment and Economic Development Projects

Foreign investment continues to flow into Myanmar following the establishment of the FIL. The breadth of new foreign direct investments, exports and imports reported in March is indicative of the country's rapid growth. These deals span industrial, agriculture, consumer products and service sectors.

An Indonesian company Bukit Asam, Malaysia's Mudajaya and Thailand's ITD each recently announced plans to build coal-generated power plants in Myanmar, where most of the population lacks access to stable electricity.^{lxv} Reportedly 15 Indonesian state-owned firms have been exploring industrial investments ranging from tin to cement to fertilizer.^{lxvi} Japan's agriculture ministry struck a deal to purchase rice from Myanmar for the first time since 1968.^{lxvii}

Myanmar's rice exports have surpassed historical peaks and are expected to continue growing.^{lxxviii} Ford Motor Company signed a deal to sell cars and trucks in Myanmar and will open its first showroom in Yangon as early as May 2013.^{lxxix} Chinese taxicab manufacturer Chery Automobile is in talks to fully produce its QQ taxis in Myanmar, where state-owned No 1 Heavy Industry Enterprise currently assembles approximately 1,300 QQ vehicles per year using imported parts.^{lxxx} THAI Smile, the budget line of Thai Airways International, introduced five weekly flights between Bangkok and Yangon beginning March 31.^{lxxxi} A South Korean corporate law firm established an office in Myanmar and other Korean firms are eyeing similar moves.^{lxxxii} Advertising agencies in Bangkok are assessing the feasibility of doing business in Myanmar through acquisitions or joint ventures.^{lxxxiii}

More major investment deals will surely follow. If currently discussed reforms to financial regulations are adopted, foreign investment in Burmese financial institutions through joint ventures could occur as soon as April 2013.^{lxxxiv} The government has also clarified the requirements for foreign telecommunications companies that are bidding for telecom licenses, an action that is expected to spur a rush of bidding.^{lxxxv} Chinese and Indian investors are seeking to develop the country's energy infrastructure and ports, with the expectation that investment could bolster influence over Myanmar's maritime trade.^{lxxxvi} Indian officials are looking to Myanmar's natural gas reserves.^{lxxxvii} Finally, Japanese businesses are poised to enter into substantial infrastructure and manufacturing projects, with the Japanese government helping to finance them with 40-year 0.01% interest rate development loans.^{lxxxviii}

Significant business and legal risks still impede economic development, as has been documented in previous reports. Infrastructure remains poor and manufacturers rely on generators because of an unstable supply of electricity.^{lxxxix} Agricultural and food exports pose substantial health risks due to a lack of food safety regulations.^{lxxx} There are reports that the National Privatization Commission, which oversees the divestiture of government holdings of business assets, has instead sold assets to military-owned companies.^{lxxxii} According to a recent analysis of Myanmar's tourism industry, the supply of tourist accommodations has not kept up with demand, causing prices to skyrocket for sometimes poor quality hotels and leading to an increase in complaints.^{lxxxiii} And with the influx of foreign money, it is little surprise that commercial rents in the country have accordingly increased.^{lxxxiiii}

C. Land Seizures

On March 12th the Latpadaung Investigation Commission, a parliamentary commission chaired by opposition leader Aung San Suu Kyi, released its investigatory report on the Monywa copper mine situation. In November 2012, activists protesting land seizures, environmental issues and health concerns relating to the mine were attacked by police, attracting international attention and temporarily halting construction of the mine.^{lxxxv} The mine project is a joint venture between Wanbao Mining Ltd., a Chinese mining company owned by China North Industries Corp. (aka Norinco), an arms manufacturer, and the Burmese military-owned Union of Myanmar Economic Holdings ("UMEH").^{lxxxvi}

The commission's report called for more transparency regarding the contract between Wanbao and UMEH and noted that the project does not provide locals with jobs, has not properly compensated locals, and violates environmental standards.^{lxxxvii} The report recommended an increase in compensation and environmental monitoring.^{lxxxviii} Nevertheless, the report found that the government should honor the Wanbao contract and continue the project.^{lxxxix} Suu Kyi, defending the report, expressed sensitivities toward future foreign investment.^{lxxxix} The report stated that the copper mine will help the economy and help spur foreign investment, and that permanent closure of the mine would discourage investment from China.^{xc}

Investigating the government's violent crackdown on protestors, the report found that the police used smoke bombs containing phosphorus to fight protestors, faulted the police for not understanding how to deploy smoke bombs properly, and recommended that the police receive training on riot control techniques.^{xcv} However, the report also stated that phosphorus bombs do not generally create a flame.^{xcvi} Discouragingly, the report did not recommend that any disciplinary action be taken against the police or those who authorized the use of force.^{xcvii}

In the aftermath of the report, hundreds of local protesters demonstrated in front of the Wanbao mining office despite warnings from Suu Kyi, who implored mine opponents to not "protest without getting permission from the authorities" and "suggested that the authorities take action if the people protest without getting permission because there must be law enforcement in our country."^{xcviii} The government ordered protesters to leave the area,^{xcv} which they did shortly thereafter.^{xcvi} However, protestors reportedly resumed their protests on March 28.^{xcvii}

Whether the commission's recommendations for more transparency and fair dealings will be heeded is not clear. In an interview with the Wall Street Journal, the president of Wanbao, Chen Defang, stated that his company will increase compensation for local residents whose land was confiscated; build libraries and other local infrastructure in the community; boost employment by helping small enterprises such as brick factories; set up joint ventures with locals to manufacture mine machinery; and provide education.^{xcviii} However, critics such as Ecodev, an NGO studying the environmental effects of industrial development in Myanmar, charge that Wanbao's suggestions are merely "cosmetic."^{xcix} Some residents have vowed not to accept additional compensation.^c Asked about the violent techniques the government had used to crack down on protests, Defang disclaimed any responsibility for the rights of local protestors, stating: "I can't tell [the government or UMEH] what they should do and not do."^{ci} Defang also revealed Wanbao's alarming apathy as to the background of its joint venture partner UMEH: "Why should we be concerned who owns their shares?" he asked, noting further "[w]e didn't focus on that."^{cii}

5. Ethnic Violence

Developments in Myanmar this month continued to demonstrate that one of the greatest threats to the country's remarkable opening is violence between Myanmar's national and ethnic communities. This includes not only violence meted out by the military against national separatist movements, but also inter-communal violence among religious communities. Tension between Muslim and Buddhist citizens, which had previously been isolated to Rakhine province where it was targeted at Rohingya Muslims, spread this month to central Myanmar.

A. Kachin State

The situation in Kachin appears to have eased somewhat, and some roads have been reopened after tentative communications between the KIO and government.^{ciii} After a first round of negotiation in mid-February, the two sides met in mid-March to negotiate a "firm cease-fire"^{civ} and have scheduled another meeting for April.^{cv} Nevertheless sporadic battles continue between the two sides.^{cvi} Recent fighting led to the death of both Kachin and government troops in northern Shan state.^{cvi}

The U.N. Report on the situation in Myanmar discussed issues related to ethnic violence at some length.^{cviii} The report noted that the U.N. was continuing to receive reports of human rights violations in Kachin and northern Shan states, including attacks against civilian populations, extrajudicial killings, sexual and gender-based violence, arbitrary arrest and detention, and torture. The Special Rapporteur noted reports that law enforcement authorities have used torture to extract criminal confessions.^{cix}

The U.N. Report also indicated that 26 people were killed in Kachin between September 2012 and February 2013, and an estimated 2,000 people newly displaced since November 2012.^{cx} In total, 75,000 people were identified as displaced, of which 40,000 are displaced in KIO-controlled areas.^{cxⁱ} Other recent reports suggest 100,000 displaced.^{cxⁱⁱ}

The U.N. Report welcomed the Joint Statement from February 6 issued by the KIO and Myanmar's military after negotiations in China offering a framework to de-escalate the conflict.^{cxⁱⁱⁱ} More generally the report emphasized the need for the government to ensure the protection of minority rights, and highlighted "systemic and endemic" discrimination against minorities in various states.^{cx^{iv}}

Meikhtila Riots and Sectarian Violence between Buddhists and Muslims

As noted, tensions between Buddhists and Muslims erupted into major riots in central Myanmar, where there was violence in several cities, including reportedly Yangon. The U.N. Report, which was published shortly before the violence, was prescient when it noted that the "profound crisis [in Rakhine State] threatens to spread to other parts of the country . . ." and to potentially undermine Myanmar's reform process.^{cx^v}

In Meikhtila, located in the Mandalay region, clashes between Buddhists and Muslims left at least 40 people dead according to one report.^{cx^{vi}} Armed Buddhists were said to have torched the city's Muslim quarters after an argument broke out between a Muslim gold-shop owner and his Buddhist customers.^{cx^{vii}} At least five mosques were burned to the ground and many homes and shops, the majority Muslim-owned, were also destroyed.^{cx^{viii}} The violence began on March 20 and was eventually calmed by the army after President Thein Sein declared a state of emergency.^{cx^{ix}}

Renewed violence broke out in another Mandalay town, Yamethin, after a brawl broke out at a Muslim-owned tea shop on March 23.^{cx^x} Approximately 12,000 people have been displaced by the violence.^{cx^{xi}} In Yamethin, a mosque and 50 homes were burnt.^{cx^{xii}} Unrest was also reported in other towns to the south of Meikhtila.^{cx^{xiii}} There were also reports of fights in certain commercial areas of Yangon, including the Mingalar Market and Yuzana Plaza, and unsubstantiated reports of violence elsewhere in the country's commercial hub.^{cx^{xiv}}

The international response to the violence was swift. Vijay Nambiar, the UN secretary general's special adviser for Myanmar, visited Meikhtila and called on the government to punish those responsible for the violence.^{cx^{xv}} The U.S. State Department issued a travel warning regarding travel to certain parts of Myanmar.^{cx^{xvi}}

There was also a notable domestic response. Myanmar authorities detained several dozen people allegedly involved in the violence.^{cx^{xvii}} President Thein Sein vowed to "to take action against those who led the violence and got involved in it and to expose those who flamed the conflict under the pretext of religion."^{cx^{xviii}} In a national speech, President Thein Sein declared "we must face and overcome these challenges together," and called on Myanmar's citizens "to rise above the old ways of doing things."^{cx^{xix}} A state-run newspaper carried a statement from Buddhist, Muslim, Christian and Hindu leaders expressing sorrow for the loss of life and calling on Buddhist monks to ease tensions.^{cx^{xx}} It remains to be seen whether Myanmar's primarily Buddhist government will take action against Buddhist participants in the violence. As noted below, after violence between Muslim Rohingya and Buddhists in Rakhine state, it was primarily Rohingya who were jailed.^{cx^{xxi}}

B. Rakhine State

An estimated 120,000 Rohingya remain in crowded and inadequate camps according to the United Nations, and are vulnerable in the face of the coming monsoon season, particularly to flooding.^{cxxxii} The U.N. Report expressed concern that without reintegration of the Rohingya refugees into communities there could be a “humanitarian disaster.”^{cxxxiii} The U.N. Report criticized the difficulty that international aid workers have had in reaching the Rohingya camps due to harassment from Rakhine Buddhists as well as the burdens imposed on the Rohingya’s ability to support themselves created by government-imposed restrictions on their freedom of movement.^{cxxxiv} The U.N. Report targeted the Nasaka, Myanmar’s border force, as being implicated in abuses and recommended that the organization’s operations in Rakhine be suspended.

More generally the U.N. Report noted that it would be necessary to reduce the level of “fear, distrust, hatred and anger” that exist between Rohingya and Buddhists in Rakhine through government-led efforts to end the “the stigmatisation of the stateless population in Rakhine State” and through “education, responsible local journalism, and mutually respectful dialogue between community leaders”^{cxxxv} It specifically called for an end to the discrimination in citizenship against the Rohingya pursuant to the 1982 Citizenship Act, and for the amendment of the Citizenship Act.^{cxxxvi} The U.N. Report also called for international access to prisoners from the period of violence in Rakhine, who are mostly Rohingya men and boys.^{cxxxvii}

Not surprisingly, Myanmar’s government takes a different view of the situation. Presidential spokesman U Ye Htut disagreed with the assessment of a looming humanitarian crisis and claimed that “most of the people” have enough food and shelter for the rainy season.^{cxxxviii} A Parliamentary commission reviewing the violence was slated to release a report on March 31, 2013, but that report has now been delayed until April 21.^{cxxxix} The stated bases for the delay is the inclusion of recommendations that go beyond Rakhine State and which require discussion with the Cabinet before public dissemination, as well as the New Year water festival.^{cxli} The U.N. Report, it should be noted, also acknowledged “the Government’s efforts and collaboration with the United Nations and humanitarian organizations to improve the conditions in these camps since . . . August [2012].”^{cxlii}

The Rohingya refugee crisis continued this month. Thai authorities plan to send a vessel of Rohingya migrants back to sea after they were found on an island near Phuket.^{cxliii} The U.N. Report noted that 20,000 Rohingya were expected to flee by sea between October 2012 and April 2013 and that the U.N. Special Rapporteur received reports of the death of hundreds of Rohingya at sea. It called for states to “not push Rohingyas back out to sea or across land borders or arrest them.”^{cxliiii}

In one last interesting development related to the Rohingya, the Internet hacker group Anonymous performed an operation in support of the Rohingya which constituted unleashing a large number of Twitter messages.^{cxliv}

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