

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

FEBRUARY 2014 REPORT

Summary. This report reviews the February 2014 developments relating to human rights in Myanmar. Relatedly, it addresses the interchange between Myanmar’s reform efforts and the responses of the international community.

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I. International Community and Sanctions

The Rohingya issue took center stage with respect to international attention on Myanmar in the past month. Tomas Ojea Quintana met with protesters in western Myanmar's Rakhine State in February during his last visit to the country as United Nations Special Rapporteur on the human rights situation in Myanmar. He was met by protesters who complained that he is biased in favor of "Bengalis," which is the politically charged way that many Rakhine Buddhists derisively refer to Rohingya Muslims who live in Rakhine but are denied Myanmar citizenship.¹

During his visit, Quintana noted that "the situation in Rakhine state might jeopardize the whole (reform) process because of the international and regional implications of the situation."² In January, reports of a mass killing of Rohingya in a village led to demands for an investigation, which were ignored by Myanmar's government.³ Quintana said he will urge the U.N. Human Rights Council to work with the government to carry out a credible investigation if the government's current probe fails to meet international standards.⁴ He suggested that "[a]n investigation conducted with the involvement and support of the international community, including in relation to technical assistance, represents an opportunity to turn the tide of impunity in Myanmar,"⁵ Quintana also met with a Rakhine political group believed to be involved in fomenting violence, and noted that the international community should listen to Rakhine Buddhists' legitimate demands, but that those demands cannot be realized through violence and the loss of life.⁶

The union government, which was also criticized by Quintana, was likewise criticized by a report which identified what were said to be official orders codifying the manner of legal discrimination against the Rohingya.⁷ The government's response was that it "does not remark on baseless accusations from Bengali lobby groups." The union government also took an aggressive stance toward Médecins Sans Frontières ("MSF"), the French medical aid organization that is providing treatment to tens of thousands of people in Myanmar and is the main provider of medical treatment to the Rohingya.⁸ MSF, which noted that it treated victims of the January massacre the government alleged did not happen, was ordered to stop all its work in Myanmar as a result of those and other comments by the organization regarding the situation in Rakhine State.⁹ The U.S. Embassy in Myanmar responded by calling for Myanmar to give aid groups such as MSF unfettered access in Rakhine state. A couple of days later MSF was allowed to resume work, but not in Rakhine State.¹⁰

During his visit, Quintana visited other hotbeds of violence between the union government and ethnic minorities, including Laiza, the rebel-controlled area in northern Myanmar, as well as the area surrounding the contested Latpadaung copper mine and two prisons.¹¹ In response to recent developments, the head of the U.S. government's aid organization USAID, Rajiv Shah, noted that the continuation of U.S. economic assistance to Myanmar depends on it stopping restricting humanitarian access to communities hit by sectarian violence.¹²

Despite the pressure exerted on Myanmar over the Rohingya issue, the country has continued to fulfill its duties as rotating president of ASEAN. For instance, in February,

Myanmar hosted the ASEAN economic integration meetings.¹³ At the same time, local media reported that Myanmar was planning to reduce its planned expenditures on hosting ASEAN meetings out of budget considerations.¹⁴ In early March, Myanmar also hosted meetings of the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation, a regional organization which includes Bangladesh, India, Myanmar, Sri Lanka, Thailand, Bhutan and Nepal. These meetings, held in Naypyidaw, included several heads of state, including outgoing Indian Prime Minister Manmohan Singh.

II. Civil and Political Rights

A. Election-Related Laws and Acts

As the Parliament continues its 2014 session, its agenda continues to be dominated by Constitutional reform debates and other election-related acts in preparation for the upcoming 2015 presidential election. The Parliament established the Joint Committee for Reviewing the Constitution (JCRC) to assess the 2008 Constitution, which had been heavily influenced by the controlling military, and by the January 31, 2014 deadline for submissions of reform proposals, the JCRC had received over 28,000 submissions.¹⁵ Among the submissions received by the JCRC were over 27,000 calls to amend the Constitution's Chapter 1, which deems military participation in national politics a constant objective of the nation in the controversial article 6(a).¹⁶ Similarly, the JCRC received over 5,000 recommendations to amend the Constitution's Chapter 12, which contains the requirement that constitutional amendments be approved by more than seventy-five percent of the Parliament; because twenty-five percent of Parliament seats are reserved for military officials, this super-majority voting provision effectively grants veto power to the military.¹⁷ Parliament likewise considered an amendment to Article 59(f) of the Constitution, which prohibits anyone with close family members who owe allegiance to a foreign power to run for president.¹⁸ The section was added to the Constitution in 2008 and is widely perceived as aiming to bar Aung San Suu Kyi, whose sons are naturalized British citizens, from a presidential candidacy.¹⁹

Ultimately, however, the JCRC shied away from implementing the most significant of the proposed constitutional reforms. The committee advised against modifying Article 59(f), which in effect will continue to disqualify Aung San Suu Kyi from the presidency, and will likely mean continued U.S. sanctions on Myanmar after the U.S. Congress conditioned the removal of remaining sanctions on Myanmar reforming its democratic process.²⁰ The JCRC likewise declined to propose changes to the constitution's provisions guaranteeing the military one quarter of all parliamentary seats and requiring approval by seventy-five percent of Parliament for constitutional amendments.²¹ Left unchanged, these constitutional provisions will continue to ensure that the Myanmar military holds an effective veto power over constitutional amendments.

The JCRC's proposals are not binding on the Parliament, and are perhaps to be expected given that 75 of the 109 members of the JCRC are from the ruling Union Solidarity and Development Party or the military.²² The committee's inaction is nevertheless a disappointing response to the proposed amendments that carried the potential of significant reform.

B. Press and Media Laws/Restrictions and Freedom of Association

Although restrictions on the press have loosened since 2011, Myanmar citizens continue to struggle against instances of media censorship. In recent months, independent local media have alleged that state-owned newspapers The New Light of Myanmar and The Mirror have altered advertisements to remove references to human rights and government corruption. Editors and writers from publications such as Pae Tin Than, the Human Rights and Democracy Journal, and Mawkun magazine have reported similar instances of the state-owned newspapers removing criticism of the Myanmar government from their paid advertisements, while The New Light of Myanmar and The Mirror have responded that the alterations are due to the publications' advertising policies.²³

The trial for four journalists and the CEO of Yangon-based Unity Journal, who were detained by the police after the newspaper reported the existence of an alleged chemical weapons factory in the Magwe region of central Myanmar, began on February 14, 2014.²⁴ The journalists are charged with publishing state secrets and have been denied bail. The report described the alleged chemical weapons factory in detail, including photographs of the facility, and reported that Chinese technicians and officials had been seen visiting the facility.²⁵ The issue of the Unity journal containing the report has reportedly been pulled from shelves by local authorities.²⁶

C. Official Corruption

Opposition politicians have raised concerns that a new anticorruption commission will not be up to the job of tackling Myanmar's endemic graft, after the President's Office nominated a former military major general to chair the body. In a letter to Parliament on February 20, 2014, the office of President Thein Sein recommended the appointment of 15 commissioners to sit on the new body that will enforce the Anticorruption Law, passed in July 2013.²⁷

The nominees included ambassadors, former civil servants, lawyers, auditors and lawmakers, as well as five former military generals, including the nominee for chair: former Maj-Gen Mya Win.²⁸

His biography said that former Maj-Gen Mya Win was in the 16th intake of Myanmar's elite Defense Services Academy. Now aged 62, he has visited China 10 times and was the commander of the Myanmar Army's Artillery Corps until he retired from the military in 2012, the biography said. Mya Win appears on a list of people that remained sanctioned by Australia after the country in May 2012 reduced its list of those sanctioned for their association with the military regime.²⁹

III. Political Prisoners

On February 27, 2014, the United States spoke about the annual State Department Human Rights Report. Among many topics, the US noted some progress in Asia, including political prisoner releases in Myanmar "as it shifts from authoritarian rule..."³⁰ This recognition of progress was in contrast to other remarks on Myanmar, including statements that serious abuses against stateless Rohingya Muslims threaten Myanmar's progress on human rights.³¹

A group of former political prisoners in Myanmar are also learning from certain counseling methods developed in the United States. In early February, this small group in Yangon

underwent a 12-day course about counseling methods for use in countries around the world where communities have experienced high levels of trauma but lack resources for treatment.³² This evidence-based psychotherapy approach is known as Common Elements Treatment Approach (“CETA”).³³ Many former political prisoners face challenges reintegrating back into their communities. They say the government has offered no help and that mental health services are not widely available.³⁴

There has also been some press this month on whether former political prisoners are being denied higher education opportunities.³⁵ Phyo Phyo Aung, a former political prisoner, was imprisoned for more than four years for her involvement in the popular uprising of 2007.³⁶ When she was freed, she found out that she was not allowed to finish her studies, stating “they are afraid I will do politics, or organise the students.”³⁷

IV. Economic Development

A. Developments in the Legal Framework of Economic Development

The Myanmar Development Resource Institute’s Centre for Economic and Social Development and The Asia Foundation jointly produced a report in February that analyzed the role of local governments and their impact on small- and medium-sized businesses and their development.³⁸ The report found that because local government offices have responsibilities that still fall under the umbrella of national government, actual authority is somewhat ambiguous.³⁹ Small- and medium-sized businesses that must satisfy – among other things – licensing, permit, and inspection requirements set by those offices face confusion and delays.⁴⁰ The report found that the reduction of the ensuing bureaucratic red tape is key to facilitating the growth of these businesses.⁴¹ Small- and medium-sized businesses account for 99.4% of businesses in Myanmar.⁴² Recognizing the importance of private business, President Thein Sein said last month that “economic development for the country is possible only when the private enterprises that constitute 90 percent of the country’s economy develop,” urging business and government to work together for growth.⁴³

According to the World Bank, Myanmar remains one of the most difficult places to do business, at 182nd out of their list of 189 countries.⁴⁴ Among the hardships faced are procedural requirements that take over two months to complete and up to a year to approve, including the gathering and submission of numerous letters of recommendation, licensing applications, and review and inspection at several levels of government.⁴⁵ The government intends to reduce some of the restrictions by next month, according to Tin Maung Than, director of the Myanmar Development Resource Institute’s Centre for Economic and Social Development.⁴⁶

Business transparency reform may be assisted by a push from the foreign-funded organization Myanmar Center for Responsible Business’s Transparency in Myanmar Enterprises initiative.⁴⁷ The organization plans to launch an index later in the year that publishes indicators of Myanmar corporations’ commitment to transparency, including the degree to which they reveal corporate structure and ownership.⁴⁸ The initiative is an attempt to encourage locally-owned corporations to reveal information that foreign corporations are already required to make public under their home countries’ reporting requirements.⁴⁹

Meanwhile, despite reforms on the political and economic fronts over the last several years, some analysts are concerned that recent regressions may signal a stalling of the country's recent "opening up."⁵⁰ In particular, the failure to resolve land seizures and return farmland to its original owners, the difficulty of farmers to obtain affordable credit, and general lack of development of the agricultural sector – which accounts for 65% of the population's livelihood – has caused critics to question whether the last several years' reforms will continue.⁵¹

B. Developments in Foreign Investment and Economic Development Projects

Foreign investment in Myanmar for the fiscal year ending this March looks to be about triple that of the previous year's, according to a new report.⁵² In spite of this, foreign investment through the end of February is at \$3.6 billion, with approximately one-fifth going into telecommunications and half into manufacturing.⁵³ The manufacturing sector will be boosted by the establishment of the Thilawa special economic zone that is being developed outside Yangon and is expected to be available by the middle of 2015.⁵⁴ The zone is being developed with Japanese help, including a consortium of large Japanese businesses, and a similar consortium of domestic companies.⁵⁵ The zone is expected to eventually have facilities and infrastructure including a deep-sea port and a power plant.⁵⁶

Among the Japanese companies intending to take advantage of the Thilawa special economic zone are automotive manufacturers Toyota and Suzuki, as well as French auto parts maker La Farge.⁵⁷ Suzuki is looking to move its assembly operations from its current location in Yangon to the new manufacturing area, while Toyota has also announced that it will establish a dealer in Yangon.⁵⁸ The two Japanese auto companies may be joined by a third: Nissan also announced plans to establish a plant in the country by 2015.⁵⁹ More Japanese companies are expected to invest in Myanmar, with Japan currently ranked 11th in investment in Myanmar.⁶⁰

Provider of consumer spending and television viewership analytics company Nielsen has announced a joint venture with Myanmar Marketing Research & Development Co., Ltd. to provide research services and solutions to companies invested in or looking to invest in the country.⁶¹ "With a population of over 56 million and the second largest land mass in ASEAN, Myanmar represents one of the last remaining untapped frontiers for our clients," said Suresh Ramalingam, Nielsen's Managing Director of Thailand, Vietnam and Myanmar Cluster.⁶² The amount spent on advertising has increased more than tenfold over the last decade.⁶³

Toward the end of the month, the Oxford Business Group, a U.K.-based consulting group, launched a collaborative report with Myanmar's government aimed at providing foreign investors with information and analyses of the country's business sectors and promoting further foreign investment.⁶⁴ The report, which will cost almost \$200 for a copy, is expected to reduce foreign investors' apparent anxiety about investing in the country, which has become more inviting to outside money since the dropping of sanctions and establishment of economic and political reforms.⁶⁵

C. Land Seizures

50 Tanintharyi residents staged a protest in February against the military seizure of farmland in the region.⁶⁶ According to the protestors, the military seized a total of 900 acres of land for the construction of a base and military training ground, but despite holding the land for over 20 years have only build on 30 acres.⁶⁷ The rest, says one protestor, was rented out for private business.⁶⁸

Farmers in Mandalay region ploughed land seized by the government in the 1980s.⁶⁹ The land, 600 acres in total, was seized in 1986 and continues to be held by the government, despite petitions over the last 28 years to which farmers say no response was received.⁷⁰ The farmers' action bears similarity to one staged in the region last December in which farmers began clearing confiscated land in an attempt to reclaim it.⁷¹ Four of the farmers involved in the recent move have been arrested.⁷²

Protestors generally continue to face severe repercussions for protesting seized land, in the form of charges for trespass or violation of Section 18 of the Peaceful Assembly and Procession Law.⁷³ The charges continue to draw criticism as evidence of ground-level policies failing to live up to the promises made at higher levels of government. Six other farmers were jailed in February in connection with another land grab case in Bago region.⁷⁴

Meanwhile, Vice President Nyan Htun added to the voices calling for a return of seized lands, in addition urging the government to explain to the public their decision not to return certain lands and to demonstrate the use for which those lands were seized.⁷⁵ Of over 500,000 acres of land seized according to a report by the Parliamentary Land Investigation Commission, Nyan Htun said that over 150,000 acres will soon be returned.⁷⁶ According to the Commission, the rest of the land has already been earmarked for national infrastructure projects, and that original owners have received compensation already.⁷⁷ Parliament's Farmland Investigation Commission directed the government this month to resolve land seizure cases by September of this year (June for seized rice paddies).⁷⁸

The military returned some land to its original owners this month, although the areas returned represent a tiny fraction of the total seized. 206 acres were ceremoniously returned to a total of 39 farmers in Myanaung township, Ayeyarwady region, with approximately 400 acres of forested and vacant land also returned.⁷⁹ 1,600 acres remain in military hands.⁸⁰ More land is expected to be returned across Ayeyarwady region, with 1,600 acres to be returned in March according to Captain Paw Nyein of the army's Southwestern Command.⁸¹ At least 5,000 acres had been seized across the region.⁸²

V. Ethnic Violence

A. Peace Talks

In President Thein Sein's monthly radio address, he urged lawmakers to take the outcome of peace negotiations with ethnic minority rebel groups into account when amending the country's constitution.⁸³ He noted that such issues might include federalism, equality, self-determination, ethnic rights and preservation of ethnic minority cultures and languages. In a speech later in the month, the president called for ethnic groups to "march toward a peaceful,

modern and developed nation through a federal system.”⁸⁴ His statements appear to represent a significant shift in the policies of his administration, which has long insisted that Myanmar be a non-federated union. Meanwhile, members of Parliament called on the president to include their participation in the peace process.⁸⁵

Peace talks among the government and armed ethnic groups have been postponed until March.⁸⁶ Continued fighting in northern Myanmar with Kachin and Shan rebel groups, discussed below in this report, has caused some ethnic leaders to question whether the government is committed to the goal of a nationwide ceasefire.⁸⁷

B. Kachin

In early February, government troops killed several Kachin troops and overtook a Kachin Independence Army (“KIA”) outpost near the KIA headquarters of Laiza.⁸⁸ According to a KIA spokesperson, the government attacks were conducted under the pretext of a government crackdown on illegal logging.

The latest fighting in Kachin State has prevented people displaced from their homes by fighting from returning.⁸⁹ An estimated 120,000 people have been displaced by the conflict between the Myanmar government and KIA since a ceasefire between the parties broke down in mid-2011. The conflict in Kachin State has been the subject of investigation by Tomas Ojea Quintana, the United Nation Special Rapporteur for Human Rights in Myanmar, who visited Kachin State in February and inquired about the conditions for civilians.⁹⁰ Quintana also expressed concern about the KIA’s recruitment of child soldiers.⁹¹

C. Shan

Fighting also intensified in Shan State in February. Government troops and Shan State Army forces exchanged fire in Mong Ton Township in late February.⁹² Following those clashes, government troops captured two key outposts of the Shan State Army-North (“SSA-N”) in a two day offensive in the in Kyethi and Mongshu townships.⁹³ An SSA-N colonel stated that the attacks will “hinder the trust-building process” between the government and SSA-N, who signed a ceasefire in 2012.⁹⁴ The SSA-N claims there have been more than 100 clashes with the government since the ceasefire was signed.

Additionally, ethnic Palaung in Shan State, also known as Ta’ang, have reported recent fighting in the region between the Ta’ang National Liberation Army (“TNLA”) and the government.⁹⁵

The Shan Human Rights Foundation released a report indicating that dam projects in Shan State’s Salween River could disrupt the peace process.⁹⁶

The Irrawaddy reported that the United Wa State Army, the largest ethnic armed group in Myanmar, has sent 30 soldiers to receive pilot training in China.⁹⁷ Karen and Karenni sources

claim that the Wa are in possession of two helicopters, as well as surface-to-air and air-to-air missiles and a weapon manufacturing facility that can produce AK-47 guns.

D. Violence Against Muslims

Fortify Rights, a Thailand-based human rights NGO, released a report on February 25, 2014 disclosing leaked government documents that demonstrate explicitly discriminatory and abusive policies against Rohingya Muslims in Myanmar.⁹⁸ The report provides evidence of government policies setting forth:

- Population control – Documents set forth a two-child policy that is enforced in northern Rakhine state. Government officials are instructed to force Rohingya women to breastfeed infants in the presence of soldiers if they suspect someone being substituted in the family registry, in order to confirm the women are the birth mothers.
- Marriage restrictions – A series of orders sets forth at least ten requirements for Rohingya to apply for permission to marry. The orders require Rohingya to present themselves to government officials several times, alongside their parents and witnesses. The application requires a photograph of the couple, in which men must be clean shaven and women may not wear a headscarf. These restrictions also apply when the couple appears before officials. To marry Rohingya, officials demand bribes as high as \$100 USD, a sum prohibitively expensive for most Rohingya. Additional approvals and payments are required to marry someone from a different township. Widows, widowers and divorcees must wait three years before remarrying.
- Restrictions on movement – Rohingya cannot travel within or between townships without authorization, which could require seven days' prior notice and an application that includes marriage certificates and household registrations.
- Restrictions on construction of houses of worship – Officials are instructed to punish people who fix, expand or build a religious building without a permit.

A spokesperson for President Thein Sein called the report “baseless accusations from [a] Bengali lobbying group.”⁹⁹

The government also cuts off vital services to Rohingya people. In February, the government took the extraordinary step of suspending all operations of medical aid organization Médecins Sans Frontières (“MSF”), also known as Doctors Without Borders.¹⁰⁰ The dispute arose when MSF stated that it treated 22 people injured following mob violence by Buddhists against Muslims in Maungdaw Township, Rakhine State.¹⁰¹ The government denies that such violence took place. The government also claimed that MSF had run a clinic for newborns against the wishes of the government, deployed more foreign staff than it was allowed to, and failed to stay impartial and neutral.¹⁰² The MSF treats approximately 30,000 HIV and AIDS patients and more than 3,000 tuberculosis patients in Myanmar. The government later allowed MSF to resume part of its activities in the country, including HIV/AIDS treatment in Yangon and Kachin and Shan states.¹⁰³ However, the government continued to suspend MSF’s activities in Rakhine State, the area in which most vulnerable Rohingya are located.

According to recent reports by the U.N. Special Rapporteur Quintana and the International Commission of Jurists, the Myanmar and Rakhine State governments intimidate lawyers in Rakhine State to prevent them from providing legal counsel to Muslim defendants.¹⁰⁴

Quintana criticized a government investigation into January's violence against Muslims in Rakhine State, which resulted in the "brutal killing of men, women and children, sexual violence against women, and the looting and burning of properties."¹⁰⁵ Rakhine State officials and the Union government's Myanmar Human Rights Commission have said no Rohingya people were killed or injured. Quintana added that "there has never been an independent investigation of any incident" in Myanmar.¹⁰⁶

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