

# STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

## JANUARY 2014 REPORT

**Summary.** This report reviews the January 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. This month’s report includes a section addressing the draft Association Registration Law which raised concerns, particularly during the summer of 2013, regarding potential repression of Myanmar civil society.

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

On January 1, 2014, Myanmar assumed the chairmanship of the Association of Southeast Asian Nations (“ASEAN”). In 1997, when Myanmar joined ASEAN, the country’s membership was met with stiff resistance because of its abhorrent human rights record under an oppressive military dictatorship. In 2006, Myanmar was encouraged to forfeit its chairmanship by ASEAN out of fear that the United States and other western nations would boycott the ASEAN Regional Forum due to the bad publicity such a boycott would garner. At the time, Aung San Suu Kyi was under house arrest, thousands of political prisoners were jailed, and political and economic sanctions by the U.S. and European Union were firmly in place.<sup>1</sup>

Becoming chair of ASEAN has helped Myanmar gain political legitimacy and offers the state the opportunity to be viewed as a responsible member of the international community. Myanmar faces numerous challenges as it begins its chairmanship. Given its decades-long isolation, the decay of its educational system, and government constraints on intellectual inquiry, Myanmar is experiencing a huge human resources deficit which will challenge the government to cope with the 1,100 meetings it is required to host as ASEAN chair, including the East Asian Summit, which in all likelihood President Obama will attend. In addition to the shortage of skilled civil servants, Myanmar’s infrastructure is weak. Only 26 percent of the country’s population has access to electricity, and only 2 percent has access to the internet. It’s clear that Myanmar’s government recognizes these challenges, and that President Thein Sein and his supporters are doing their best to address them. But how successful this or any future government will be in addressing these challenges is unclear.<sup>2</sup>

If Myanmar is able to successfully chair ASEAN in 2014, it will boost the country’s national pride as well as the internal legitimacy of the government of President Thein Sein leading up to the 2015 national elections. However, Myanmar will be targeted for criticism on a number of issues, most notably the Muslim Rohingya problem that is an irritant in intra-ASEAN relations, with many Rohingya fleeing Myanmar for other Southeast Asian states, as well as Bangladesh. Further, the government’s cease-fires with groups representing the most populous ethnic minorities, the Karen and Shan, are fragile. Until Myanmar’s government becomes more successful in pursuing ethnic reconciliation and preventing sectarian violence, its prospects for long-term stability and democratization will continue to remain clouded.<sup>3</sup>

## **II. Civil and Political Rights**

### **A. Election-Related Laws and Acts**

As the Myanmar Parliament continues its 2014 session, its agenda will continue 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 country’s 2008 Constitution, which had been heavily influenced by the controlling military. By the January 31, 2014 deadline for submissions of reform proposals, the JCRC received over 28,000 submissions.<sup>4</sup> Among those 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.<sup>5</sup> 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.<sup>6</sup>

Parliament will likewise consider an amendment to Article 59(f) of the Constitution, which prohibits anyone with close family members who owe allegiance to a foreign power from running for president.<sup>7</sup> The section was added to the Constitution in 2008 and is widely perceived as aiming to bar Aung San Suu Kyi, who's sons are naturalized British citizens, from a presidential candidacy.<sup>8</sup> U.S. Ambassador Derek Mitchell has criticized Article 59(f), lamenting the fact that “someone who is the leader of a major political party, chair of a major parliamentary committee, who has sacrificed herself for decades as a courageous patriot committed to the success and strength of the country, someone clearly very popular with the people, will be excluded from presidential contention” if the provision is not amended.<sup>9</sup> NLD lawyer Ko Ni echoed Ambassador Mitchell's sentiment, stating that “the president is elected by the people [and] Article 59(f) blocks people from voting for the person they want to vote for.”<sup>10</sup> Nevertheless, the provision has found support even among the pro-democracy movement in Myanmar. Activists staged an event in early February 2014 to support Article 59(f), with Parliamentarian Khin Wine Kyi stating the group's opinion that “politics should not serve one particular person, but all people . . . . Changing the constitution for the benefit of one person equals corruption.”<sup>11</sup>

While parts of Parliament's agenda show encouraging signs of democratic progress, other acts up for debate this session remain discriminatory and counter to democratic ideals. Parliament will vote on one bill aimed at restricting the rights of temporary ID holders to form political parties or vote.<sup>12</sup> The bill is widely viewed as an effort to exclude Muslim Rohingya from the political process, as temporary IDs, or “white cards,” were widely distributed to the Rohingya prior to the 2010 elections.<sup>13</sup>

As the debates over constitutional and democratic reform will continue and likely intensify over the course of 2014, President Thein Sein encouraged lawmakers to consider the demands of various ethnic groups in order to continue to strive to end decades of armed conflict and civil war.<sup>14</sup>

## **B. Press and Media Laws / Censorship**

Although restrictions on the press have loosened since 2011, Myanmar's citizens continue to struggle against instances of media censorship. In early January, the publication “People Image Journal” faced pressure from President Thein Sein's administration and the Ministry of Home Affairs for publishing a piece which was critical of President Thein Sein.<sup>15</sup>

On January 7, 2014, over 200 Myanmar journalists rallied in Yangon to protest against the imprisonment of one of their colleagues who had been working on a story about corruption.<sup>16</sup> Journalist Naw Khine Khine Aye Cho, also known as Ma Khine, was sentenced to three months in prison in late 2013 on charges of defamation, trespass and use of abusive language. Ma Khine had been sued by a local attorney after an argument that allegedly took place between her and the attorney while she was seeking comments on an alleged video piracy case in late October, 2013.<sup>17</sup> Ma Khine is believed to be the first journalist sentenced to prison under censorship laws since President Thein Sein began his administration.<sup>18</sup> As protestors in Yangon marched with signs and shirts bearing slogans that proclaimed the importance of the freedom of press to a

democracy, activists elsewhere in Myanmar were prohibited from organizing a protest of Ma Khine's imprisonment, with local authorities claiming that the protests would create unwanted conflict.<sup>19</sup>

Also in January, four journalists and the CEO of Yangon-based Unity Journal were detained by police after the newspaper reported the existence of an alleged chemical weapons factory in the Magwe region of central Myanmar.<sup>20</sup> 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.<sup>21</sup> The issue of the Unity journal containing the report has reportedly been pulled from shelves by local authorities.<sup>22</sup> This report will monitor this issue closely in coming months.

### **C. Official Corruption**

As further described in the sections on economic development, *infra*, the World Bank last month announced a US\$2 billion aid package meant to improve Myanmar's health care and electrical infrastructure, while at the same time cautioning that the money would be withheld if any of the projects were found to involve corruption.<sup>23</sup> The World Bank has also put their support behind the development of Myanmar's telecommunications sector, although there are concerns that government corruption could lead to the infringement of personal privacy and security rights.<sup>24</sup> Jim Yong Kim, the President of the World Bank, said that the use of funds provided for the electricity and health care projects would be carefully monitored, and those projects would be shut down if necessary, as occurred with a 2012 Bangladesh project that suffered from corruption.<sup>25</sup>

The World Bank ranks Myanmar 182 out of 189 of countries for doing business, and Transparency International ranks it 157 out of 175 for corruption.<sup>26</sup> According to Samantha Grant, Transparency International's regional coordinator for Southeast Asia, "[t]he aid and development community can play a role" in improving governmental corruption and transparency, both by directing funds toward anti-corruption initiatives and by pressuring aid recipient governments generally.<sup>27</sup>

Not long after being released from prison,<sup>28</sup> activist Htin Kyaw held a one-man protest in Yangon against judicial corruption, after receiving approval to do so.<sup>29</sup> He said he was staging the protest "to publicize our concrete knowledge of the corruption cases of some district judges[.]"<sup>30</sup> Many of Htin Kyaw's countrymen have voiced similar objections. Earlier in the month, the Judicial, Legal Affairs, Complaints and Pleas Scrutiny Committee revealed that it had received over 10,000 complaint letters, with some nine-tenths complaining of judicial corruption.<sup>31</sup> Among the complaints are allegations of sentence-fixing, such as a defendant—who claims she was wrongly accused—complaining about allegedly being required to pay judges in order to receive a lighter sentence, and a plaintiff whose lawsuit was dismissed when he declined to pay a sum to the judge.<sup>32</sup>

### **D. Association Registration Law**

Paragraph 354 of Myanmar's 2008 Constitution, which relates to the right of freedom of association, states:

Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality:

- a) to express and publish freely their convictions and opinions;
- b) to assemble peacefully without arms and holding procession;
- c) to form associations and organizations; [and]
- d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

While the conditional clause in the first sentence provides a potentially expansive excuse for infringement of the freedom of association, at least nominally the right of freedom of association is constitutionally protected in Myanmar.

Critics, however, have noted that some of Myanmar's laws are inconsistent with the right of freedom of association. For example, under the long-standing Unlawful Associations Act, an association that "interferes or has for its object interference with the administration of the law and with the maintenance of law and order" or that "constitutes . . . a danger to the public peace" may be deemed illegal.<sup>33</sup> The Unlawful Associations Act may also be used to prosecute persons on the grounds of them being members or having contact with illegal organizations. Those found guilty of either offence can be sentenced to imprisonment for up to three years and fined. Managers of such associations risk a higher sentence of up to five years.<sup>34</sup> This law remains in effect, although many of the recently pardoned political prisoners that have been released by Myanmar's government had been convicted of high treason or other offenses under the Unlawful Association Act.<sup>35</sup>

Likewise, in the summer of 2013, the government of Myanmar suggested a new draft law relating to associations, presently known as the Association Registration Law, which would have tightened the control over all civil society organizations ("CSOs"), regardless of whether they were held to be unlawful. The original draft law would have required organizations to register with a national military-chaired government committee and obtain a "formation certificate" prior to operating.<sup>36</sup> Although there were some exceptions, critics noted that the exceptions were narrow and did not apply to CSOs, and furthermore that many necessary acts, such as the initiation of judicial proceedings, required registration.<sup>37</sup> The military-chaired committee could also have terminated organizations' certificates and could have done so on broad grounds, such as that the organization had been "found to be acting in ways or for an objective that are different from those at the time of formation or registration."<sup>38</sup> The original draft law would have permitted the imposition of prison sentences and fines against members of unregistered organizations.<sup>39</sup>

The early version of the law was strongly criticized for subjecting civil society groups to arbitrary decisions without appeal.<sup>40</sup> Indeed, both Burmese and international activists and civil society groups expressed their concerns that the draft Association Law would threaten CSOs' ability to participate in social and political development.<sup>41</sup> The UN special rapporteur on the human rights situation in Myanmar, Tomás Ojea Quintana, urged parliament to postpone passing

the draft law, saying in August: “With this bill, the Government is setting up a system of registration for civil society which enables them to arbitrarily clamp down on legitimate organizations. The government has to change its mindset on registration procedures if it is to create an environment in which civil society can thrive.”<sup>42</sup>

The criticized provisions were initially included in the draft versions of the law despite the fact that CSOs had been consulted from early in the drafting process, which started in 2012.<sup>43</sup> Two drafts of the Association Law were initially produced. The first draft was released on July 27, 2013 through publication by the Public Affairs Management Committee in a state-run newspaper.<sup>44</sup> After a limited two-week review period where the law received much criticism from CSOs, Myanmar’s lower house of parliament released an amended second draft on August 19, 2013, renaming the legislation the “Association Registration Law.”<sup>45</sup>

Fortunately, subsequent discussions between Burmese CSOs and ruling party lawmakers led to an agreement on a more “progressive” Association Registration Law.<sup>46</sup> Indeed, CSO representatives were invited to a joint meeting with lawmakers from both houses of Myanmar’s Parliament, the home affairs minister and other officials.<sup>47</sup> The version of the law that was agreed to, which is now the only version being debated, provides for completely voluntary registration procedures, conducted according to a simple process, and fully eliminates criminal penalties.<sup>48</sup> Under this “progressive” version of the law “[a]n organization whose registration has not been approved shall receive the reasons in the written document and also has the right to appeal.”<sup>49</sup> The International Crisis Group (“ICG”) has noted that the newest version “is far less restrictive and addresses the majority of civil society concerns.”<sup>50</sup>

The International Center for Non-Profit Law (“ICNL”), which prepared an analysis of the revised draft Association Registration Law and provided technical assistance to local partners, noted that the resulting version of the draft law, which was released on November 4, 2013, “reflects substantial improvement over prior versions of the draft Law” from the summer of 2013.<sup>51</sup> Specifically, the ICNL noted approvingly that the November version:

Defines an “association” through terms more consistent with international good regulatory practice, affirming the right to pursue any “common interest or public interest.” (Article 2(h));

Strengthens the recognition that registration is voluntary, not mandatory . . . .;

Continues to envision a decentralized registration system, but relaxes territorial limitations on the scope of associations’ activities. (Articles 9-12);

Continues to envision a 30-60 day time period for government review of registration applications, depending on the territorial scope of the applicant. (Article 8);

Provides domestic associations with the right to appeal a denial of registration, in contrast to the August draft law. (Article 8); [and]

Continues to affirm that all organizations currently registered under the 1988 Association Law shall be deemed registered under the draft Law. (Article 37)[.]

Observers have noted that the evolution of the Association Registration Law is an example of the fact that Myanmar's "nascent legislature has proved more vibrant and influential than many expected."<sup>52</sup> The ICG noted that while "[i]nitial drafts [of the Association Registration Law] were considered by local organisations and international experts to be highly restrictive and far short of global best practice" there was a "legislative willingness to consult with those local groups and listen to expert advice." As a result, "[t]he latest version is far less restrictive and addresses the majority of civil society concerns."<sup>53</sup> The ICG noted further that Myanmar is experiencing the emergence of a "lawmaking process with flaws" but one in which lawmakers are generally "willing to consult with stakeholders and make use of expert inputs[,] and in which "[a]uthoritarian reflexes and concerns in some quarters about opening up too far, too fast are now tempered, though not erased, by other considerations, such as public demands for consultation and a desire to meet international standards."<sup>54</sup> This is reflected by the evolution of the draft Association Registration Law because it shows how Myanmar lawmakers "[w]ith a heavy workload and little technical and research support . . . rely on reflexes developed under decades of military rule," using "as reference points old domestic laws (mostly developed by the colonial power or the military regime) or laws from elsewhere in the region that often fall far short of international best practice."<sup>55</sup> Under this interpretation, "[t]he association law experience suggests that problems relate to the challenges of an authoritarian legacy, rather than authoritarian intent on the part of the legislature or executive."<sup>56</sup>

### III. **Political Prisoners**

Certain individuals and groups have continued to criticize President Thein Sein in the past month for the government's treatment of political prisoners, arguing that the government has failed to uphold its promise to release all political prisoners by the end of 2013. Bo Kyi, founder and joint-secretary of the Assistance Association for Political Prisoners in Burma ("AAPP-B") has indicated that the Committee for Scrutinizing Remaining Political Prisoners will continue work through 2014, despite government claims that all political prisoners were released by December 31 of last year.<sup>57</sup> He told the press recently that "we need to continue because there are still political prisoners in Burma."<sup>58</sup> The AAPP-B, which has tracked political prisoners in Myanmar since 2000, estimates that approximately 46 political prisoners remain behind bars, with around 70 others awaiting trial, and another 148 sentenced during 2013 under catch-all laws that allow the government to lock up dissidents.<sup>59</sup> Relatedly, on January 3, 2014 the Office of the United Nations High Commissioner for Human Rights criticized Myanmar's government for not releasing human rights activists Dr. Tun Aung and Kyaw Hla Aung, detained in June 2012 and July 2013 respectively.<sup>60</sup>

Separately, the Former Political Prisoners Society (FPPS) and AAPP-B are attempting to compile the first comprehensive list of political prisoners who were jailed in Myanmar from the military coup in 1962 through 2013, and to record information about their experiences behind bars.<sup>61</sup> Tun Kyi, a member of the FPPS, told The Irrawaddy that "[t]he only aim of the data collection is to record all political prisoners in history because we need to at least recognize and honor the sacrifices they made as activists for the country."<sup>62</sup>

#### IV. Economic Development

##### A. **Developments in the Legal Framework of Economic Development**

On January 8, 2014, a UK-based global risk analytics firm, Maplecroft, released its annual Legal and Regulatory Environment Risk Atlas report for 2014, in which it indicated that the strengthened laws and regulations and continued government reform in Myanmar made it the world's most improved country for doing business.<sup>63</sup> According to the report, Myanmar made progress in 2013 with tackling corruption, weak rule of law, respect for property rights and controls on corporate governance.<sup>64</sup> Legal advisors in Myanmar credit the promulgation of new laws and regulations in Myanmar for its "most improved" ranking.<sup>65</sup> Kelvin Chia Partnership's Yangon director Cheah Swee Gim noted that in the past two years Myanmar has passed 75 new laws, including the Myanmar Citizens Investment Law, the Foreign Exchange Management Law and the Central Bank of Myanmar Law, all of which "have been promulgated or updated with the intention of facilitating business and investment in Myanmar."<sup>66</sup> A new foreign investment law with revised foreign direct investment limits, improved land leasing rules and accession to the New York Convention on recognition and enforcement of arbitral awards was also credited with creating a more predictable business landscape for international investors in 2014.<sup>67</sup>

Despite these improvements, however, the report also showed that Myanmar remained the fifth riskiest country in the world to do business out of 173, with a rating of "extreme."<sup>68</sup> A Maplecroft senior analyst said in a press release that "the country's current lack of effective institutions of governance still raises serious concerns over regulatory enforcement, and it remains a challenging place to do business." But he also forecasted that if Myanmar sustains its current trajectory it may move out of the "extreme risk" category in the next 1-3 years.<sup>69</sup> Jean Loi, managing partner at legal and tax firm, VDB Loi, said that in terms of legal and regulatory framework, Myanmar did not present any higher risk for investors than its Southeast Asian neighbors.<sup>70</sup> "There is a raft of new laws being approved and implemented slowly. Investors can have an entity established in Myanmar within three days. It still takes around one to two years in Laos."<sup>71</sup> While the legal and political framework remained the most significant risk to investors looking to Myanmar, Loi said there were already changes in the pipeline for a rewrite of the income tax law, new value-added taxes, and changes to stamp duty rates.<sup>72</sup>

The Second Myanmar Development Cooperation Forum ("MDCF") took place on January 27 and 28 in Naypyidaw in an effort to continue Myanmar's effort to seek cooperation with local and international partners for development.<sup>73</sup> The MDCF was attended by Myanmar President Thein Sein, Vice President Sai Mauk Kham, World Bank President Jim Yong Kim, the UN's Economic and Social Commission for Asia and Pacific Under Secretary General and Executive Director Noeleen Heyzer, as well as related ministers, parliament members, representatives of development partners, donor countries, local and foreign non-governmental organizations and social organizations.<sup>74</sup> At the end of the MDCF, the Myanmar government and its development partners issued a joint statement expressing their commitment to finalize the Naypyidaw Accord Action Plan, a commitment by the government to engage in reform programs to transform Myanmar into a modern, developed and democratic nation, which was approved a year before at the First Development Cooperation Forum.<sup>75</sup> Parties attending the forum also vowed to ensure continued support for Myanmar's Framework for Economic and Social Reforms and the National Comprehensive Development Plan, and pledged to strengthen government capacity to lead Myanmar's development efforts and engage with public and private actors in the planning



and implementation process. The statement also said progress will be reported at a mid-term review meeting later in 2014 and again at the third such forum to be held in 2015.<sup>76</sup>

The Central Bank of Myanmar will allow foreign banks to operate in the country this year, and the drafting of regulations to govern such operation is underway with the help of World Bank and International Monetary Fund (IMF).<sup>77</sup> So far, over 20 foreign bank representative offices have been set up in Myanmar, mainly from Brunei, Bangladesh, Cambodia, China, India, Japan, Malaysia, Singapore, Thailand and Vietnam.<sup>78</sup> There are 19 private banks and three state-owned banks in Myanmar. In the latest development, the United States authorized financial services with four Myanmar banks in February 2013, including the State Economic Bank, Myanmar Investment and Commercial Bank, private-owned Asian Green Development Bank and Ayayawaddy Bank.<sup>79</sup>

## **B. Developments in Foreign Investment and Economic Development Projects**

The International Monetary Fund has predicted that Myanmar's economy will grow 6.75 percent in the 2013-14 fiscal year, driven by natural gas, sales and investment.<sup>80</sup> Myanmar's draft national plan for 2014-15 targets a growth of 3.9 percent in the agricultural sector, 10.4 percent in the industrial sector and 12.4 percent in the services sector.<sup>81</sup> The growth of major regions is set at 9.3 percent for Yangon, 12.4 percent for Mandalay and 28.2 percent for Naypyidaw.<sup>82</sup> President Thein Sein told the government's planning commission that Myanmar needs to attract foreign investment to develop technology and human resources, and double domestic production in eight sectors—industry, agriculture, infrastructure, energy, mining, tourism, finance and communication—in order to reach an 8-percent level of GDP growth.<sup>83</sup>

According to Myanmar's Presidential Economic Advisor, Dr. Zaw Oo, Myanmar is aiming to increase foreign direct investment by 10 percent this year to around US\$3 billion and is targeting primarily agriculture and tourism.<sup>84</sup> Dr. Zaw Oo noted that Myanmar is a resource-rich country and should receive a lot of foreign investment aimed at tapping into its natural resources.<sup>85</sup> In addition, he noted that Myanmar wants to promote more investment flows into small and medium sized enterprises ("SME") so that they can generate the labor-intensive manufacturing developments, which are the long-term, sustainable factors needed for the economy to grow.<sup>86</sup> Dr. Zaw Oo also noted that new business-friendly laws and financial reform is underway, even though Myanmar has a long way to go. "It's a matter of getting the policy right and encouraging the right kind of financial framework, and so the resources are already here. So I think we should be able to mobilize both the domestic and international resources to help the SME sector."<sup>87</sup>

According to the most recent figures available, in the first six months of the 2013-14 fiscal year, which began April 1, 2013, the Myanmar government approved projects worth more than US\$1.8 billion. That compares with just US\$1.4 billion of foreign investment for the whole of the 2012-13 fiscal year.<sup>88</sup> National Planning and Economic Development Minister Kan Zaw was quoted in local newspapers as taking a positive view of the foreign investment outlook during a development conference in Naypyidaw.<sup>89</sup> Kan Zaw highlighted growing investment from China and Thailand, and said the garment cutting, manufacturing and packing sector was doing well as a result of low wages and cheap production costs.<sup>90</sup>

But despite Kan Zaw's positive outlook and Myanmar's aim to continue to increase foreign investment, some experts are predicting that 2014 will be a year of waiting for the business community because of the country's uncertain political situation, which may put a damper on both local and overseas investment.<sup>91</sup> Much hinges on the outcome of the 2015 elections, which could have a significant impact on whether the international community continues to embrace investment in Myanmar.<sup>92</sup> Myat Thin Aung, chairman of Yangon's Hlaing Tharyar Industrial Zone, insisted that the current political situation—especially the uncertainty over whether the 2008 Constitution will be amended to allow opposition leader Aung San Suu Kyi to become president—is a major concern of foreign firms looking to bring heavy industry investment into the country.<sup>93</sup> He stated that “foreign investment is coming, but in the garment industry only, not to heavy industry. People know that the government doesn't take much tax from the factory owners in the garment industry. But in heavy industry, investors are waiting until next year's election to see whether Aung San Suu Kyi can be elected or not.”<sup>94</sup> Ye Min Oo, managing director of the Asian Green Development Bank, agreed that 2014 will be about waiting: “I expect that if many foreign investors are coming in this year, it means they don't care about the Burma political situation. They will work with any government in 2016.”<sup>95</sup>

The President of the World Bank, Jim Yong Kim, spent two days in Myanmar in late January, during which time the World Bank Group announced a US\$2 billion multi-year public and private sector investment program.<sup>96</sup> The funding is meant to help Myanmar ramp up work in three areas that are a priority: energy, health, and agriculture.<sup>97</sup> A significant part of the aid package, US\$200 million, will support the government's aim of providing health care to all citizens by 2030, while half will go to expand electricity generation, transmission and distribution, the Bank said in a statement.<sup>98</sup> Kim observed: “Expanding access to electricity in a country like Myanmar can help transform a society—children will be able to study at night, shops will stay open, and health clinics will have lights and energy to power life-saving technology. Electricity helps bring an end to poverty.”<sup>99</sup>

Japan's Sumitomo Corporation's deputy general manager in Myanmar, Soe Kyu, told Reuters that Japan's KDDI Corporation and Sumitomo were jointly invited to discuss becoming the international partner of Myanmar Post and Telecommunication (“MPT”), sharing its existing license.<sup>100</sup> Soe Kyu expects to conclude a partnership in the next two months, barring unforeseen circumstances. MPT is currently Myanmar's sole telecoms operator as well as the industry's regulator.<sup>101</sup> The government plans to create a new regulator by 2015 and will divest a part of MPT while retaining a majority stake. That company, with a new name, will be one of four licensed operators.<sup>102</sup> Currently, state-backed Yatanarpon, primarily an Internet service provider until now, also holds a license, and Norway's Telenor and Qatar's Ooredoo won the bidding for two new licenses in June 2013.<sup>103</sup> Soe Kyu noted that a partnership between Sumitomo and KDDI had been shortlisted for the two international licenses awarded in June.<sup>104</sup>

Telenor and Ooredoo, the firms who won the June bidding, finalized their licenses on January 30, 2014.<sup>105</sup> Telenor aims to provide network coverage to 90 percent of the population within five years and Ooredoo has already started building its 3G network.<sup>106</sup> The licenses, valid for 15 years, are the first to be awarded by Myanmar.<sup>107</sup> Telenor, which said the license fee was US\$500 million, said it expects to break even in three years.<sup>108</sup> The firm said it would now start building a mobile network, although it acknowledged that the process of reaching Myanmar's scattered rural communities would likely present hurdles.<sup>109</sup> Ooredoo's Myanmar CEO, Ross Cormac, told Reuters that his company could roll out a network and provide mobile phone and

data services in Myanmar's four biggest cities within six months of getting final approval and would reach 97 percent of the population within five years.<sup>110</sup> But he warned that the operators will have their work cut out for them in a country with little infrastructure in rural areas, several ethnic armed groups controlling large swathes of territory, and where land ownership is a complicated and volatile issue.<sup>111</sup> Law firm VDB Loi, which represents Ooredoo, has urged the government to simplify the process of acquiring land to build towers necessary to extend service across the country.<sup>112</sup> Cormac told Reuters that Ooredoo plans to share the building and use of infrastructure with Telenor and MPT, or one of the two.<sup>113</sup>

On January 29, 2014, a senior Myanmar energy ministry official announced that Myanmar's energy ministry aims to award blocks in its inaugural offshore licensing round next month, and to sign production sharing contracts ("PSCs") for the onshore blocks it awarded last October in the next three months.<sup>114</sup> Win Maw, Deputy Director General of the Ministry of Energy's Planning Department, said that the Ministry would like to launch another offshore round this year, but that would depend on the progress of the signing of the onshore PSCs, as well as the award of the offshore blocks.<sup>115</sup> According to Win Maw, "after the tender we have to do so many processes . . . . After all [that work goes] smoothly, we'll do the next bidding round. We have plans, but we can't say definitely when will be the next bidding round."<sup>116</sup> The country is also moving ahead with plans to build its first liquid natural gas ("LNG") import facility.<sup>117</sup> "Hydropower generation has been a main power source in Myanmar. We now have plans to import LNG and expand it by introducing gas-fired turbines in response to power shortages," Win Maw said. The LNG planning comes under the auspices of the Ministry of Electric Power, which indicated that a feasibility study is underway and that more than 10 companies have submitted import terminal proposals.<sup>118</sup>

Thailand-based shipyard and logistics group Unithai is embarking on a project in Myanmar with a new joint venture established with Chin Corp Myanmar.<sup>119</sup> The new joint venture, Unithai Chin Corp Logistics (Myanmar) Limited, or Unichin, will provide an entire range of shipping and freight-forwarding services in Myanmar.<sup>120</sup> Khun Arthit Pathumsuwan, Unithai group Managing Director, said that the venture "will enable Unithai and Chin Corp to strengthen their cooperation and collaboration to share experience, expertise and networks to develop shipping and logistics solutions, in response to Myanmar's rapid growth in economic and industrialization." Michael Chin, chairman of Chin Corp Myanmar, was reported saying: "The broad expertise of Unithai in shipping and logistics will contribute to the success, mutual benefits and achievements of our ultimate goals."<sup>121</sup>

### **C. Foreign Investment Activities That May Have Human Rights Implications**

As mentioned above, the Myanmar government is now in the final stages of selecting the companies that will be allowed to develop its energy sources, including oil and gas exploration. Myanmar has significant reserves of both.<sup>122</sup> American companies have been encouraged by the U.S. government to bid aggressively for the rights, but some are urging a more cautious attitude.<sup>123</sup> For one thing, critics say the Myanmar economy is widely regarded as rife with cronyism and many worry that the contracts will mainly serve to enrich some of the country's elite.<sup>124</sup> And human rights activists worry that the pattern of energy development will exacerbate tribal and religious tensions by favoring some groups over others.<sup>125</sup> Another possible complicating factor in Myanmar's oil and gas picture comes from Aung San Suu Kyi, the Nobel Prize-winning dissident who, following liberalization of Myanmar, is now a member of

Parliament and a possible candidate for president in 2015.<sup>126</sup> While generally favoring greater oil and gas production, she has also advocated keeping most of the country's resources for domestic use, rather than for export.<sup>127</sup> That could change the economics of exploration and drilling from the perspective of Western companies.<sup>128</sup> As a consequence, some countries are waiting for more signs that the commitment to democracy is genuine and irreversible, and that the country's many minority groups are protected as development proceeds.<sup>129</sup>

#### **D. Land Seizures**

Land in Thingangyun Township that was appropriated by the military in the 1990s will not be returned to its original owners, according to a letter sent by the Ministry of Defense.<sup>130</sup> The letter, which was sent to lawmaker Thein Nyunt, who took up the cause of the former owners of the land, purportedly stated that the land remained military property and would be used to house army veterans.<sup>131</sup> The Ministry's letter comes approximately one month after a sit-in protest by a group of the original owners disbanded, following promises by the Land Investigation Commission that appropriate action would be taken to investigate the land seizure.<sup>132</sup> 179 families of vegetable farmers, to whom the army had rented the land following the original seizure, have also been evicted.<sup>133</sup> They were given small temporary land plots to farm following their eviction, but those grants have expired.<sup>134</sup>

Farmers from across the country demonstrated in Yangon to protest thousands of acres seized by the military government.<sup>135</sup> The farmers believed that under the new government they would be able to protest publicly, but found this not to be the case: many now face charges or jail time under Article 18 of the Peaceful Assembly Law for gathering without advance permission.<sup>136</sup> Others were charged with trespassing for returning to and planting crops on their land last year.<sup>137</sup>

The Deputy Minister for Agriculture and Irrigation, Ohn Than, told Parliament that the government has resolved 423 out of a total of 745 land seizure complaints, prompting strong disagreement from some members of the government regarding his figures.<sup>138</sup> One lawmaker, Mi Myint Than, indicated that the actual total complaints numbered over 6,000.<sup>139</sup> According to Ohn Than's figures, 565 of the total complaints, or about three-quarters of those he recognized, were directed at the military.<sup>140</sup> Local representatives also disputed the figures, with one representative responding that in his township alone there are still over 100 complaints not yet resolved.<sup>141</sup> Additionally, some lawmakers are pushing for more details regarding the complaints Ohn Than said were resolved, describing his presentation as "too general."<sup>142</sup>

### **V. Ethnic Violence**

#### **A. Peace Talks**

A conference of most of the country's ethnic armed groups took place in Karen National Union (KNU)-controlled territory near the Thai border on January 20.<sup>143</sup> KNU chairman Saw Mutu Say Poe emphasized the importance of consolidating existing ceasefires signed individually between rebel groups and the government. Ethnic leaders are calling for foreign monitors to observe peace talks and the implementation of a cease-fire agreement.<sup>144</sup> Ethnic leaders also said they would sign a nationwide ceasefire agreement provided that political

dialogue begins immediately at the signing conference.<sup>145</sup>

However, peace talks among the government and Myanmar's armed ethnic groups that will take place in the Karen State capital of Hpa-an were postponed again until February 2014.<sup>146</sup> The United Wa State Party and United Wa State Army, together comprising one of the nation's largest rebel groups, continue to hold back from peace talks and to demand an autonomous state.<sup>147</sup>

Earlier in the month, President Thein Sein submitted a budget request of 7 billion kyats (US\$7.1 million) for expenses related to peace talks.<sup>148</sup> A "peace appropriation" had never before been requested as a component of the government's budget. In the past, outside funders and foreign governments have been the primary financial backers of the peace process.

## **B. Mon**

A Burmese soldier allegedly beat and attempted to rape an ethnic Mon woman in Thanbyuzayat Township in Mon State.<sup>149</sup> The incident followed an alleged rape of a 13-year-old Mon girl in Kawzar sub-township on December 24, 2013. A community leader said that the girl's family was threatened by the soldier's battalion to keep quiet and was paid 500,000 kyats (US\$500) in exchange for their cooperation.<sup>150</sup> According to the Human Rights Foundation of Monland, the military and local police have been accused of 127 cases of sexual abuse in the last 15 years in Kawzar sub-township alone.

The Women's League of Burma, a Thailand-based advocacy group, issued a report accusing the Burmese military of using rape as a weapon in the country's conflicts with ethnic rebel groups.<sup>151</sup> The report found more than 100 cases of women and girls being raped by soldiers since 2010, including an alleged gang rape of a Kachin woman on January 10.

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