

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

SEPTEMBER 2014 REPORT

Summary. This report reviews the September 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 United Nations Development Program (“UNDP”) and the Government of Finland have signed an agreement that would see Finland contribute €2 million (approximately USD \$2.6 million) towards the UNDP’s work on strengthening democratic governance in Myanmar.¹ The funds from Finland will contribute to the achievement of Myanmar’s priorities in the areas of: improving planning and statistical capacities; enhancing legislative processes; supporting rule of law and accessible and fair justice; and enabling civil service to become more accountable and responsive to the needs of the people.² In line with best practices of international development assistance, the funding is provided on program basis, *i.e.*, not earmarked towards specific activities or projects, thus enabling strategic and flexible leveraging of funds in support of larger reform objectives, as well as reducing transaction costs for development actors involved.³ UNDP’s democratic governance work in Myanmar is also financially supported by the peoples and governments of Australia, Denmark and Japan.⁴

It has been two years since the U.S. eased sanctions on Myanmar, which had amounted to a near-total ban on doing business in the country.⁵ Now, to edge the country’s leaders towards a democratic transition, U.S. diplomats are pushing for American companies to invest in Myanmar. However, those efforts have been hindered by the legacy of sanctions and the increasing care that banks take on compliance after a rash of record fines (primarily related to the business of those banks in other countries subject to sanctions such as Iran).⁶ Few U.S. banks are willing to transfer money into or out of the country, and even money transfers through a third country such as Singapore often get blocked by U.S. firms if Myanmar appears in a company name.⁷

Many banks view allowing any Myanmar transactions as problematic. Despite the lifting of the broad ban, U.S. authorities still blacklist more than a hundred Myanmar companies and individuals because of alleged relationships with the country’s military.⁸ The lengthy blacklist translates into a ban on doing business with those who directly or indirectly control 70% of the country’s economy, according to Eric Rose, an attorney with Herzfeld & Ruben P.C. who spends half the year in Yangon.⁹ Diplomats are encouraging banned companies to apply to be taken off the list by demonstrating that they are cutting ties to the military, but the delisting process can take years.¹⁰ No names were taken off the list so far this year.¹¹

While U.S. State Department officials are encouraging American businesses to invest in Myanmar, the banking woes and the blacklist have stopped many companies from doing so. Fewer than a dozen companies have reported investing more than half a million dollars in Myanmar.¹² Those include Coca-Cola Co., Western Union Co. and Gap Inc. For more business to flow —particularly from small and medium size companies —Mr. Rose said U.S. officials need to work with banks to create open financial channels in Myanmar.¹³ The “U.S. has done very little to address banking,” he said.¹⁴ This is why companies “are postponing, scaling back or choosing not to come to Myanmar at this time.”¹⁵

II. Civil and Political Rights

A. Election-Related Laws and Acts

In a surprise development, Myanmar's election commission announced on September 7, 2014 that the 2014 by-elections will be cancelled, purportedly to allow political parties to concentrate on the crucial 2015 general elections.¹⁶ The by-elections, which were scheduled to be held this November, would have filled 35 seats in Myanmar's Parliament which are currently vacant.¹⁷ Speaking to representatives from more than 30 political parties, Tin Aye, the chairman of Myanmar's Union Election Commission ("UEC"), claimed that the elections were being cancelled due to their high costs and logistical burdens, as well as a relative lack of political significance.¹⁸ According to the UEC, the elections would have cost more than 2 billion kyat (roughly U.S. \$2 million) to organize, and would have been of little political significance since the general elections would be held just one year later.¹⁹

Reactions to the cancellation of the elections have been mixed, with some political parties in Myanmar reacting with frustration while others — notably, the National League for Democracy ("NLD") — have supported the decision to cancel the by-elections.²⁰ Nyan Winn, spokesperson for the NLD, claimed that his party had accepted the cancellation of the by-elections because the party would not otherwise have had enough time to prepare for the elections; with the cancellation, the NLD will now be able to focus its efforts on the 2015 general elections.²¹ The NLD won 43 of 46 seats in the last parliamentary by-elections held in April 2012, including one seat won by party leader Aung San Suu Kyi.²²

Nevertheless, representatives from other political parties have rebuked the UEC's decision. Aye Maung, chairman of the Rakhine National Party, stated that the UEC's decision to cancel the by-elections raises doubts as to the commission's ability to follow through on future promises.²³ Arakan League for Democracy chairman Aye Thar Aung echoed these sentiments, claiming that the UEC was "sowing confusion" by cancelling the elections after announcing this past March that the elections would take place.²⁴ Meanwhile, the founder of the Kachin State Democracy Party, Tu Jar, argued that leaving the vacant parliamentary seats unfilled impairs the political rights of the relevant constituencies, who are effectively denied representation in Parliament.²⁵

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

Following the August 2014 sentencing of five Unity Journal journalists on national security charges, Parliament member Thein Nyunt submitted a motion to the Parliament's Lower House to amend the Burma Official Secrets Act, the 1923 law under which the Unity Journal journalists were convicted.²⁶ Thein Nyunt, a member of the New National Democracy Party, argued that the English language law was out of step with the current social and political atmosphere in Myanmar, and violated both the recently passed Media Law and the 2008 Constitution, which makes Myanmar language the country's official language and guarantees rights to Myanmar citizens that the British did not.²⁷

Ultimately, however, the motion to amend the Act failed to muster enough support in Parliament. Deputy Minister of Home Affairs Brigadier General Kyaw Kyaw Tun opposed the amendment, claiming that the Act is necessary to protect state security — a view supported by

most Members of Parliament from the ruling Union Solidarity and Development Party.²⁸ Still, Lower House Speaker Thura Shwe Mann stated that the Act may be resubmitted for revision after it is officially translated into Myanmar language.²⁹

Myanmar's Ministry of Information recently announced its plans to take legal action against two media outlets for articles the Ministry considered defamatory.³⁰ One article, published in August by the Myanmar Herald, was directed at President Thein Sein, prompting the Ministry to accuse the source of "damaging the president's dignity." Meanwhile, the other article was published in June 2014 by Eleven Daily and alleged misuse of funds by the Ministry of Information in its purchase of printing presses.³¹ Ye Htut, the Minister of Information as well as the presidential spokesman, stated that the decision to take legal action was made largely in response to the media groups' refusal to issue corrections on their published stories.³²

Both the Myanmar Herald and the Eleven Daily maintain the accuracy of their reporting.³³ The Myanmar Herald indicated that it had issued an apology demanded by the Ministry of Information, but that the Ministry had rejected its apology.³⁴

C. Official Corruption

On September 24, Myanmar lawmakers questioned the effectiveness of the country's Anti-Corruption Commission, the commission charged with enforcing the anti-corruption law enacted by the Union Parliament in 2013, noting that only 3 out of the 533 complaints received since the commission's formation in February had resulted in any legal action.³⁵ The Commission received complaints ranging from land conflicts (170) to the judiciary (95) to those related to governance (238) and general matters (30).³⁶ The Commission's lack of independence from executive branch interference and a requirement that complainants reveal their identity in order to submit evidence and/or complaints (cases may not be submitted for prosecution unless a complaint satisfying the aforementioned requirement is submitted) were suggested as explanations for the Commission's low rate of prosecutions.³⁷ The requirement for complainants to submit their identity may be particularly problematic in light of Section 59 of the Anti-Corruption Law, which provides that any person convicted of defaming a person without sound reason or who submits information or lodges a complaint about illicit enrichment based on false allegations, or gives or creates false evidence, or asks another person to do so, may be punished with imprisonment up to 5 years and a fine.³⁸

On September 29, at a session of the Lower House, Myanmar's Deputy Attorney-General Tun Tun Oo called for the government to enact a procurement law to ensure transparency and prevent corruption related to bidding on government contracts.³⁹ The contemplated law would presumptively diminish corruption by ensuring a more open bidding process.⁴⁰

D. Miscellaneous

On September 2, students gathered to protest a proposed law that civic groups say would allow greater centralized control of universities and curtail greater autonomy for Myanmar's institutions of higher learning.⁴¹ The proposed bill would result in the establishment of a National Education Commission which would have the power to set policy, control curriculum and determine the budget for the country's entire education sector.⁴² The government is currently

debating the scope and content of proposed education legislation; protesters are calling for a bill which would permit greater autonomy for universities in setting their own agendas.⁴³

Myanmar's 88 Generation Students Group has held talks with visiting officials from the Communist Party of China ("CPC") regarding the transparency the CPC offered Myanmar's general population with respect to proposed Chinese investments in Myanmar through state-run companies.⁴⁴ The 88 Generation Students Group emphasized the need to protect the interests of local people affected by Chinese projects, which are mainly related to infrastructure development.⁴⁵

On September 18, at a rally commemorating the seventh anniversary of the Saffron Revolution, Buddhist monks rallied to call for reforms to Myanmar's official Buddhist monastic committee, claiming that the state-appointed body did not reflect the will of the clergy.⁴⁶ The committee has the power to disrobe monks who have violated its decrees and expel monks from their resident monasteries.⁴⁷

On September 18, in Shan state, a bomb exploded in front of the home of a local politician. The politician was unharmed but his brother-in-law was injured. Police speculated that the politician's work trying to protect local farmers was a reason that he was targeted.⁴⁸

III. Governance and Rule of Law

The Lower House's Rule of Law, Stability and Peace Committee, headed by Aung San Suu Kyi, compiled a report concluding that the rule of law in Myanmar is weak, in part due to a court system rife with corruption.⁴⁹ The report, which was presented to the Lower House at the end of the month, criticized the judicial sector, with MP Thura Aung Ko noting that verdicts often come slowly and at great expense, damaging public trust in the courts.⁵⁰ Low judicial staff salaries also contributed to corruption, he said, as they may incentivize bribery.⁵¹ The report also criticized the government's failure to open "rule of law centres".⁵²

The report was approved by the Lower House on September 30, although some individuals expressed reservations as to certain proposals contained therein.⁵³ One such proposal is the formation of an independent watchdog to monitor the courts, which Supreme Court Judge Soe Nyunt criticized as an interference with judicial independence.⁵⁴ He expressed his belief that a lack of such independence would lead to reduced foreign investment.⁵⁵ Nan Wah Nu, from the White Tiger Shan Party, supported the notion of independent branches of government, explaining that "[p]eople don't like the current system because all three pillars of power support one another."⁵⁶

IV. Political Prisoners

Despite President Thein Sein's promise to release all political prisoners by the end of 2013, a leading advocacy group is now claiming that the number of political prisoners has actually increased over the past year.⁵⁷ The Assistance Association for Political Prisoners in Burma ("AAPP-B") said in a statement on September 8 that there are 84 political prisoners in Myanmar with approximately 122 individuals facing what they consider to be politically motivated charges.⁵⁸ The AAPP-B also predicted that the number of political prisoners will continue to rise through 2014.⁵⁹ The group said that the rise in political incarcerations is largely attributable to the

use of Myanmar’s controversial Section 18 — part of the Right to Peaceful Assembly and Peaceful Procession Act — to convict activists. Despite having been amended in June, rights defenders still say that the law grants too much leeway for authorities.⁶⁰

A man was arrested in the capital this month, pursuant to Section 18, on International Peace Day for staging a solo protest calling for an end to divisiveness in Myanmar.⁶¹ His protest consisted of holding placards with slogans that said: “The public will only have trust when they receive complete freedom and peace”; “Please leave hate and grudges in 20th century”; and “We want to be proud of our country in the international community.”⁶²

Meanwhile, the AAPP-B and the Former Political Prisoners Society (“FPPS”) have written to international leaders, including President Obama, urging them to raise the issue of political prisoners in Myanmar.⁶³ Thet Ooh, spokesperson for the FPPS, said: “We want international leaders to push the government to release political prisoners.⁶⁴ The government always says Myanmar doesn’t have any more political prisoners and we want international leaders to know that’s not the case and they shouldn’t trust the government.”⁶⁵

V. Economic Development

A. Developments in the Legal Framework of Economic Development

Stock Exchange

The planned Yangon Stock Exchange, which will replace the Myanmar Securities Exchange Centre, is still set to launch by October 2015.⁶⁶ The Myanmar Economic Bank has partnered with Japan’s Tokyo Stock Exchange and Daiwa Securities Group in a joint venture to establish and operate the exchange.⁶⁷ Three public companies will be listed initially: the Asia Green Development Bank, First Myanmar Investment Co., Ltd, and the Myanmar Agribusiness Public Cooperation Limited, established by the Myanmar Rice Federation.⁶⁸ This is a departure from statements in June, in which Minister Maung Maung Thien had hinted that five public companies would be listed initially.⁶⁹

Banking Licenses

The effort to license up to ten foreign banks to operate in Myanmar is ongoing in the face of a revised end-of-September 2014 deadline.⁷⁰ According to Set Aung, Deputy Governor of the Central Bank, rumors that the process will be delayed are not true.⁷¹ The same 25 foreign banks with Myanmar representative offices—culled from 42 in June—remain candidates.⁷² As discussed in our prior reports, the selected foreign banks will receive restricted licenses that will limit the banks to one branch each and bar them from retail banking.⁷³

Loans to Small Businesses and Improving the Banking System

The World Bank’s International Finance Corporation (“IFC”) has made a \$5 million convertible loan to Myanmar’s Yoma bank.⁷⁴ The loan is earmarked to assist Yoma with lending to small and medium businesses.⁷⁵ The IFC has also pledged to continue to assist Myanmar with improving its financial and banking sector as well as its corporate governance.⁷⁶ IFC support is

expected to assist Yoma with providing 1,000 additional loans worth \$370 million to local small and medium businesses by 2019.⁷⁷

B. Developments in Foreign Investment and Economic Development Projects

Nestle Investment

Swiss giant Nestle, partnering with Myanmar Distribution Group, plans to begin manufacturing its products in Myanmar by the end of 2016.⁷⁸ Pending the Myanmar Investment Commission's approval of the venture, Nestle will begin working on building a factory in Dagon Seikkan Industrial Zone within the next two months.⁷⁹ Nestle initially will make its 3-in-1 coffee products at the factory, but intends later also to manufacture dairy, ice cream, and chocolate goods.⁸⁰ Investment will total about \$50 million over the next five or six years.⁸¹ Due to the lack of sufficiently high-quality raw products, Nestle will begin with imported raw materials.⁸² It plans to source locally after working with local businessmen to improve production to acceptable levels of quality and quantity.⁸³

Mobile Phone Growth

Mobile phone growth continues to explode: the proportion of the population with access to mobile phones is expected to rise from 7% to 97% within five years.⁸⁴ Ooredoo, of Qatar, has pledged to spend \$15 billion on telecommunications services over the course of its 15-year license to operate in Myanmar.⁸⁵ Japan's second-largest wireless carrier has promised to invest around \$2 billion.⁸⁶ In addition to the Japanese, Qatari and other investments mentioned in our previous reports, Vietnam Posts and Telecommunication Group also signed a memorandum of understanding this week to work with four Myanmar companies in the mobile phone space.⁸⁷

Accommodating Expanding Tourism

Tourism in Myanmar is up 43% this year over last year.⁸⁸ In response, Myanmar's Ministry of Hotels and Tourism plans to open a hotel zone in western Chin State, the poorest and least developed part of the country.⁸⁹ An official stated that this is an effort to promote ecotourism in the rugged region.⁹⁰ The zone will open near Natma Taung National Park, which contains Myanmar's third highest mountain and has been identified as a "priority candidate" for recognition as a UNESCO World Heritage site.⁹¹ Concomitantly, plans are in the works to upgrade the facilities at the park.⁹²

Dawei Myanmar-Thailand Port Project

The stalled construction of a deep sea port at Dawei, a joint venture between Myanmar and Thailand, is moving forward again.⁹³ Political unrest in Thailand has delayed the project, but a visit to Dawei from Thailand's prime minister next month is expected to give the project a big boost.⁹⁴ Thailand's National Economic and Social Development Board has been ordered to simplify the processes and procedures that will guide the development.⁹⁵ Each country will have a 50% stake in the port, which is expected to spur creation of an industrial area and a city in the now-sleepy area.⁹⁶

C. Land Seizures

In late September, members of Parliament received a report from the parliamentary Farmland Investigation Commission on delays by various government ministries in returning confiscated lands.⁹⁷ The Commission found that the Ministry of Defense addressed only 22% of the land claims sent to it. Claims sent to state and regional governments fared even worse; only 4.5% of the roughly 26,371 submitted land claims have been addressed.⁹⁸ According to the Commission's report, delays were exacerbated by government departments assigning junior officials who lack the requisite authority to make decisions on land ownership and compensation claims.⁹⁹ Nan Say Awa, a Karen State Member of Parliament and a member of the Commissioner, cited the "red tape" as resembling "the bureaucratic machine back in the colonial era."¹⁰⁰

On September 25, approximately 5,000 farmers protested in front of Magwe's Forestry Department office to demand the return of confiscated lands.¹⁰¹ The farmers claim that more than 30,000 acres of land had been confiscated since 2005, on which the farmers used to grow beans, corn, sesame and cotton.¹⁰²

On September 30, approximately 1,000 farmers protested on the streets of Singu Township, Mandalay Region, to demand the return of seized farmlands.¹⁰³ The protesters have accused the Royal Palace Army as failing to follow instructions from the Commander-in-Chief of Defense Services to return seized lands.¹⁰⁴

At a press conference held on September 30, farmers tilling land near the Thayagone village tract in the Bago Region complained that they were being turned into "land slaves."¹⁰⁵ According to the farmers, after their lands were seized by the Air Force Ordnance Depot in 1997 and 1998, they were each allocated a 70-by-90 feet plot.¹⁰⁶ However, in exchange for farming the land, the farmers had to pay soldiers a share of rice and other crops. Fencing that has been erected to keep farmers from entering the seized lands continues to disrupt daily life, such as herding cattle and sending children to school.¹⁰⁷

VI. Ethnic Violence

A. Violence Against Muslims

This month, the government drafted its "Rakhine State Action Plan," which is intended to serve as a general blueprint for development and post-conflict reconstruction in the state.¹⁰⁸ However, the plan has faced harsh criticism by rights advocates for its discriminatory effects on the Rohingya population.¹⁰⁹ The plan would require Rohingya to identify themselves as Bengali in order to possibly receive citizenship as part of its citizenship verification process.¹¹⁰ For those failing to meet the criteria for citizenship, it is proposed that the government will "construct temporary camps in required numbers for those who refuse to be registered and those without adequate documents," a process which rights groups warn could force thousands of Rohingyas from their villages into camps where they would be detained indefinitely.¹¹¹ Further, the permanent resettlement zones contemplated by the draft plan were criticized by Human Rights Watch, which said they will "deepen the isolation and marginalization of the Rohingya in violation of their freedom of movement and other rights."¹¹²

In August and September, the government conducted a pilot program of the citizen verification process in Myebon. According to officials from the immigration ministry, 1,094 Muslims took part in the pilot verification process, 209 of which were found eligible for citizenship.¹¹³ Although some of the 209 Muslims who received citizenship are members of the Kaman Muslim minority, which is recognized by the government as indigenous to Myanmar, some were also Rohingya.¹¹⁴ Officials have not explained why the 209 persons were granted citizenship and the others were not, nor were they able to elaborate on the precise number of Rohingya included.¹¹⁵ Aung Win, a Rohingya community leader, noted that many Rohingya have refused to take part in the verification process because they did not want to list their identity as Bengali, as required by the government.¹¹⁶

At the end of September, President Thein Sein signed into law an amendment to Myanmar's Political Parties Registration Law, which removes the rights of those holding temporary citizenship cards to form or join political parties.¹¹⁷ This change appears to target the Rohingya minority, many of whom are temporary citizenship cardholders.¹¹⁸

B. Violence Between the Central Government and Ethnic Rebel Groups

In September, rising tensions between government forces and rebel groups (including the Democratic Karen Benevolent Army (“DKBA”) and other smaller ethnic Karen rebel groups) led to a number of clashes in several areas of southeastern Myanmar, resulting in what has been referred to as some of the worst fighting in the region since the government signed bilateral ceasefires with the rebels in 2012.¹¹⁹ Both sides suffered casualties, and dozens of local residents were forced to flee their homes, with some crossing into Thailand for safety.¹²⁰ Although the DKBA has signed a ceasefire agreement with the government, the absence of a code of conduct and the related uncertainty over troop movements and border demarcation has exacerbated tensions.¹²¹ The discussion of a code of conduct has apparently been sidelined in order to prioritize the negotiation of a peace agreement.¹²² A series of violent incidents is also responsible for the increased tension, including the killing by government security forces of a DKBA soldier who was allegedly drunk driving; the discovery in the Moei River in the Karen State of the dead, handcuffed body of a Karen National Union (“KNU”) soldier; the detention by DKBA forces of eight government soldiers and police officers; and the injury of two government soldiers in an exchange of fire.¹²³ Five members of the Government's Border Guard Force have been detained in connection with the killing of the KNU soldier.¹²⁴ In addition, fighting between government troops and the KNU resulted in the deaths of one government soldier and one KNU soldier.¹²⁵ The fighting reportedly resulted from the government's patrolling of KNU-controlled areas without informing the KNU in advance.¹²⁶ However, one positive development that occurred in September was the signing of a second draft of a troop code of conduct between the KNU and government peace negotiators.¹²⁷

Government troops also clashed with Shan ethnic rebels in Shan State's Kyethi Township this month, resulting in the death of five government soldiers and two rebels, and the injury of 50 government soldiers and three rebels, according to rebel sources.¹²⁸ The fighting resulted in approximately 200 locals being displaced and taking refuge at a Buddhist monastery.¹²⁹

C. Peace Talks

The government's Union Peacemaking Work Committee ("UPWC") and the nationwide Ceasefire Coordination Team ("NCCT") failed to reach a nationwide cease-fire agreement after another round of talks held at the end of September.¹³⁰ However, in a joint statement, the UPWC and NCCT said that the two sides have agreed in principal to a new draft of the agreement, certain points of which are to be discussed internally before discussions resume in October.¹³¹

According to Lian Hmung Sakhong, a representative from the NCCT's Chin National Front, the September talks fell short of expectations because negotiators couldn't agree on issues of "army placement" and "troop recruitment."¹³² The government reportedly wants rebel armies out of strategically sensitive areas to make way for development projects and has also demanded that ethnic armies give up recruiting new members.¹³³ Rebel groups resent the idea of not being able to move freely within their own territories and have indicated that, although they will end forced recruitment, they will continue to accept volunteer soldiers.¹³⁴ Additional areas of disagreement, according to Lian Hmung Sakhong, included which rebel armies would take part in political dialogue to explore greater representation for their ethnic groups.¹³⁵

In an address to the nation, President Thein Sein commented that the signing of a nationwide ceasefire accord is necessary for the success of the 2015 elections and a smooth political transition. His remarks have been criticized by some, with one political commentator questioning whether the comments were aimed at pressuring the rebel groups to reach a ceasefire agreement.¹³⁶

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