

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

OCTOBER 2014 REPORT

Summary. This report reviews the October 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

On October 30, United States President Barack Obama held separate telephone calls with President Thein Sein and opposition leader Aung San Suu Kyi to discuss a range of issues.¹ The calls were placed in advance of an unprecedented meeting which President Thein Sein was scheduled to host, together with Aung San Suu Kyi, the country's military chief, leaders of other political parties and certain ethnic groups, in order to discuss Myanmar's growing political problems.² Among other issues, President Obama stressed the need for an "inclusive and credible process" for conducting the upcoming 2015 general elections and the need to take "additional steps to address the tensions and the humanitarian situation" in Myanmar's Rakhine state, where violence between the majority Rakhine Buddhists and minority Rohingya Muslims has persisted since 2012.³ Obama specifically called for revisions to the Rakhine Action Plan, which certain rights groups have criticized as entrenching discriminatory policies against the Rohingya.⁴

Myanmar is scheduled to host a high-level meeting of the Association of Southeast Asian Nations and the East Asia Summit in November. President Obama, along with leaders from China, Russia, India, Japan, South Korea, Australia and New Zealand, as well as the southeast Asian nations, are expected to attend.⁵

On October 31, for the second time since it began lifting sanctions in 2012, the United States placed sanctions on a Myanmar official, this time placing sanctions on lower parliamentary member Aung Thaung, who has been linked to attacks on Myanmar's democratic opposition.⁶ Aung Thaung is a former industry minister and army officer.⁷ Adam Szubin, director of the Office of Foreign Assets Control, stated that "[Aung Thaung], [b]y intentionally undermining the positive political and economic transition in Myanmar . . . is perpetuating violence, oppression and corruption."⁸ Certain political commentators and Myanmar experts said they believed the reason for Aung Thaung's placement on the sanctions list was his connection with certain hard line groups which have been active in attacking Myanmar's Muslim minority.⁹ Aung Thaung was also the industry minister under the former military government.¹⁰ The announcement was made in advance of President Obama's plan to visit Myanmar for the East Asian Summit and U.S.-ASEAN Summit on November 12-13.¹¹

The European Union is currently drafting a resolution intended to pressure Myanmar's government to refrain from forcing the country's Rohingya minority to be categorized as "Bengalis", a term many Rohingya reject.¹² The resolution expresses "serious concern" about the Rohingya's status and calls on the government to permit "freedom of movement and equal access to full citizenship for the Rohingya minority," as well as permitted "self-identification" for the Rohingya.¹³

A conglomerate controlled by Myanmar's military has won a legal fight to wrest full control over Myanmar's biggest brewery from its Singaporean partner in a dispute that has raised concerns in the international community over legal protections in Myanmar for foreign investors.¹⁴ The dispute marked the first major disagreement between a foreign investor and a state-owned enterprise since the country launched reforms in late 2010.¹⁵

II. Civil and Political Rights

A. Election-Related Laws and Acts

In early October, President Tein Sein said that the signing of a nationwide ceasefire accord would be necessary for a successful 2015 general election and a smooth political transition in Myanmar.¹⁶ His statement was criticized by opposition legislators and political analysts, who pointed to the elections in 1990, 2010 and 2012 as indicative of the country's ability to hold a general election without a nationwide ceasefire.¹⁷ Analysts suggested that President Tein Sein's remarks could have been aimed at pressuring the ethnic armed forces into signing a nationwide ceasefire, and that a ceasefire before the elections offered certain political advantages to the government.¹⁸

President Tein Sein's remarks regarding the necessity of a ceasefire led some to fear that the general elections would be postponed due to continued military clashes.¹⁹ However, on October 21, Myanmar's Union Election Commission ("UEC") announced that the general elections would be held either in the last week of October or the first week of November 2015.²⁰ Although specific dates for the election were not provided, Tin Aye, the chairman of the UEC, stated that the commission has no intention of postponing the election.²¹

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

The five Unity Journal journalists who had been convicted of disclosing state secrets in a January 2014 story that purportedly revealed the existence of a chemical weapons factory, and who had been subsequently sentenced to ten years in prison with hard labor, have had their sentences reduced on appeal to seven years' imprisonment.²² The wife of convicted reporter Lu Maw Naing reported that the five journalists have vowed to lodge another appeal in Myanmar's Supreme Court in Naypyidaw because "their sentences are not in line with freedom of the press."²³

Myanmar journalists have been objecting to a proposed law that would authorize the formation of a broadcasting council to regulate television and radio broadcasting, and that would limit foreign ownership of private television broadcasting.²⁴ The measure was proposed by the government and passed through the Parliament's upper house with little debate on October 16.²⁵ Media members protesting the proposed law have argued that the measure was considered too hastily in the upper chamber.²⁶

The Ministry of Information recently announced its plans to take legal action against two media outlets for articles the ministry considered defamatory.²⁷ One article, published in August by the Myanmar Herald, was directed at President Tein Sein, prompting the Ministry of Information to accuse the source of "damaging the president's dignity." Meanwhile, the other article was published in June 2014 by the Eleven Daily and alleged misuse of funds by the Ministry of Information in its purchase of printing presses.²⁸ 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.²⁹

C. Official Corruption

On October 17, Hsan Hsint, who was Minister of Religious Affairs until his termination by President Tein Sein in June 2014,³⁰ was sentenced to 13 years in prison by a district court in Naypyidaw.³¹ He was charged with criminal breach of trust for misappropriating public funding, among other charges. According to local media reports, he misappropriated millions of kyats for personal family interests.³²

On October 24, the New York Times had a prominent feature report on the culture of corruption plaguing Myanmar's judicial system, with thousands of complaints received by the Parliament's judicial affairs committee.³³ One example highlighted by the report involved a case of a judge's wife demanding the equivalent of US\$150,000 for a favorable decision. Ja Bhu, a Yangon resident who was involved in a property-related dispute, said the judge's wife "just showed up at my house' and requested the money."³⁴ Myanmar lawyers interviewed for the report said that bribes are "required at nearly every step of the judicial process: to clerks, record-keepers, stenographers and judges."³⁵ Euphemisms abound for describing such payments, including "tea money for a court stenographer, unlocking fees for court records and tributes for judges."³⁶ The report also discussed how corruption is impacting foreign investment, with Daniel Aguirre, an advisor for the International Commission of Jurists, a legal activist group in Myanmar, noting that "[f]oreign companies are afraid of the courts."³⁷

D. Miscellaneous

On October 31, President Obama made separate telephone calls to President Tein Sein and Myanmar opposition leader Aung San Suu Kyi ahead of his much-anticipated trip to Myanmar in November. In his call with President Tein Sein, President Obama "stressed the importance of the government of Myanmar taking additional steps to address the tensions and the humanitarian situation in Rakhine State including through revisions to the Rakhine Action Plan and other measures to support the civil and political rights of the Rohingya population."³⁸ With Aung San Suu Kyi, President Obama "discussed the status of Myanmar's ongoing political and economic reforms and the need to ensure an inclusive and credible process for conducting the 2015 elections."³⁹

III. Governance and Rule of Law

Thura Aung Ko, MP and parliamentary chair of the Judicial, Legal Affairs, Complaints and Pleas Scrutiny Committee, told reporters at the end of the month that there are too many laws in place that protect Myanmar's courts and judges, contributing to and protecting the country's "corruption' culture".⁴⁰ He noted in particular the delays involved in deciding some lawsuits – some taking up to 10 years to resolve – and occasions where senior judges escaped discipline while the same was levied upon their junior staff, and pointed out the disparity between the time taken to enact laws protecting the public versus laws protecting the courts.⁴¹ He stressed the importance of a strong media, as the country's "fourth pillar", in bringing attention to the problems and shortcomings of the other pillars and supporting the rule of law.⁴²

IV. Political Prisoners

On October 7, the government pardoned over 3,000 prisoners but advocacy groups said no political detainees were included, in spite of a pledge to free all of them by the end of the year.⁴³

The Ministry of Information announced the amnesty on its website, stating that the 3,073 prisoners were freed on “humanitarian grounds.”⁴⁴ The announcement did not mention political prisoners.⁴⁵ Most of the individuals released had committed minor crimes.⁴⁶ At least eight were former intelligence officers jailed a decade ago as part of a political purge.⁴⁷

The Assistance Association for Political Prisoners-Burma (“AAPP-B”) announced subsequent to the release that only one of the over 3,000 detainees was on their list of currently detained political prisoners.⁴⁸ Bo Kyi, a former political prisoner and current joint-secretary of AAPP-B, identified the released prisoner as Mar La, a Kachin man who was imprisoned under the Unlawful Association Act for his alleged association with the Kachin Independence Army.⁴⁹ Myint Aung, from the Former Political Prisoners Association, said his group is still trying to figure out how many political prisoners were released, but noted that it was “only a few.”⁵⁰ According to AAPP, the more than 50 farmers from Kantbalu Township who were arrested for protests demanding the return of seized land were not included in the amnesty.⁵¹

The release came a month ahead of a summit of Asia-Pacific leaders to be held in Myanmar.⁵²

V. Economic Development

A. Developments in the Legal Framework of Economic Development

Securities and Exchange Commission

The government has established a Securities and Exchange Commission (“SEC”) tasked with regulating the country’s securities exchanges, including the stock exchange planned for October 2015.⁵³ Myanmar’s Securities Exchange Law, enacted in July 2013, made provisions for the establishment of the SEC, providing it with the authority to approve, suspend and revoke the establishment of stock exchanges.⁵⁴ The SEC will consist of seven members, including Deputy Minister for Finance Dr. Maung Maung Thein.⁵⁵ It will initially operate under the Ministry of Finance for up to five years before becoming an autonomous body.⁵⁶

Japanese Cooperation

The Japanese government is helping Myanmar devise a relevant legal code for the Yangon Stock Exchange which is scheduled to open next year.⁵⁷ Japan Exchange Group and Daiwa Institute of Research are also contributing their rule-making expertise.⁵⁸ Japan’s participation in the lawmaking process is expected to help secure more trading system deals for Japanese corporations which have already benefited from similar opportunities.⁵⁹ To date, the Central Bank of Myanmar has agreed to commence using a computer network modeled on the Bank of Japan’s payment settlement system, and Japanese company NTT Data is slated to provide software for Myanmar’s central bank network while Daiwa Institute of Research, Fujitsu and KDDI won a contract to develop the network’s infrastructure.⁶⁰ Japan has provided Myanmar with grants which require it to engage Japanese contractors.⁶¹

Foreign Bank Licenses

Myanmar has awarded banking licenses to nine foreign banks, including the three biggest Japanese banks, Bank of Tokyo-Mitsubishi UFJ, Sumitomo Mitsui Banking Corp. and Mizuho Bank; Australia & New Zealand Banking Group Limited; Thailand's Bangkok Bank; China's Industrial and Commercial Bank of China; Malaysia's Malayan Banking (Maybank); and two Singaporean banks – Oversea-Chinese Banking Corporation and United Overseas Bank.⁶² Despite intense lobbying, banks from France, South Korea, Vietnam and other Southeast Asian banks, including Malaysia's CIMB Bank and Thailand's Siam Commercial Bank and Kasikornbank, were unsuccessful, as were banks from India, Taiwan and Mauritius.⁶³ The licensed banks will be able to start lending foreign currency to foreign corporations and domestic banks, although they will not be able to lend in the local currency, the kyat, and are expected to transact such business through local bank partners.⁶⁴ Foreign bank entry is a key part of the government's sweeping program of economic reform, although local resistance has flared amid warnings that local banks could be wiped out by foreign competition.⁶⁵

Companies Act Rewrite

The 1914 Burma Companies Act is being rewritten, with U.S. law firm Baker & McKenzie and its managing partner for Myanmar, Christopher Hughes, playing a key role.⁶⁶ He described the Act as “a critical part of the legislative infrastructure”, and said a practical approach was being taken to amending it.⁶⁷ The process needs to align with other reform initiatives, particularly in investment, banking and financial sector reforms, establishment of the Yangon Stock Exchange and supporting small and medium-sized enterprises, Hughes said.⁶⁸ The process is still underway with a timeline to be released.⁶⁹

B. Developments in Foreign Investment and Economic Development Projects

The Myanmar government is considering several initiatives in a bid to develop the economy and increase revenue. One such initiative is legalizing gambling, but only for foreigners.⁷⁰ In August, it was reported that the Ministry of Hotel and Tourism would permit three-star hotels in border areas to open casinos.⁷¹ Officials believe this move will help the country meet its goal of attracting seven million tourists per year by 2020, up from two million currently.⁷² Myanmar nationals will be permitted to participate in a regulated national lottery.⁷³ Another initiative is to develop domestic chemical industries. Citing a lack of investment and technical know-how, a government industrial official called for developing chemical industries in Myanmar, especially petrochemical.⁷⁴

Large multinational companies continue to invest in Myanmar. Colgate-Palmolive Company has purchased a local Myanma toothpaste company for roughly \$100 million, making it one of the biggest acquisitions made by a foreign company in Myanmar.⁷⁵ KFC's parent company Yum! is also set to open a KFC in Myanmar in 2015.⁷⁶ A Singapore-Japan consortium won a \$1.4 billion deal to build a new airport, set to open in 2019.⁷⁷ The airport will be located 90 kilometers from Yangon, and it is expected to accommodate 12 million passengers per year, up from the current Yangon airport's capacity of 2.7 million.⁷⁸ To attract investment not just in large projects and companies but also in small-to-medium ones, Myanmar has just launched a website, www.myanmarsmelink.com, on which business owners can seek international partners by listing their specific needs, like capital or technology.⁷⁹

Foreign investment in, and development of, the energy sector in Myanmar continues. To date, 30% of total foreign investment has been in the oil and gas market—despite transparency concerns as 20 firms in the industry still refuse to disclose their ownership details.⁸⁰ 40 oil and gas blocks already have been awarded to the likes of Total, Shell, and Chevron, accounting for half of all blocks available.⁸¹ Myanmar will release 15 additional blocks to international investors by the end of next year.⁸² The United States also announced an agreement to develop two solar energy plants, which should generate 10-12% of Myanmar’s power upon its completion in 2016.⁸³ Faced with a steeply increasing demand for electricity, Myanmar is also considering a bill that will curb the sale of natural gas for uses other than generating electricity domestically.⁸⁴ Meanwhile, the Yangon Electricity Supply Board intends to sell up to 49% of the company to the public.⁸⁵ Priority will be given to national investors over foreign, perhaps because foreign investment currently accounts for nearly 40% of all investment in Myanmar’s power sector.⁸⁶

C. Land Seizures

A group of local NGOs urged Myanmar and Thailand to address the complaints of local communities in southern Myanmar over a lack of adequate consultation and compensation during the initial phase of the Dawei Special Economic Zone (“SEZ”).⁸⁷ The NGOs issued their statement during the first day of the official visit of Thai Prime Minister Prayut Chan-o-cha, whose government has announced that it wants to revive the massive Thai-Myanmar project with Japanese help after it stalled late last year.⁸⁸

“Local communities have not been provided with adequate information about the project. They have been forced off their land without fair or adequate compensation.⁸⁹ There is also no remedy for those whose rights have been abused in the process so far.⁹⁰ All of these problems must be resolved before the project restarts,” said Thant Zin, coordinator of DDA (Dawei Development Association), a Dawei-based NGO.⁹¹

The SEZ in Tanintharyi Region’s Dawei District would be a massive billion-dollar project that includes a deep-sea port, heavy industries and extensive transport links.⁹² It would form a regional industrial hub located just 350 kilometers west of Bangkok and allow cargo ships to dock in southern Myanmar and avoid the busy Strait of Malacca.⁹³ Thailand’s largest construction firm, Italian-Thai Development (“ITD”), was given leadership of the project in 2010.⁹⁴ ITD failed, however, to attract private investment to finance the project or to secure an agreement to build a power plant for the complex.⁹⁵ ITD was taken off the project in late 2013 after reportedly having spent US\$189 million on implementing the first project phase.⁹⁶ Myanmar and Thailand have called on Japan, which is developing the Thilawa SEZ near Yangon, to step in with funding and technical support to help revive the project.⁹⁷

Hundreds of farmers have already lost land to the project, but tens of thousands more would be required to give up farmland if the project resumes.⁹⁸ The SEZ, which includes a large coal-fired power plant, would also produce high levels of industrial pollution.⁹⁹ Local communities are up in arms over these prospects and have complained of a dearth of project information and poor compensation offers for loss of land.¹⁰⁰

The NGOs called on Naypyidaw and Bangkok to release the findings of a due diligence assessment by international accounting firm Ernst & Young, which has reviewed ITD’s activities

and investment during the project's initial phase.¹⁰¹ Communities and NGOs wanted to compare what ITD told the accountants about how much it had paid in compensation with what the farmers on the ground had received for their loss of land.¹⁰² DDA believes there could be discrepancies between recorded payments and what farmers had received, which would be an indication of possible corruption.¹⁰³ The local NGOs opposing the Dawei SEZ filed an official complaint about the project with Thailand's Human Rights Commission last year and the activists are due to testify during a public hearing of the commission later this month.¹⁰⁴

VI. Ethnic Violence

A. Violence Against Muslims

The government's recent aggressive identity campaign to register Rohingya and officially categorize them as "Bengalis" has increased desperation and led to an increase in the number of Rohingya fleeing the country.¹⁰⁵ According to Chris Lewa, the director of the nonprofit advocacy group Arakan Project, there has been a large surge in the number of Rohingya fleeing since October 15, with an average of 900 people per day loading onto cargo ships anchored off Rakhine state.¹⁰⁶ Lewa further noted that the actual number may be even higher, as it is getting more difficult to track the number of boats leaving due to an increase in departure locations.¹⁰⁷ The fleeing Rohingya usually travel to Thailand, where they are brought to jungle camps and face extortion and beatings until relatives are able to come up with enough money to pay for their release (after which they may be moved to Malaysia or other countries but still suffer in a stateless condition).¹⁰⁸

A new draft United Nations resolution pending before the General Assembly's Human Rights Committee criticizes Myanmar's identity campaign.¹⁰⁹ The resolution (which would be non-binding, but would potentially send a strong message to the government) expresses "serious concern" about the status of the Rohingya and urges the government to "allow freedom of movement and equal access to full citizenship for the Rohingya minority" and to "allow self-identification".¹¹⁰ In addition, in a call to President Tein Sein, United States President Obama (who is scheduled to visit Myanmar in mid-November), reportedly called for revisions to the Rakhine State Action Plan, which, as noted in our September report, has been criticized by rights advocates for its discriminatory effects on the Rohingya population.¹¹¹ President Obama also called for measures "to support the civil and political rights of the Rohingya population", among other things.¹¹²

According to a pair of studies prepared over a three-year period by the London-based Equal Rights Trust and Bangkok's Institute for Human Rights and Peace Studies of Mahidol University, the Rohingya community in Myanmar should rank as one of the most excluded, persecuted and vulnerable communities in the world.¹¹³

B. Violence Between the Central Government and Ethnic Rebel Groups

In early October, unconfirmed reports that government troops would launch an offensive against the Kachin Independence Army ("KIA") over alleged forced recruitment efforts resulted in more than 5,000 people in Kachin state fleeing their homes due to concerns over possible renewed fighting.¹¹⁴ Tensions between the KIA and government forces rose after government forces sent a

letter warning the rebels to stop arresting locals on drug charges and calling for those in custody to be released by October 3rd.¹¹⁵ According to a local source of Radio Free Asia, “the KIA ‘arrested’ people who used drugs but the government army saw it as recruitment” and the government letter warned the KIA that it would “clear all KIA troops” if the KIA didn’t release those in its custody by the government deadline.¹¹⁶

In Shan State, ongoing clashes between the government and ethnic Ta’ang rebels that began in early October resulted in the death of two government soldiers and the injury of two more government soldiers.¹¹⁷ According to rebel sources, fighting in Shan State in early October among the Ta’ang National Liberation Army, the KIA and the Myanmar National Democratic Alliance Army resulted in the death of 17 government soldiers and the injury of four soldiers, though this report is contradictory with other reports of fewer fatalities in Shan State in the month of October.¹¹⁸

In a statement regarding the status of peace talks with the government and other matters, the United Nationalities Federal Council (the “UNFC”), a coalition of twelve armed ethnic groups, called on Myanmar’s military to end incursions against rebel groups in the country’s Kachin, Shan, Mon, and Kayin states, noting that government actions in recent months had led the coalition to doubt the government’s commitment to the peace process.¹¹⁹ However, a representative of the UNFC noted that the UNFC would continue to support the Nationwide Ceasefire Coordination Team (the “NCCT”) in talks with the government’s Union Peacemaking Work Committee (“UPWC”).¹²⁰

At the end of October, talks among four armed ethnic Karen groups regarding the creation of a unified Karen army appeared to gain momentum as the Karen National Union, one of the groups involved, which had previously indicated it wished to table the issue until 2016, agreed to discuss the proposal in November.¹²¹

C. Peace Talks

As noted in our September report, the UPWC and NCCT failed to reach a nationwide ceasefire agreement due to a number of issues. In addition, the refusal by Myanmar’s military to give up its parliamentary veto on constitutional amendments, a position that was announced in October, has prompted concerns over the possibility of achieving successful political dialogue and lasting peace.¹²² The joint-general secretary of the UNFC (which indicated in a statement that Myanmar’s civil war with ethnic groups would only end if the constitution was amended to provide greater powers to ethnic states) noted that failure to amend the constitution to provide more powers to ethnic states would make current efforts to forge a nationwide cease-fire meaningless.

However, at a rare roundtable meeting among Myanmar political leaders and opposition and rebel groups held at the end of October, the participants agreed to work towards a nationwide ceasefire agreement later this year or in early 2015.¹²³ In a call to President Thein Sein, President Obama (who, as noted above, is scheduled to visit Myanmar in November) urged that “every effort be made to conclude a national ceasefire in the short term”.¹²⁴

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4 Radio Free Asia, *supra* note 1.

5 *Id.*

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26 *Id.*

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<http://www.irrawaddy.org/burma/burmas-govt-bring-defamation-charges-2-publications.html>.

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<https://www.dvb.no/news/former-min-of-religious-affairs-sentenced-to-13-years-imprisonment-burma-myanmar/45178>.

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36 *Id.*

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47 *Id.*

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