

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

DECEMBER 2014 REPORT

Summary. This report reviews the December 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 Conference on Trade and Development (“UNCTAD”) announced this month that Myanmar would remain on UNCTAD’s list of the world’s least developed countries.¹ Myanmar’s gross national income per capita was US\$ 994 in 2014, putting it in front of only Cambodia and Bangladesh among Myanmar’s regional neighbors.²

During a confirmation hearing in front of the United States Congress, Admiral Harry Harris Jr., the nominee to become the next commander of U.S. forces in the Pacific, stated that he felt the time was not yet right to expand nascent military ties with Myanmar, as the country remained “firmly under military control.”³ Conversely, Congress appears poised to pass legislation which would permit the U.S. to train the Myanmar military in certain noncombat activities, a position that has prompted some human rights advocates and lawmakers to respond with concern about mixed messages following President Barack Obama’s previous commitment to Myanmar opposition leader Aung San Suu Kyi not to forge closer ties with the military.⁴

A member of the Chinese Foreign Ministry expressed concern in response to protests against a copper mine in Letpadaung in mid-December being constructed by a Chinese state-run company.⁵ The protests were the result of a decision by the company to restart construction in the face of staunch local opposition.⁶

The U.N. Office for the Coordination of Humanitarian Affairs (“OCHA”) released a monthly aid bulletin noting that a “volatile security situation and bureaucratic delays” have prevented U.N. convoys from traveling to certain rebel territories in Kachin State, leaving up to 27,500 people displaced and without necessary blankets and clothes for the coming winter.⁷ A spokesman for the OCHA noted that the U.N. has been unable to conduct any cross-line missions since September, which appears to be largely the result of Myanmar army policy.⁸

Japan’s Daiwa Securities Group Inc. and Japan Exchange Group Inc. signed a joint venture agreement with Myanmar Economic Bank to establish Myanmar’s first-ever stock exchange in Yangon.⁹ The government has indicated that they would like the exchange to be up and running by October 2015.¹⁰

On December 26, opposition leader Aung San Suu Kyi encouraged the U.S. and E.U. to refrain from reintroducing previously lifted sanctions in response to the slow pace of democratic reform in Myanmar.¹¹

On December 29, the U.N. General Assembly approved a resolution urging Myanmar to provide “full citizenship” to its Rohingya Muslim minority and to permit the Rohingya to move freely throughout the country.¹² The resolution, which was adopted by consensus, stressed the assembly’s “serious concern” about the government’s treatment of the Rohingya, and, among other things: urged the government to (i) permit the Rohingya to return safely to their communities (Rohingya are currently forced to live in camps and other restricted villages in Rakhine State), (ii) permit Rohingya to legally call themselves “Rohingya” (certain authorities have been actively trying to classify Rohingya as “Bengalis”) and (iii) investigate alleged instances of violence and discrimination against Rohingya.¹³

II. Civil and Political Rights

A. Election-Related Laws and Acts

In his New Year's speech to the nation, President Thein Sein said that the general election scheduled for later in 2015 would provide a platform for Myanmar politics to mature by allowing opposition parties a more active role by opening up dialogues with the government.¹⁴ According to President Thein Sein, because of this new political culture the 2015 elections will mark the first time since Myanmar's independence that elections will be freely and fairly contested by all political stakeholders.¹⁵ Furthermore, the President recognized that opening up political dialogue with ethnic armed groups will enable them to take a proactive role in politics.¹⁶

On January 5, 2015, representatives of 12 ethnic armed groups held meetings with President Thein Sein and military chief Senior General Min Aung Hlaing to discuss a proposed ceasefire and prospects for peace.¹⁷ The chairman of the All Burma Students Democratic Front said that during this meeting his group presented ideas on how to deal with three issues critical to solving Myanmar's political problems: amending the Constitution ahead of the 2015 elections, implementing a nationwide ceasefire and political dialogue, and recognizing the struggle of laborers, farmers and student communities.¹⁸

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

On December 22, police shot and killed Khin Win, who had joined other protesters attempting to prevent employees from China-backed Myanmar Wanbao Mining Copper Ltd. from fencing off land for the Letpadaung mining project.¹⁹ Dozens more protestors were injured.²⁰ Several hundred activists, students and farmers held protests in Mandalay denouncing the violent two-day crackdown at the mining site and calling on authorities to act according to the investigation committee's final recommendations on the project, as well as to punish Khin Win's killer.²¹ Aung San Suu Kyi, who was also chairwoman of the parliamentary commission that investigated the Letpadaung project, said that the government failed to implement the body's recommendation.²²

Myanmar authorities have arrested and charged four activists following the Letpadaung copper mine protests.²³ The activists have been charged under Articles 353 and 505(B) of Myanmar's penal code for interfering with public servants in the discharge of their duties and inciting offenses against the state.²⁴ Article 505(B) in particular prohibits spreading statements that cause alarm or induce others to commit an offense. The arrests followed clashes that occurred on December 29, where about 100 activists demanded the closing of the controversial copper mine.²⁵

Among the activists, Myanmar authorities have also arrested Wai Lu and charged him with "defamation of the state".²⁶ However, villagers at a protest camp said that Wai Lu had only provided humanitarian assistance and that he was not involved in the protest.²⁷ The charges against Wai Lu follow his November 11 release from Insein prison, where he had served a three-month sentence for organizing an unlawful demonstration against a sudden increase in electricity prices in Yangon, as well as for helping Moehiti Moemi gold miners who say their land was confiscated by a private mining firm.²⁸

III. Constitutional Reform

Throughout its 2014 session, Parliament's agenda was largely dominated by constitutional reform debates in the lead up to the upcoming 2015 presidential election. Parliament established the Joint Committee for Reviewing the Constitution ("JCRC") to assess the 2008 Myanmar Constitution, which had been heavily influenced by the controlling military, and by early 2014, the JCRC had received over 28,000 submissions for proposed constitutional reform.²⁹ Among the submissions received by the JCRC were over 27,000 calls to amend the Constitution's Chapter 1, which deems military participation in national politics a constant objective of the nation in the controversial Article 6(a).³⁰ Similarly, the JCRC received over 5,000 recommendations to amend Article 436, which contains the requirement that constitutional amendments be approved by more than seventy-five percent of 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.³¹ Additionally, the JCRC received proposals to amend Article 59(f) of the Constitution, which prohibits anyone with close family members who owe allegiance to a foreign power to run for the position of president.³² The section was added to the Constitution in 2008, and is widely perceived as aiming to bar Aung San Suu Kyi, whose sons are naturalized British citizens, from a presidential candidacy.³³

Ultimately, however, the JCRC in early 2014 shied away from implementing the most significant of the proposed constitutional reforms, advising against modifying Article 59(f) and declining to propose changes to the Constitution's provisions guaranteeing the military one quarter of all parliamentary seats and requiring approval by seventy-five percent of Parliament for constitutional amendments.³⁴

Nevertheless, advocacy for constitutional reform continued throughout much of 2014 as the JCRC's proposals were not binding on Parliament.³⁵ The National League for Democracy ("NLD") initiated a nation-wide petition to amend Article 436, garnering five million signatures in favor of the amendment.³⁶ United States President Barack Obama, who visited Myanmar in November 2014, called for inclusive, free and fair elections in 2015 and stated that amendments to the Constitution would be key to Myanmar's democratic transition.³⁷

In a disappointing development, however, Myanmar government officials have all but ruled out constitutional reform in advance of the 2015 presidential election.³⁸ In November 2014, military representatives in Parliament signaled that they will not support amendments to the Constitution.³⁹ The military MPs objected to the removal of their supermajority voting power, and at least one military MP indicated that the entirety of the Constitution was off limits, as far as his colleagues were concerned.⁴⁰ In fact, the military MPs proposed their own constitutional amendments, including one proposal that would allow the National Defense and Security Council ("NDSC") to play a part in dissolving Parliament and another that would expand the powers of the NDSC.⁴¹

In late November, Parliament endorsed a small “summit” to discuss constitutional changes, which would involve Aung San Suu Kyi, President Thein Sein, the speakers of the two houses of the assembly, military chief Senior General Min Aung Hlaing, and a member of a party representing an ethnic minority.⁴² Despite this promising development, the President’s office has since ruled out such discussions, with presidential spokesman Ye Htut calling the six-party summit “rather impractical.”⁴³ Following President Obama’s visit to Myanmar, lower house speaker Shwe Mann further confirmed that the Constitution would not be changed before a general election in 2015.⁴⁴

IV. Governance and Rule of Law

“Rule of law centres” have been established in Lashio and Mandalay as part of a pilot program to make these legal aid clinics available across the country, pending evaluation of the two locations’ centres.⁴⁵ The rule of law centre program is being implemented by the Rule of Law and Tranquility Committee, which is chaired by Aung San Suu Kyi, with assistance from the United Nations Development Programme and other donor countries.⁴⁶ This assistance is necessary as the committee decided to avoid placing the program under the purview of any of Myanmar’s governmental organizations.⁴⁷ In a report submitted to Parliament in September, the committee was critical of the government’s failure to cooperate in establishing such centres.⁴⁸

V. Political Prisoners

In December, members of the Committee for Scrutinizing Remaining Political Prisoners (“CSRPP”) complained that efforts to assess the cases of prisoners jailed for political reasons were stalling due to a lack of government cooperation.⁴⁹ Specifically, members of the CSRPP have indicated that while they have been making a list of inmates they consider to be political prisoners, the government has failed to call meetings to discuss the issue.⁵⁰ The committee was founded in May 2013 through government assistance and the urging of the United States, with the aim of releasing political prisoners as part of the country’s democratic transition.⁵¹ The committee is comprised of cabinet members, political party representatives, civil society organizations and former political prisoner associations.⁵²

In early January 2015, activist groups launched a photography campaign calling for the release of Myanmar’s remaining political prisoners.⁵³ This three day event coincided with Myanmar’s Independence Day.⁵⁴ The campaign involved placards and displayed photographs depicting portraits of former political prisoners, with the names of other jailed individuals written on the palms of the campaigners’ hands.⁵⁵

VI. Economic Development

A. Developments in the Legal Framework of Economic Development

Securities Exchange Operations and Licenses

On December 23, 2014, the state-owned Myanmar Economic Bank entered into an agreement with Japan Exchange Group Inc., operator of the Tokyo Stock Exchange, and the Daiwa Institute of Research Ltd, to establish and operate Myanmar's first stock exchange.⁵⁶ The exchange, known as the Yangon Stock Exchange, will be run by a joint venture, called Yangon Stock Exchange Joint-Venture Co., with a 51% stake in the joint venture being held by Myanmar Economic Bank under Myanmar's Finance Ministry.⁵⁷ The exchange is expected to open in October 2015.⁵⁸ The Securities Exchange Commission, which was formed in August 2014 to supervise the new exchange, is working on the rules for issuing licenses.⁵⁹

Banking Law Reforms

Myanmar continues to debate a draft Banks and Financial Institutions Law, which would substantially revamp its existing banking laws.⁶⁰ The proposed legislation was drafted with input from the World Bank, which hailed the legislation as needed in light of international standards, lessons from the 1998 Asian banking crisis and to close serious structural gaps.⁶¹ The International Monetary Fund also provided input.⁶² Among the changes are new requirements on the qualifications and fitness of bank directors and officers, affiliate transactions and insider lending restrictions, anti-money laundering requirements, capital adequacy requirements and credit exposure limits.⁶³ The Central Bank of Myanmar would also be subject to greater oversight.⁶⁴ For foreign investment in the banking sector, the legislation would amend application procedures for foreign banks and non-banking financial institutions, and it is thought that this might be an indication of further liberalization of the banking sector to come.⁶⁵

B. Developments in Foreign Investment and Economic Development Projects

Foreign direct investment in Myanmar has had a positive impact on employment over the past fiscal year, accounting for the employment of over 200,000 Myanmar nationals since the 2011-12 financial year.⁶⁶ Legally, businesses incorporated under the Foreign Investment Law are required to employ Myanmar nationals to comprise a certain proportion of their staff.⁶⁷

According to Myanmar's Ministry of Industry, there are more than 120,000 small- and medium-sized enterprises ("SMEs") across the country, which account for 99 percent of Myanmar's economy.⁶⁸ However, those SMEs lack access to sources of capital as Myanmar's banks face difficulties in offering loans to SMEs due to the firms' lack of evidence of collateral, receipt and payment accounts and balance sheets.⁶⁹ Without the ability for banks to review this proof of collateral, SMEs currently obtain loans via the government's Directorate of Industrial Supervision and Inspection⁷⁰ or via foreign banks, which could prove to be risky with the kyat weak against the dollar.⁷¹ At the same time, Japan is investing in Myanmar's fledgling insurance business and aiding Myanmar Insurance in establishing a Credit Guarantee Corporation to guarantee amounts that SMEs wish to borrow.⁷² It is unclear if this will provide banks with the requisite comfort to lend to SMEs.

The European Union has announced that it has allotted €688 million in bilateral aid to Myanmar between now and 2020 to aid in its political transition and development, directed at rural development, education, governance and peace building.⁷³ In an effort to improve national water

resources in Myanmar, the World Bank has also approved a US\$ 100 million credit from the International Development Association to strengthen the government's ability to sustainably manage the Ayeyarwady River by developing water resources management institutions and enabling informed decisions about future investments in developing the river.⁷⁴ Notably, at around the same time, a new report published by the World Bank has urged the Myanmar government to prioritize the development of electricity, finance and skilled labor to attract domestic and foreign investment and boost employment. The report is titled 'Ending Poverty and Boosting Shared Prosperity in a Time of Transition.'⁷⁵

Aimed at improving infrastructure, Japan has announced that it will grant US\$ 40 million to set up a Control Centre System for Yangon's circular-train system and is also in discussions with Myanmar to grant additional low interest rate loans to upgrade the whole circular-train system in Yangon at an estimated cost of about US\$ 2 billion.⁷⁶ In Mon State, the Myanmar Investment Commission has approved construction by a joint venture between South Korea's Sky International Co Ltd and Myanmar's Asia International Fisheries Co Ltd of a cable car linking Yathaedaung Camp to Kyaiktiyo Pagoda.⁷⁷

The real estate and tourism sector continues to expand with 31 foreign investment hotels permitted to open in six regions of Myanmar, including Bagan and Mandalay.⁷⁸ Swiss luxury hotel group Kempinski will open its second hotel in Myanmar in late 2016 in Yangon in a historic building, bringing US\$ 4,000 per night hotel rooms to the city.⁷⁹

C. Land Seizures

Two separate hotbeds for discord stemming from land seizures flared up this month. The most prominent occurred at the Letpadaung mine on December 23, 2014.⁸⁰ A villager named Khin Win was shot and killed while protesting the expansion of the Chinese-backed copper mine.⁸¹ Chinese employees of the Letpadaung mine were erecting a fence in the village of Moegyo Pyin, where land had been seized for expansion of the operation.⁸² More than a dozen people, including, purportedly, some of the security force, were injured.⁸³ Two other protestors had been shot and wounded in the same town earlier in December.⁸⁴

The day of Khin Win's death, mine operators had announced an expansion of the mine that will require seizure of land in 35 nearby villages.⁸⁵ The Letpadaung copper mine is a joint venture between the military-owned Union of Myanmar Economic Holdings and the Chinese company Myanmar Wanbao Mining Copper Limited.⁸⁶ The joint venture was one of the last major deals approved by the military junta before it ceded power to President Thein Sein in 2011.⁸⁷ The mine became a symbol of President Thein Sein's nominally civilian government's heavy-handed support of military interests when, several years ago, police fired phosphorus smoke bombs to disperse protesting villagers and Buddhist monks.⁸⁸ Dozens of monks suffered severe burns, prompting a national outcry and a rare apology from the President.⁸⁹

Ye Htut, spokesman for the government of Myanmar, said the police were attacked by villagers as construction of the fence began.⁹⁰ A spokesman for the project, Cao Desheng, stated that the events leading up to Khin Win's death are still unclear.⁹¹ In a subsequent press release, Wanbao described Khin Win's death as "senseless" and noted that the project has support from a vast majority of villagers who were consulted through door-to-door visits.⁹² Some villagers state

they are hesitant to take compensation for their lands, explaining that their families have worked the lands for generations and they are concerned about their livelihoods because all they know is farming.⁹³

Khin Win's death has sparked protests in other parts of the country, including Yangon, where protesters gathered outside the Chinese embassy.⁹⁴ Her family has filed an official complaint over her killing.⁹⁵

The second December flashpoint concerns the land dispute in Migyaungkan Wards 1, 2, and 3 in Thingangyun Township in northeast Yangon.⁹⁶ In something resembling an "Occupy Wall Street" move, protestors have been camped beside Maha Bandoola Park east of city hall for over 260 days.⁹⁷ On December 3, the group issued an ultimatum that if the authorities fail to resolve their land confiscation complaints within one week, they will up the protest's momentum.⁹⁸ Protestors claim that the military evicted them from their land without compensation roughly 20 years ago.⁹⁹

After the government failed to respond to the ultimatum, the group on December 12 blocked a gate at city hall and chanted loudly.¹⁰⁰ The government riposted by playing loud music and broadcasts from city hall, which overpowered and disrupted the group's chanting.¹⁰¹ The group then appears to have held a candlelight vigil that evening.¹⁰²

At least one activist was arrested after this uptick in the protest.¹⁰³ Wai Lu was charged with violating a section of Myanmar's penal code that prohibits spreading statements that cause alarm or induce others to commit an offense against the state or the public.¹⁰⁴ Protesters claim Wai Lu was not involved with the protest, but instead provided humanitarian assistance to the elderly in the protest camp.¹⁰⁵ Wai Lu, apparently a career activist, was only recently released from jail after serving a three-month sentence for organizing an unlawful demonstration.¹⁰⁶

VII. Ethnic Violence

A. Violence Against Muslims

In the beginning of December, President Thein Sein approved a controversial religion and family planning law and submitted it to parliament for consideration at the next session.¹⁰⁷ Rights advocates have criticized the law as discriminating against Muslims and women.¹⁰⁸ The law is part of a series of four laws proposed by an organization called the Association for the Protection of Race and Religion, which is connected to a nationalist Buddhist monk group.¹⁰⁹ The law would, among other things, require couples consisting of Buddhist women and men of other faiths who wish to marry to apply to local authorities, who would then provide public notice of their engagement, after which the couple would only be permitted to wed if there are no objections.¹¹⁰ The law also would require those who wish to change their religion to seek various bureaucratic approvals.¹¹¹

At the end of December, the United Nations General Assembly, by consensus, approved a resolution urging Myanmar to give "full citizenship" to the Rohingya minority and to allow them to move freely throughout the country.¹¹² As noted in previous reports, Myanmar authorities want to officially categorize the Rohingya as "Bengalis", implying that they are illegal immigrants from Bangladesh.¹¹³ The resolution stressed the assembly's "serious concern" over the treatment of

Rohingya and further urged the government to, among other things, “step up its efforts to end remaining human rights violations and abuses, including arbitrary arrest and detention, forced displacement, rape and other forms of sexual violence.”¹¹⁴

B. Violence Between the Central Government and Ethnic Rebel Groups

In December, an attack by ethnic rebels on an army outpost in Myanmar’s northeastern border region left seven soldiers dead and twenty wounded.¹¹⁵ Reports indicate that the attack was carried out by ethnic Kokang rebels, who are primarily based in Shan state.¹¹⁶

C. Peace Talks

Peace negotiations between the government and ethnic groups have stalled after last month’s deadly attack by the government army on a rebel training camp, which left 23 rebel cadets dead.¹¹⁷ December’s meeting to discuss the peace process was “grossly under-attended”, according to The Irrawaddy, as members of the Nationwide Ceasefire Coordination Team (which represents the ethnic rebels) apparently do not want to continue high-level peace talks until after the government meets with ethnic stakeholders to discuss the attack on the rebel training camp.¹¹⁸

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