

# STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

## AUGUST 2015 REPORT

**Summary.** This report reviews the August 2015 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 August 4, Myanmar government appealed for international assistance to help provide needed supplies following the destructive impact of weeks of heavy monsoon rains.<sup>1</sup> Various countries pledged aid within days of the request<sup>2</sup> in the face of devastating flooding which has affected more than a million people.<sup>3</sup> The government has been accused of taking credit for internationally provided aid to drum up support ahead of the pending November elections.<sup>4</sup>

Indonesian police rescued 45 Myanmar fishermen believed to be victims of human trafficking from a hotel in central Jakarta.<sup>5</sup>

Yanghee Lee, the UN human rights envoy, alerted the associated press that the Myanmar government had placed prohibitive limits on her ability to access various parts of Myanmar, including Rakhine State.<sup>6</sup> Ms. Lee has been on a five day tour of Myanmar in advance of a report she is scheduled to deliver to the UN General Assembly in October. Myanmar's Ministry of Foreign Affairs responded by blaming restrictions on Ms. Lee's movements on recent weather conditions and accusing her of making statements based on speculation, rather than facts.<sup>7</sup>

Parliament passed two bills that place restrictions on religious conversion and polygamy.<sup>8</sup> The bills will become law if and when they are signed by President Thein Sein. The bills are part of a four-bill package which has been the subject to international condemnation; Yanghee Lee remarked earlier in August that "the package of four race and religious bills clearly violate [international] norms."<sup>9</sup>

The United States-based Carter center, one of the five international observers of Myanmar's national election, issued a list of recommendations to be addressed by the government in advance of the election.<sup>10</sup> Most of the recommendations address issues such as transparency that would encourage a free and fair election.<sup>11</sup> The center also expressed concern about the proposed deployment of additional police for "election security," questioning the purpose and scope of their involvement.<sup>12</sup>

Parliament approved loans from the Asian Development Bank (US\$240 million), ASEAN Infrastructure Fund (US\$20 million) and French Development Agent (€40 million) for various infrastructure development projects.<sup>13</sup>

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

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

Myanmar's election commission has barred 15 Rohingya candidates from the Democracy and Human Rights Party ("DHRP") from running in the upcoming November elections, declaring them ineligible to run for parliamentary seats because their parents were not Myanmar citizens when they were born.<sup>14</sup> DHRP chairman Kyaw Min said that his party plans on appealing the ruling, saying "[it] does not make sense and it lacks a detailed explanation."<sup>15</sup> He did not seem hopeful that the appeal would be successful, fearing that the commission's decision was part of a pervasive effort to disenfranchise the Rohingya community.<sup>16</sup> Rohingya, as "white card" holders, are currently unable to vote in the elections despite being permitted to do so in 2010.<sup>17</sup> In 2010,

white card holders generally supported President Thein Sein and his party. Earlier this year, however, likely feeling pushback from some Buddhist-led groups expressing an anti-Rohingya sentiment, the government revoked the approximately 700,000-strong white card holders' eligibility to vote.<sup>18</sup> Ethnic Rohingya may vote if they are eligible for citizenship under the 1982 citizenship law, but that eligibility is contingent upon identifying as “Bengali” – a condition many Rohingya and human rights groups find disagreeable as it carries the implication that the Rohingya are illegal immigrants from Bangladesh.<sup>19</sup>

Despite the Constitution permitting an election to be postponed in the event that its fairness and accuracy could not be guaranteed due to regional instability, the Ministry of Information has announced that recent disastrous flooding will not delay the November polls.<sup>20</sup> Union Election Commission (“UEC”) chairperson Tin Aye said that the UEC is prioritizing the correction of voter lists for the flood-affected areas, and that they would provide refugees from those areas with certificates to vote even if they had lost their national identity cards.<sup>21</sup> He also stated that refugee camps had lists of original voter addresses, and that refugees could register to vote either in the home constituencies or in the camps.<sup>22</sup> If there were to be any postponements, they would be at specific affected polling stations rather than across the whole constituency and affected voters could also cast their ballots early, according to Tin Aye.<sup>23</sup>

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

On August 7, police arrested Saw Maung Gyi, a leader of the 88 Karen Generation Student Organization, which assists small farmers in peacefully resisting land confiscations, under section 17(1) of the Unlawful Associations Act, for allegedly providing assistance to a Kayin insurgent.<sup>24</sup> The police further arrested nine farmers and activists who were sleeping at the organization's office and fined them for staying overnight outside their home district without government permission.<sup>25</sup>

On August 27, the Union Election Commission issued free speech restrictions for the 15-minute state-controlled television and radio broadcast segments ahead of the November elections.<sup>26</sup> Political parties must avoid speeches that could cause the disintegration of the Union, fracture national solidarity, infringe on the state's sovereignty or insult or destroy the security and stability of the country.<sup>27</sup> Furthermore, all parties must also avoid defaming the government, using hate speech and misusing nationalism and religion.<sup>28</sup> Candidates must submit their public addresses seven days in advance to be vetted by the UEC and the Ministry of Information.<sup>29</sup> The restrictions have been widely condemned by political parties.<sup>30</sup>

## **C. Miscellaneous**

In a dramatic turn ahead of the November elections, conservatives in the ruling Union Solidarity and Development Party (“USDP”) forced out Shwe Mann, who was the chairman of the party and a possible leading candidate for president.<sup>31</sup> Shwe Mann had been the third most powerful member of the junta that controlled Myanmar until 2011.<sup>32</sup> As speaker of the lower house of Parliament in the current government—a role he continues to fill for the time being—Mann has formed an alliance with Nobel Laureate Aung San Suu Kyi, which was thought to make conservative leaders uncomfortable.<sup>33</sup> Security forces have deployed outside party headquarters.<sup>34</sup> This story is continued in Section III below.

### III. Governance and Rule of Law

The European Union said that it will send a group of over one hundred experts to observe Myanmar's upcoming elections, scheduled for November 8.<sup>35</sup> Although the EU had sent a smaller group to observe the 2012 by-elections, the November observation will be their first comprehensive participation.<sup>36</sup> According to the EU's ambassador to Myanmar, the observation is meant to promote transparency and increase credibility, "to strengthen democracy, the rule of law and human rights."<sup>37</sup> The previous general election, held in 2010, resulted in a victory at the polls for the opposing National League for Democracy ("NLD"), but the result was ignored by the ruling junta. Ahead of this year's election, armed forces Commander-in-Chief Min Aung Hlaing told *The Asahi Shimbun* that "[t]here is no reason for [the army] to refuse the election result," should the NLD win at the polls, signaling an apparent willingness to go along with an increase in democratic freedom and rule of law.<sup>38</sup>

In contrast to this, speaker of the parliamentary lower house and former general Shwe Mann was forcibly removed from his position as chairman of the USDP in a night-time raid of the party's Naypyidaw headquarters by armed troops.<sup>39</sup> Shwe Mann was considered a possible presidential candidate and one who could potentially be an appealing compromise given his informal alliance of sorts with NLD leader Aung San Suu Kyi: whether or not (as some cynics believe) his ulterior motive was simply to strengthen his position against longtime rival President Thein Sein, Shwe Mann has assisted Suu Kyi by, for instance, enabling her to chair the Rule of Law Committee and by entertaining the (seemingly ultimately futile) possibility of amending the Constitution.<sup>40</sup>

Shwe Mann replaced President Sein as chairman of the USDP when he argued that it was unconstitutional to hold both the presidency and chairmanship simultaneously.<sup>41</sup> Following his removal, Shwe Mann was replaced by Htay Oo, another former military man and a hardliner known to be close to former Senior General Than Shwe – an individual some critics suspect is ultimately behind this power play.<sup>42</sup> *The Wall Street Journal* puts President Sein back in the chairman's seat, and notes that several other ex-military men have been added to the USDP's central committee.<sup>43</sup> According to an anonymous former general, adding military-aligned MPs is a strategy to counter the possible reduction of seats reserved for uniformed military members (currently an effective veto bloc of 25 percent of all MPs).<sup>44</sup> Shwe Mann's son, meanwhile, has stated that his father is not under house arrest as previously thought, and is planning to contest a parliamentary seat in November.<sup>45</sup>

The President extended the state of emergency in effect in the Kokang Self-Administered Zone of Shan State, due to continued fighting between Myanma troops and ethnic Chinese rebels in the northern region.<sup>46</sup> The state of emergency was first declared in February. With this extension, direct military control over the region will continue until mid-November, expiring after the November 8 polls – a fact that has not gone unnoticed by critics, including UN Special Rapporteur on Myanmar, Yanghee Lee, who voiced the concern that "elections may be cancelled for security reasons."<sup>47</sup>

The first of four Rule of Law Centres expected to open this year opened its doors in Mandalay this month.<sup>48</sup> A project pushed by Suu Kyi and backed by the United Nations, the Rule of Law Centres are intended to raise awareness of and provided education in rule of law, with a

focus on Myanmar-specific issues.<sup>49</sup> It is hoped that the Centres – which will provide training in Myanmar language rather than English, as is the current informal policy with respect to such education materials – will make a relevant legal curriculum accessible to those seeking it.<sup>50</sup> It is further hoped that the skills and institutional knowledge taught at the Centres will spread organically as attendees carry both with them upon completing the training.<sup>51</sup>

#### **IV. Political Prisoners**

For information with respect to land rights activists in Kayin State facing arrest in connection with their support of local farmers, please see Section V.C below.

Ousted USDP chairman Shwe Mann was thought to be held under house arrest following his removal from the chairmanship earlier in the month, although his son has stated otherwise. For more information, please see Section III above.

#### **V. Economic Development**

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

In August, Parliament passed legislation setting a minimum wage of 3,600 kyat (US\$2.80) for an eight-hour work day.<sup>52</sup> The measure was supported by several prominent garment companies, including Hennes & Mauritz and Gap Inc.<sup>53</sup> The new minimum wage became effective on September 1 and is expected to give Myanmar’s garment industry a competitive advantage over garment makers in Vietnam and Cambodia.<sup>54</sup>

However, last month Parliament failed to adopt the Myanmar Investment Law, which would have reduced various restrictions on foreign direct investment and which was drafted with the assistance of the International Finance Corporation.<sup>55</sup> In addition, revisions to the Myanmar Companies Act did not pass.<sup>56</sup> Legislative action on these items is not expected to occur before the national elections on November 8.<sup>57</sup>

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

Royal Dutch Shell plc and other parties have reached an agreement to develop a liquefied natural gas terminal at the Dawei special economic zone in Myanmar’s Tanintharyi region.<sup>58</sup>

Myanmar recently engaged Citi and Standard Chartered as advisors in obtaining the country’s first-ever credit rating from the major global credit rating agencies.<sup>59</sup> Although Myanmar’s credit rating is expected to debut below investment grade, the move is significant because it will provide more information about Myanmar to potential investors and potentially improve investor confidence.<sup>60</sup>

##### **C. Land Seizures**

Human Rights Watch (“HRW”) concluded this month that land rights activists are Myanmar’s newest political prisoners.<sup>61</sup> In support of this conclusion, HRW cited the “arbitrary” arrest of a prominent land rights activist in Kayin State.<sup>62</sup> At about midnight on August 7, police arrested Saw Maung Gyi, a leader of the 88 Karen Generation Student Organization.<sup>63</sup> Gyi was

charged with providing assistance to a man the police claim is an insurgent.<sup>64</sup> If convicted, he will face a two-or-three-year prison sentence.<sup>65</sup> To further harass the Kayin activist organization, police arrested nine farmers and activists that same night who were sleeping at the Kayin organization's office, and fined them for staying overnight outside their home district without government permission.<sup>66</sup>

HRW cites additional evidence that shows regular government harassment of land activists in Kayin State.<sup>67</sup> Twenty-seven people were arrested in Kayin State in June of this year.<sup>68</sup> Their crime—for which they face up to seven years in prison—was violating the Forest Law by building huts on land they believed was theirs.<sup>69</sup> Another 13 people were arrested for peacefully protesting land confiscations.<sup>70</sup>

Elsewhere, in Mandalay Region's Amarapura township, residents have sent the region's chief minister a letter of complaint over land seized in 2000 for use as a cemetery.<sup>71</sup> The operation of a cemetery at that site is additionally problematic because it is adjacent to a university.<sup>72</sup>

## **VI. Ethnic Violence**

### **A. Violence Against Muslims**

Myanmar was hit by heavy floods in early August, causing President Sein to declare a state of emergency in four regions – Chin, Magwe, Sagain and Rakhine.<sup>73</sup> While thousands of people were sheltering in monasteries, reports claimed that Rohingya Muslims were turned away from shelters.<sup>74</sup> After Rohingya took shelter in abandoned schools and community centers, security forces rushed to the scene to remove them, assaulting many in the process.<sup>75</sup> Some were told that these buildings were meant to shelter “those who belong to this country,” referring to the majority Rakhine Buddhist population.<sup>76</sup> The Rohingya were forced to flee to hilly areas, which can become dangerous during the monsoon season.<sup>77</sup>

### **B. Violence Between the Union Government and Ethnic Rebel Groups**

As peace negotiators continued to insist that a nationwide ceasefire was near, clashes reportedly broke out in late August in Shan and Kachin states ahead of a planned meeting between a handful of ethnic armed groups, President Sein and Senior General Min Aung Hlaing.<sup>78</sup>

The Ta'ang National Liberation Army (“TNLA”) said fighting with the Myanmar Army took place in an area of the TNLA's control in Namhsan Township, Shan State, with the TNLA claiming to have killed two government soldiers after coming under attack at the village of Nang Kay.<sup>79</sup> Tar Bong Kyaw, the TNLA's general secretary, reported that clashes had occurred almost every day for a week amidst an increased deployment of Myanmar army troops in the area.<sup>80</sup>

### **C. Peace Talks**

A ninth round of peace talks ended in a stalemate earlier this month, as the two sides remained at odds over the number of insurgent armies to be included in a proposed nationwide cease-fire agreement.<sup>81</sup> Negotiators were otherwise able to finalize a draft cease-fire agreement

during the two-day talks in Yangon, but were unable to agree on whether the pact would include 15 or 21 armed ethnic groups.<sup>82</sup>

At issue was the government's refusal to recognize certain ethnic groups, such as the TNLA, the Myanmar National Democratic Alliance Army ("MNDAA") and the Arakan Army ("AA"), all of which have had recent skirmishes with the Myanmar army.<sup>83</sup> These three groups had made a collective peace offer to the government, "with the view that if our three groups cease fire with the government, it would contribute to and expedite the nationwide ceasefire process and political dialogue," according to Mai Phone Kyaw, the TNLA secretary.<sup>84</sup> The groups viewed their offer as demonstrating their intent "to show the people and other stakeholders that [the] ethnic armed groups are really desirous of peace and seriously committed to finding a political solution."<sup>85</sup> The government refused the offer, however, and insisted on bilateral agreements with these unrecognized groups.<sup>86</sup>

Talks resumed in mid-August, after which the Karen National Union ("KNU") had decided to sign the nationwide agreement as other rebel groups considered whether to sign the agreement.<sup>87</sup> The KNU stated that for the organizations not able to sign the nationwide agreement (since the government still had not accepted the principle of all groups signing at the same time), the KNU would "attempt to gain a guarantee for them politically, militarily and with the right to humanitarian assistance."<sup>88</sup>

In response to the KNU's willingness to sign, Aung San Suu Kyi reportedly expressed to Major Htoo Htoo Lay of the KNU her opinion that armed ethnic groups should not rush into signing the ceasefire agreement, and that groups may have to consider not signing the agreement until after the November general election.<sup>89</sup> Suu Kyi later clarified her remarks, saying that she wished to see the ceasefire agreement concluded as soon as possible but wanted to ensure that it would be "meaningful."<sup>90</sup>

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