

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

SEPTEMBER 2015 REPORT

Summary. This report reviews the September 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

In a letter to Mandalay Region Chief Minister Ye Myint, Human Rights Watch called on Myanmar's government to publicly condemn discriminatory remarks about gay and transgender people made by government officials in the Mandalay regional parliament;¹ comments included remarks by the Minister of Border and Security Affairs, Myint Kyu, calling on police to arrest gay people. Human Rights Watch called for discriminatory laws, such as Section 377 of Myanmar's penal code, which criminalizes same-sex sexual behavior, to be repealed.²

The US-based Global Financial Integrity ("GFI") estimated that almost US\$20 billion worth of "dirty" money and physically smuggled goods have left Myanmar in the past five decades.³ Outflows of illicit value from poor nations have received the attention of anti-poverty groups and world leaders as these flows are often untaxed and thus serve as a potential source of funds/revenue for governments to improve the lot of their own citizens. The GFI estimates that roughly 6.5% of Myanmar's annual economic input leaves the country in the form of the aforementioned illicit financial flows.

The Myanmar National Human Rights Commission ("MNHRC") called on Myanmar's government to take action against police officers who brutally cracked down on student protesters earlier in the year.⁴ The MNHRC was formed by President Thein Sein and has previously been criticized for a lack of independence from the government.

The Mandalay Region government agreed to a request by Buddhist nationalists to prevent ritual cattle slaughter during Eid-al-Adha Celebrations.⁵ The announcement came shortly after claims that Buddhist Nationalists had worked closely with the government to shut down Muslim-owned slaughterhouses in the region.

The World Bank's International Finance Corporation has agreed to advise the Myanmar government on its plans to build more hydropower dams.⁶ The IFC noted that it would be providing "advisory services", including improving the government's ability to assess the environmental and social risks related with such projects.

II. Civil and Political Rights

A. Election-Related Laws and Acts

The Association for the Protection of Race and Religion ("Ma Ba Tha") celebrated the passage of the last of four controversial pieces of legislation known collectively as the "race and religion protections laws."⁷ The group celebrated the legislative victory nationwide over fourteen days. Wirathu, a nationalist monk, said the celebrations were intended to show the strength of Ma Ba Tha, a movement that officially began just over two years ago.⁸ Critics have said the laws infringe on women's rights and could be used to discriminate on the basis of religion.⁹ Wirathu responded to the controversy surrounding the laws by saying "If there are people who remain against these laws, we want to give warning: You will face punishment from the people, including the country's monks."¹⁰

The laws ban polygamy, create restrictions on interfaith marriage and religious conversion, and empower authorities to impose birth spacing requirements.¹¹ Human rights concerns have been raised by foreign governments, local women’s rights groups and the UN envoy for human rights in Myanmar.¹² The legislation is described by both its opponents and advocates as measures to counter a perceived threat posed by Muslims to Myanmar’s Buddhist majority.¹³

A leading Ma Ba Tha member in June told members of the clergy to encourage voters to support the incumbent Union Solidarity and Development Party (“USDP”) over the political opposition, saying the latter did not have the necessary experience to govern.¹⁴ In making such declarations, Ma Ba Tha and its followers may be violating an election law prohibition on “making speeches, making declarations and instigating to vote or not to vote on grounds of race and religion.”¹⁵ The National League for Democracy (“NLD”) has filed formal complaints against Ma Ba Tha, alleging that the group was using religion to influence voters ahead of the November poll, in contravention of Myanmar’s election laws.¹⁶

In addition to the controversy related to the Race and Religion Protections Laws, the disqualification of candidates in Myanmar has also created headlines internationally. The United States and eight other nations are concerned about the disqualification of more than 100 candidates for Myanmar’s upcoming general election.¹⁷ Over half of the candidates were rejected based on questions of citizenship.¹⁸ There are reports that almost all Muslim candidates have been disqualified—including some current members of Parliament.¹⁹ The Union Election Commission (“UEC”) has permitted eleven individuals who were previously disqualified from the November election to rejoin the race. All those reinstated were initially excluded under Sections 8(b) and 10(c) of the Election Law, which bars candidates from seeking office if they are not citizens, or if they have a parent who was not a citizen at the time of the candidate’s birth.²⁰

B. Campaign Developments/Miscellaneous

Campaigning for the general elections to be held on November 8 formally started on September 8.²¹ In August, USDP conservatives forced out Shwe Mann, who was the chairman of the party and a possible leading candidate for president.²² Shwe Mann had been the third most powerful member of the junta that controlled Myanmar until 2011.²³ As speaker of the lower house of Parliament in the current government—a role he continues to fill for the time being—Shwe Mann had formed an alliance with Aung San Suu Kyi and backed a bill proposing to lift the army’s veto authority over constitutional reform, which was thought to make conservative leaders uncomfortable.²⁴ Additionally, Shwe Mann and other USDP leaders rejected more than half of the retired senior officers the army had preselected as candidates to put on the party’s ticket for the November election.²⁵

At a campaign rally in rural Kawhmu, Aung San Suu Kyi told the gathered crowd to vote for the NLD without fear of repercussion, and to verify that their names correctly appear on the appropriate voter registration list.²⁶ With respect to voter intimidation concerns, Aung San Suu Kyi had been informed by one person that he was afraid of being fired from his job in retaliation for voting for the NLD, according to a member of her election campaign.²⁷ Aung San Suu Kyi urged voters to cast their ballots without apprehension, promising that an increase in transparency if the NLD wrests control of the government from the military-backed USDP will protect voters from retaliatory action.²⁸ However, it is unclear how this protection will extend to voters in the

near-term or to those voters retaliated against in a civilian setting, or should the NLD ultimately fail either to win the election or to change current administrative practices. The latter is of particular concern regardless of the outcome of the election, since the military will continue to hold one quarter of parliamentary seats in any event.

With respect to concerns regarding inaccurate voter lists, the NLD has claimed that voter lists they have inspected contain numerous errors, such as the inclusion of names of deceased individuals or the absence of voters who should be listed.²⁹ Despite raising the issue with the UEC on multiple occasions, the NLD says that lists remain incorrect.³⁰ Thu Wai, chairman of the Democratic Party (Myanmar), has also criticized the UEC, saying that his own name was not on the relevant voter list in spite of already reapplying once with a letter of recommendation from his township administrator.³¹ “They blame the machine or computer,” he said, “but the UEC must check the list.”³²

In light of these concerns, Aung San Suu Kyi called on the world through a video address posted on her Facebook page to scrutinize the general election poll process and ensure that the results are respected.³³ The swift forcible removal of Shwe Mann will be seen as a reminder to the democracy movement that the army is willing to take measures to ensure its dominance and may do so following an NLD win.³⁴

In response to an invitation by the UEC, the European Union has deployed an Election Observation Mission (“EOM”) to observe Myanmar’s upcoming elections.³⁵ The EOM, comprised of nine election analysts and 30 long-term and 62 short-term observers, underscores the EU’s support for Myanmar’s democratic transition and its commitment to supporting credible, transparent and inclusive elections in Myanmar.³⁶

C. Press and Media Laws/Restrictions

The Myanmar government has stated that it will work with Facebook in advance of the upcoming election to delete accounts that post hate speech or incite personal attacks.³⁷ The government will also move to prosecute users that break the guidelines under Myanmar’s Electronic Transactions Law.³⁸ Zaw Htay, director of the President’s Office, reported that government officials had met with Facebook staff on at least two occasions to discuss Facebook’s community standards that ban personal attacks, “including cartoons.”³⁹ According to Zaw Htay, Facebook staff explained that they would take action by working in partnership with the authorities if these standards are not followed.⁴⁰ Banned activities on Facebook include threats, intimidation, hateful or disturbing speech, releasing personal information, infringing copyrights, and inciting violence.⁴¹

In a related incident, Myanmar movie director Mite Tee had recently been rebuked by the President’s Office for posting a cartoon to Facebook that depicted violence towards President Thein Sein.⁴² In response, the President’s office issued a warning, saying, in part, that any “acts promoting violence will be charged under [Myanmar’s] anti-terror acts. Citizens should get freedom, but according to existing laws...There should be responsibility with practicing freedoms—people should take responsibility for what they have done.”⁴³

On September 23, President Thein Sein released a video titled “opening the freedom of expression” and posted it on his Facebook page.⁴⁴ The video praises President Thein Sein for allowing trade unions and the right to protest, and shows newspapers being printed, people discussing news at kiosks and protesters apparently free to engage in democratic dialogue.⁴⁵ On the same day, the NLD filed formal complaints against Ma Ba Tha for holding large public gatherings across the country to celebrate the passage of the controversial Race and Religion Protection Laws; the NLD is charging that the group was using religion to influence voters before the elections in contravention of the country’s election laws.⁴⁶

Myanmar will begin the process for selecting the 29-member News Media Council, which is slated to replace the Interim Press Council, in October.⁴⁷ Under Myanmar’s Media Law, enacted in March 2014, the president is obligated to establish the council which is charged with regulating all forms of media in the country.⁴⁸ The new council will be composed of one person from each of the Myanmar Journalist Network, the Myanmar Journalist Association, the Myanmar Journalist Union and Burma News International; two from the existing Interim Press Council; six from news media organizations; eight from publishing, writing, poetry or cartoonist associations; two independent candidates; and four “experts” drawn from legal, social or economic fields.⁴⁹ Additionally, each of the lower and upper house speakers of Parliament, as well as President Thein Sein, will be entitled to appoint one council member.⁵⁰

D. Freedom of Association/Religion

On August 31, President Thein Sein signed into effect the Monogamy Law, which had been passed earlier in the summer and is the last of a series of controversial “race and religion protection laws” to be enacted in Myanmar.⁵¹ The law, which proponents claim will counteract a population burst in some regions of the country, includes a 10-year prison term for any person who conceals an existing marriage in order to remarry but also protects the rights of children born to an illegal or concealed marriage.⁵² On September 21, Ma Ba Tha celebrated the passage of the law by holding a march in Mandalay region, while revelers celebrated with music and dancing.⁵³ Celebrations are scheduled to continue across the country over a two-week period.⁵⁴ Although proponents state that the law does not discriminate and instead offers protections for both Buddhist and non-Buddhist women, civil society and international human rights groups worry that the laws could be used to unfairly target the country’s Muslim minority and could result in the abuse of women by husbands seeking divorce.⁵⁵ Wakema township police have arrested and charged the first person in violation of the new law, and police said the case would come before the township court on September 29.⁵⁶ The accused, a 37-year old Muslim man, was living with a Buddhist woman for three days in his aunt’s home, despite his pre-existing marriage.⁵⁷

On September 18, the Kyauktada township court in Yangon imposed an additional four months of jail time for two activists who had been arrested in December for protesting a police shooting death outside a Chinese-owned copper mine in Sagaing region.⁵⁸ The pair had been convicted by the court under Article 18 of the Act on the Right to Peaceful Assembly and Peaceful Procession, alleging that their protest was unauthorized and thus violated the law.⁵⁹ The two individuals now face terms of five years and six years, five months, respectively, and have been simultaneously convicted by two other courts for the same protest.⁶⁰ One of the activists, Naw Ohn Hla, had also been sentenced to six months in June for conducting a peaceful prayer vigil eight years ago for the release of Aung San Suu Kyi.⁶¹

Also on September 18, a group of monks and activists commemorated the eighth anniversary of the failed Saffron Revolution by observing a moment of silence in Yangon and releasing a statement calling on the government to release the country's political prisoners.⁶²

On September 27, the Centre for Youth and Social Harmony (in partnership with USAID and the U.S. Embassy in Yangon) launched a campaign with a Myanmar title translating to "People of Myanmar – Sharing one boat and one destination."⁶³ During the campaign launch, representatives distributed pamphlets that encourage racial and religious co-existence and harmony and spoke to Myanmar children about topics of national identity and religious tolerance.⁶⁴

On September 29, UN Secretary General Ban Ki-moon addressed a meeting of the UN Partnership Group on Myanmar, held in New York during a session of the 70th General Assembly and in advance of Myanmar's Universal Periodic Review.⁶⁵ In his remarks, he condemned Myanmar's decision to revoke white (voting) cards from the Rohingya Muslim population and stated that authorities "must ensure that all those who were able to vote in previous elections retain those rights" in the upcoming general election.⁶⁶ The prior week, Myanmar's Foreign Minister Wunna Maung Lwin publicly defended the government's revocation of voting cards, comparing the disenfranchised minority group to green card holders in the United States.⁶⁷

E. Official Corruption

As discussed in Section II.B above, conservatives in the USDP recently forced party chairman Shwe Mann out of office.⁶⁸ Shwe Mann had been the third most powerful member of the junta that controlled Myanmar until 2011 and a possible leading candidate for president.⁶⁹ Shwe Mann has yet to face criminal charges.

The coming election has raised the theme of official corruption on several fronts. First, candidates have raised the issue in their platforms. Aung San Suu Kyi's NLD party has promised a "clean government" in which "no corruption will be tolerated."⁷⁰ The independent candidate Nyo Nyo Thin has similarly promised to "eradicate corruption."⁷¹ Second, scrutiny of candidates may expose their questionable past conduct. Thein Tun, a former general now campaigning as the USDP candidate in his home region of Magwe, was last seen in public office as the national telecoms minister, a post from which he resigned in 2013 amid a major corruption investigation by the President Thein Sein administration.⁷² Third, allegations of vote-buying by officials already in power may threaten the democratic process. Mandalay Region Chief Minister Ye Myint recently returned to local farmers a small portion of the 3,600 acres of land his office had previously-confiscated.⁷³ Sources quoted in the Myanmar Times suggest that at least some of his electorate viewed the act as an attempt by Chief Minister Ye Myint to use his power to curry political favor.⁷⁴

A comprehensive report by the UK's Environmental Investigation Agency was released this month, revealing how Chinese demand continues to fuel exports.⁷⁵ The report identifies members of a Chinese smuggling cartel and alleges complicity by Myanmar officials and state enterprises including the Myanmar Timber Enterprise.⁷⁶

III. Constitutional Reform

Tin Naing Thein, secretary of the USDP, stated that his party vowed to amend the 2008 Constitution if the USDP wins the general election.⁷⁷ “We need to amend the constitution to build a federal union and to achieve a mature democracy in the country,” the secretary told a gathering of around 3,000 USDP supporters in the capital Naypyidaw.⁷⁸ However, the secretary did not provide a specific timeframe for constitutional reform even if his party were to win the November elections, saying the party would “discuss amending the constitution within the upcoming five years with different ethnic groups, members of the government and the public.”⁷⁹ Furthermore, Tin Naing Thein did not provide details about which clauses the USDP would seek to amend should it win the upcoming elections.⁸⁰

IV. Governance and Rule of Law

Should Aung San Suu Kyi’s NLD triumph over the ruling USDP in this November’s elections—as many expect it to do—Myanmar can trust Aung San Suu Kyi to usher in “good governance,” according to a speech she gave at a campaign rally in rural Kawhmu mid-month.⁸¹ “We can’t change some things unless we change the administrative system,” Aung San Suu Kyi told observers, and should the NLD win, they would replace the current ineffective administration of the USDP to, among other things, improve infrastructure maintenance.⁸² Kawhmu was affected by strong weather earlier in the year.⁸³

The NLD was unable to take control in 1990 despite a landslide win at the polls, because the ruling military junta refused to acknowledge the party’s victory – something military chief General Min Aung Hlaing said this month would not happen whatever the result of the November elections.⁸⁴ “My real attitude is not to overturn state power through a coup,” he said, going on to explain that the military cannot and will not act in contravention of Myanmar’s constitution.⁸⁵ As noted above, the same constitution gives the military 25 percent control of Parliament, enough to give them veto rights over constitutional amendments.

As noted in Section III above, a senior USDP official also promised to amend the Constitution should the party triumph at the election, although he did not specify which clauses or to what extent the amendments would be effected.⁸⁶ Attempts to amend the Constitution earlier this year fell flat, with most of the proposed amendments failing to garner enough parliamentary votes to pass.⁸⁷

Meanwhile, Myanmar lawyers have begun a “yellow ribbon” campaign to protest the appointment of 20 former military officers to judicial positions in Myanmar’s Supreme Court, and as a broader measure to end the practice of appointing military retirees to the nation’s judiciary branch.⁸⁸ Lawyers in Naypyidaw, Yangon and Mandalay began wearing yellow ribbons in protest of the recent appointments, and the Asian Human Rights Commission (“AHRC”) has also chimed in, urging an amendment to the Constitution to allow for appointment to judicial positions of only those individuals with relevant legal qualifications and professional experience.⁸⁹ Four of Myanmar’s seven Supreme Court judges themselves are ex-military, including the chief justice, Htun Htun Oo.⁹⁰ Min Lwin Oo, a Myanmar lawyer working for the AHRC, encouraged international human rights organizations to actively support the movement, asking them to force authorities to follow the international standard and develop the rule of law.⁹¹ The yellow ribbon

movement bears resemblance to another movement, the “black ribbon campaign” by medical professionals protesting the appointment of ex-military officers—some of whom possess no medical experience—to civilian government agencies, including recent appointments to senior Ministry of Health positions.⁹²

The practice of appointing military or former military officers to civilian government positions is hardly new to Myanmar. Compared to its inaugural government in 1948, in which only three out of 19 cabinet ministers were active or former military officers, and the few cabinets to follow which had similar numbers, the post-coup cabinet of General Ne Win included seven military men in his eight-member cabinet.⁹³ The trend would continue until the present quasi-civilian government of President Thein Sein which, despite reshuffling over the years, has at all times included at least 29 former generals and other high-ranking military officers.⁹⁴ The ruling USDP shows no indication of halting these so-called “parachute appointments”, and President Thein Sein, himself a former military officer, is widely thought to have become president with the blessing of former Senior General and string-puller Than Shwe.⁹⁵

The next parliament may include more MPs who are women or younger candidates if successful at this November’s polls. Approximately 7 percent of the USDP’s candidates and 15 percent of the NLD’s are women, while women currently constitute only 4 percent of MPs in both houses.⁹⁶ One official said that some women are qualified for the job but have family obligations that impede their running, while others are interested in running but lack qualification (whether all currently serving male MPs are qualified is, of course, another question).⁹⁷ *Myanmar Times* surveyed some of the female candidates and found that they possessed varying levels of qualification or even familiarity with national politics – in many cases due to a lack of exposure – all were keen to improve women’s rights in the country.⁹⁸ Meanwhile, in an interview with *The Irrawaddy*, two young candidates from the NLD and the Arakan National Party expressed their optimism and belief in a constituency ready to believe in the power of youth to effect change, while accepting that the entrenched MPs have greater finances and political familiarity.⁹⁹

V. Political Prisoners

The Assistance Association for Political Prisoners has announced in its monthly report that 108 political prisoners remain in Myanmar prisons, and more than 450 political activists are currently on trial.¹⁰⁰ In August, 16 political activists were arrested, two of whom were incarcerated. Additionally, 11 activists were sentenced and 12 were released in September.¹⁰¹

A network of organizations focusing on the rights of political prisoners asked political parties to demand the release of remaining political prisoners before the November general election.¹⁰² Tin Maung Oo, spokesperson for the Former Political Prisoners Society, expressed the group’s disappointment that the political parties have been relatively silent about political prisoners, saying that while candidates “speak a lot about democracy, human rights, clean government and reforms, they are neglectful of those who fought for these causes and spent their lives in prisons for doing so.”¹⁰³

VI. Economic Development

A. Developments in the Legal Framework of Economic Development

In September, the International Monetary Fund (“IMF”) characterized Myanmar’s efforts to liberalize its foreign exchange rules as a “bold move” that will help economic growth.¹⁰⁴ In a new report, the IMF notes that the country has made “impressive strides in economic reform, including the dismantling of trade barriers and the opening of the banking sector.”¹⁰⁵ However, Myanmar officials were urged to tighten monetary and fiscal policies and enforce prudential measures to address “underlying causes” of macroeconomic imbalances.¹⁰⁶ The IMF also emphasized the need for Myanmar to continue pushing forward with structural reforms “aimed at improving the business environment, transforming the industrial structure toward manufacturing, and upgrading infrastructure.”¹⁰⁷

In an effort to improve its tax receipts, Myanmar’s Directorate of Investments and Company Administration (“DICA”) has initiated a complete review of its company registry, which will require all companies, whether holding current or expired registration certificates, to inform DICA on whether they are still operating.¹⁰⁸

B. Developments in Foreign Investment and Economic Development Projects

In September, Myanmar also launched its first international standard special economic zone, called the Thilawa Special Economic Zone, with substantial support by Sumitomo, Marubeni, and Mitsubishi.¹⁰⁹ The first phase is reported to have attracted 44 foreign companies, among them is Millcon Steel, which is an important development given reports that Myanmar’s growth has been hampered by lacking basic industries such as steel.¹¹⁰

At the recent Myanmar Global Investment Forum, Aung Naing Oo, director general of DICA and secretary of Myanmar Investment Commission (“MIC”), indicated that Myanmar may see a significant inflow of foreign direct investment by 2017 due to legal reforms, including a modernized investment law. In particular, MIC is forecasting foreign investment worth US\$2.9 billion in the coming fiscal year.¹¹¹

C. Land Seizures

At a recent campaign event in Dekkhinathiri Township, Myint Hlaing, Minister of Agriculture and Irrigation, dodged questions about land confiscation.¹¹² A farmer claimed that 43 acres of land were confiscated in 2011 under the name of the minister’s wife, Khin Thant Zin.¹¹³ The farmer claimed that he owned five of the seized acres, and that four or five people received compensation but the compensation process was not transparent.¹¹⁴ About 15 farmers who lost land to the minister’s wife attended the rally, but only one was permitted to ask a question.¹¹⁵ Zaw Lin Aung, who had 33 acres confiscated, said that his land was seized in August 2010; when he and other farmers demanded compensation, the registered name of the new owner of the land was simply changed.¹¹⁶ Eventually the farmers discovered that the Minister of Agriculture and Irrigation owned the land, but none of the farmers were compensated for their loss.¹¹⁷

VII. Ethnic Violence

A. Violence Between the Union Government and Ethnic Rebel Groups

In the run-up to a high-level peace talks meeting in Naypyidaw involving President Thein Sein, military representatives and several ethnic rebel leaders, conflict continued on at least four different fronts between government troops and ethnic armed groups.¹¹⁸

Government troops exchanged fire with soldiers from the Shan State Army-South (“SSA-S”) in Shan State’s Loilem Township on September 7, according to the head of the SSA-S liaison office based in Taunggyi.¹¹⁹ Likewise, the Kachin Independence Army (“KIA”) and Ta’ang National Liberation Army (“TNLA”) have both claimed that their troops clashed with government soldiers as the Union Peacemaking Working Committee held informal talks with ethnic leaders in Naypyidaw.¹²⁰ TNLA troops and government troops clashed twice in northern Shan State, according to a TNLA information officer.¹²¹ Major Tan Sai, a soldier with the KIA, stated that fighting “is a typical problem” the groups face whenever peace talks are held, and that the military “always deploys more troops [when peace talks are held].”¹²²

B. Peace Talks

Initial hopes of an agreement on the nationwide ceasefire agreement were running high this month following a meeting between President Thein Sein and the leaders of a number of ethnic groups on September 9, 2015, which ended in the announcement that a ceasefire agreement should be signed “before the end of September”.¹²³

However, the government was criticized for failing to reach a firm agreement on the key remaining issue, the exclusion by the government of a number of ethnic groups from the ‘nationwide’ negotiations, including the TNLA, the Myanmar National Democratic Alliance Army and the Arakan Army, alongside three non-armed groups, the Lahu Democratic Union, Wa National Organization and Arakan National Council.¹²⁴

The senior delegation of the ethnic groups continued to seek an assurance that, even if such excluded ethnic groups are not able to sign up to the nationwide ceasefire agreement initially, the government will invite such groups to accede to the agreement at a later stage and to participate in ongoing discussions. The government, however, continues to refuse to extend the accord to cover these groups, blaming ongoing fighting and the failure of such groups enter into bilateral ceasefire agreements with the government.¹²⁵

At a three-day summit beginning on September 28, 2015, seven ethnic groups agreed to sign the accord, with the remaining groups refusing to continue negotiations until all stakeholders were involved in discussions.¹²⁶

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