

# STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

## DECEMBER 2015 REPORT

**Summary.** This report reviews the December 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. Political Developments**

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

Following the landslide victory by the National League for Democracy (“NLD”) in the November elections, the NLD and the ruling Union Solidarity and Development Party (“USDP”) have formed committees to manage the transfer of government duties and have engaged in a series of meetings to discuss the transfer of power.<sup>1</sup> On December 16, 2015, members of President Thein Sein’s outgoing administration held the first transition meeting with Aung San Suu Kyi and other representatives of the NLD, in which participants discussed “the topics we will need to discuss in order to transfer power,” according to Ye Htut, a committee member and information minister of the USDP.<sup>2</sup> Ye Htut noted that the Thein Sein administration had already begun preparing for the government transition prior to the election, and had initiated additional preparations following the final election results. According to Ye Htut, “[a]ll members of the government, including the President, are proud of what we have done to promote political reform during these last five years, and we have no difficulty with the process of transferring our duties, since we want to help the new government continue with the work that we couldn’t finish during our term.”<sup>3</sup>

On January 4, 2016, in a speech to mark Myanmar’s Independence Day at the Yangon headquarters of the NLD, Aung San Suu Kyi announced to hundreds of party members and supporters that the country’s peace process will be the firm priority of her new government.<sup>4</sup> The statement was noteworthy given that Aung San Suu Kyi had previously spurned the government-led ceasefire peace talks and has since never expressed her support for the nationwide ceasefire agreement signed in October 2015.<sup>5</sup>

As discussed further below in Section V.A., a union-level peace conference, led by President Thein Sein, will be held before January 12, 2016, which will feature the inclusive participation of stakeholders to discuss solutions to the country’s political problems, armed conflicts and goals of national reconciliation.<sup>6</sup> During her January 4 speech, Aung San Suu Kyi stated that her party plans to have its own congress with the armed ethnic groups aimed at a full peace and said that it would be “all-inclusive,” although she made no reference to the peace talks already planned.<sup>7</sup>

Although the NLD-led government is set to take power in March 2016 following a presidential election expected to take place in February, a full transition will not occur immediately. First, due to the lack of experience and skilled technocrats available and little policy development work from within her party, Aung San Suu Kyi will likely retain some of the key people and policies from the departing government, at least in the short run.<sup>8</sup> Second, under the Myanmar constitution, a quarter of the parliamentary seats are reserved for unelected military officials, and three powerful ministerial positions (the ministers of home affairs, defense affairs and border affairs) are also chosen by the military’s commander-in-chief. This reserved military power will require Aung San Suu Kyi and her NLD party to find a way to build bridges that will allow for cooperation with the military.<sup>9</sup> Despite assurances from both the military and the NLD that the two sides continue to engage each other and will enter into an effective power-sharing agreement, observers remain concerned regarding the actual mechanics of what will be the biggest political change for the country in more than 50 years.<sup>10</sup> Notwithstanding pledges from

commander-in-chief Senior General Min Aung Hlaing to the contrary, there are no guarantees that the military will give way to a fully democratic government led by Aung San Suu Kyi or how it will respond to her hand-picking a president she says she will control.<sup>11</sup>

Ethnic groups have expressed concern that any lingering political tension between the military and the NLD will permeate the complex peace process, potentially transforming the peace process into an awkward tussle between the military and the NLD government.<sup>12</sup> Daung Khar, the leader of the Kachin Independence Organization's technical team, stated, "We have to ask questions on whether she can actually influence the military, or whether they will influence her when it comes to the peace process. How she will compromise with the military is our key concern."<sup>13</sup>

## **B. International Community and Sanctions**

In early December, the U.S. Treasury Department announced that the U.S. would temporarily ease trade restrictions on Myanmar by allowing all shipments to go through its ports and airports for six months, in an effort to boost the NLD party after its landmark election win in November.<sup>14</sup> U.S. officials said that the policy change applies even to ports and airports controlled by entities on the U.S. sanctions blacklist.<sup>15</sup> To bolster Myanmar's transition to democracy after decades of military rule, U.S. officials began lifting sanctions against the country after a civilian government was formed in 2011. However, officials acknowledged on Monday that remaining U.S. sanctions against those with ties to Myanmar's military have had the unintended consequence of halting "many, many dozens" of shipments.<sup>16</sup> U.S. officials cautioned that while the policy shift allows financing of shipments through blacklisted trade hubs, banks are still barred from doing business directly with the banned firms.<sup>17</sup> A second senior administration official said the ease in restrictions would lend a boost to Aung San Suu Kyi's party, and was "potentially the single most important thing that we can do on the economic front immediately to give the NLD some breathing space over the next several months as it forms its government."<sup>18</sup>

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

### **A. Press and Media Laws/Restrictions**

Despite many observers acknowledging that the media had generally enjoyed freedom to go about its work in the run-up to the November 8 general elections, a report by the New York-based PEN American Center found that Myanmar's media continues to suffer from censorship, weak protections, restrictive laws and intrusive bureaucratic structures that curb freedom of expression.<sup>19</sup>

The report calls on the incoming NLD government to safeguard free expression as a pillar of Myanmar's developing democracy.<sup>20</sup> While many maintain hope that the NLD will succeed in reforming the country's approach to freedom of speech, some remain nervous that such reforms may not materialise.<sup>21</sup> Suzanne Nossel, PEN's executive director, noted that the incoming NLD government "has its work cut out for it in terms of dismantling restrictions and ending the patterns of harassment and intimidation that continue to prevent the media from doing its job in holding authorities accountable," and called on the new leadership "to recognize that a truly free

environment for media and expression is not a threat to its power, but rather the best way to secure the democracy it has so long awaited.”<sup>22</sup> The progression of freedom of speech in the country will be keenly observed both within and outside of the country and will be seen as a key early test for Aung San Suu Kyi and the NLD.

Those who practice political expression through art and culture are hopeful for progress and greater freedoms. For over 50 years under Myanmar’s military regime, each song, film and exhibition needed to be approved by the censorship office that strictly monitored content. “Artists painted what they were told. Please draw a flower, a pagoda or a monk. That’s what it was like,” recounted the artist Aung Soe Min.<sup>23</sup>

In an illustration of how freedom of speech is slowly returning to the country, the English newspaper *The Daily Mail* has reported that an increasing number of satirists have emerged, with particular attention being given to the politicians of Myanmar.<sup>24</sup> One artist, for example, published a political cartoon showing a destitute family chiding a paunchy parliamentarian. “We are very happy for you that you have not been beaten and abused. We only hope that you won’t cause trouble for others,” reads a speech bubble above the raggedly dressed father, mother and small child. The image takes aim at inequalities faced by many ordinary people in Myanmar, despite reforms that have rippled through the nation.<sup>25</sup>

As cartoonist Maung Maung Aung stated, “Cartoons need freedom. The more freedom there is, the more a cartoon is able to say and be creative so they can carry more meaning.”<sup>26</sup> After suffering through four decades of poverty, fear and censorship as a cartoonist in Myanmar, Maung Maung Aung sought refuge as an artist in the United States before returning to his homeland in 2012.<sup>27</sup> Today, cartoons are enjoying somewhat of a renaissance, tackling a range of subjects—from the country’s economic woes to foreign policy—peppering newspapers and websites daily.<sup>28</sup>

Myanmar’s caricaturists are readying themselves for the next and bigger test of the new regime: how to satirize Aung San Suu Kyi as her party prepares to take over government in late March. Analyst Khin Zaw Win noted that Aung San Suu Kyi has been a sacrosanct subject, but believed that satire at her expense will come.<sup>29</sup> “We can’t have a really free media if one figure is held ‘out of bounds,’” he stated. “She will not—and should not—be spared.”<sup>30</sup>

In an early manifestation of this dilemma, an illustration that many believe to be critical of Aung San Suu Kyi recently triggered an online backlash in Myanmar. The image, initially published in an online website, shows two small boys dressed as ministers being glared at by an older girl—representing Aung San Suu Kyi—clutching a crown. “Sister, you told us what you wanted to do but then you got angry when we said what we want to do,” the boys say in a speech bubble.<sup>31</sup> The image has sparked a torrent of online animosity aimed at Maung Maung Aung, normally a thorn in the side of the current government.<sup>32</sup>

## **B. Freedom of Association/Religion**

In December, after the conclusion of Myanmar’s elections, the Sitagu International Buddhist Academy and the Institute for Global Engagement (a US-based NGO that works to promote religious freedom) introduced a 10-day Religion and Rule of Law certificate program to

promote peace-building efforts and to increase understanding between people of different religions in the country.<sup>33</sup> The certificate program is designed to include 30 participants of different faiths and covers topics like the connection between religion and the rule of law and international human rights in relation to freedom of religion.<sup>34</sup> The program is believed to be the first of its kind in Myanmar and already has the support of leaders from several different religions, including Yangon's Archbishop Cardinal Charles Bo, and professors and trainers from both the International Theravada Buddhist Missionary University and the Islamic Centre of Myanmar.<sup>35</sup>

On November 21, 2015, the police searched Kyaw Press, situated at 54th Street, Pazundaung Township, and found 52 printing plates and 3,490 printed papers used for printing a calendar that described Rohingya Muslims as a recognized ethnic-religious minority in Myanmar.<sup>36</sup> Subsequently, Pazundaung Township Police Force Major Khin Maung Latt arrested six men involved with printing the calendar and registered a case against them. Kyaw Press owner Hoke Shwe (a.k.a. Kyaw Kyaw), Manager Ye Thu Aung, employees Win Naing (a.k.a. Marmek), Zaw Min Oo (a.k.a. Harnik) and bookbinder Win Htwe (a.k.a. Ismail), as well as the man accused of ordering the calendar, Aung Khin, were each charged under section 20 of the Printing Law.<sup>37</sup> They were each fined 1 million kyats (nearly \$800 USD) by a Pazundaung trial court on November 23, but Aung Khin absconded.<sup>38</sup> On November 24, the police major charged the remaining five men a second time under Section 505(b) of the Myanmar Penal Code for creating material with the intent to "cause fear or alarm the public" and which may incite people to commit offences "against the State or against the public tranquillity." The five men in custody were subsequently jailed, and the court heard statements from witnesses, including Aung Khin's daughter who testified regarding Aung Khin's potential whereabouts.<sup>39</sup> On December 17, the men appeared before Yangon's Pazundaung Township Court for the third time.<sup>40</sup> The court proceedings were witnessed by the Htantabin Abbot of the group Patriotic Myanmar Monks' Union, under orders from Ma Ba Tha.<sup>41</sup> The fourth hearing was scheduled for December 23.<sup>42</sup> No information is yet available about the outcome of the latest hearing.

On December 7, a 25-year-old Rohingya man was shot by Border Guard Police at a checkpoint near Buthidaung in Rakhine State.<sup>43</sup> Eleven Rohingya groups protested his death, which was the third killing of a Rohingya in Myanmar within a one-month time period.<sup>44</sup>

### **C. Official Corruption**

Despite far-reaching political and economic reforms over the past five years, Myanmar's judiciary remains one of the country's most corrupt institutions, according to a report tabled in the Lower House on December 8, 2015.<sup>45</sup> The Judicial and Legal Affairs Complaints and Grievances Investigation Committee, which investigated the country's legal system over the five-year term of the Thein Sein government, confirmed the existence of a "chain of bribery" in the judiciary, with judges at different levels taking instructions from their superiors and links between supervisory legal staff, that often affects the outcome of criminal and civil cases.<sup>46</sup> Corruption and bribery are common feature of most civil cases in Myanmar, the committee said, with lawyers, court staff and even messengers in charge of dispatching summons notices implicated.<sup>47</sup> The parliamentary committee of 15 lawmakers was formed in September 2011. From July 1, 2012 to November 18, 2015, the committee received 12,360 complaints about judicial conduct, referring 1,485 of them directly to the courts and departments named in the

complaints. The committee claims to have settled 1,071 of those complaints referred on to other authorities.<sup>48</sup>

Professor Ko Ko Kyaw Soe, head of Meiktila University was recently sued by the anti-corruption committee at the Meiktila Police Station for taking a bribe.<sup>49</sup> Investigator Than Htun Myint from the Anti-Corruption Committee filed the lawsuit under Section 56 of Anti-Corruption Law on December 10 after it was discovered that the professor abused his power by requesting bribes totaling 10.9 million kyat from MDC Company Limited during the construction of a classroom building at the university between 2014 and 2015.<sup>50</sup>

### **III. Governance and Rule of Law**

Aung San Suu Kyi met with President Thein Sein this month following her party's landslide victory at the November polls, after which both expressed their optimism toward a peaceful transition of power.<sup>51</sup> The outgoing president framed the transition as the "final victory" of the reform efforts during his presidency meant to steer Myanmar toward a democratic rule.<sup>52</sup> He also congratulated Aung San Suu Kyi on her party's success, and said that a "channel of communication" had been established between the two in order to facilitate a smooth change in ruling party.<sup>53</sup> Aung San Suu Kyi then met with and conducted similar discussion with Senior General Min Aung Hlaing, commander-in-chief of Myanmar's military.<sup>54</sup> Following their meeting, Min Aung Hlaing stated that the brief conversation had "yielded positive results."<sup>55</sup>

While the meetings have been recognized for their importance, especially given that the NLD has little administrative experience and would greatly benefit from a cooperative transfer of power, some still harbor skepticism that the military and the military-controlled old guard will cooperate fully, particularly when it comes to prioritizing transparency and rule of law over military interests.<sup>56</sup> Former military officer Nay Zin Latt said that the military does wish to slowly exit politics and refocus on becoming a professional army, but admitted that it may not be easy for the military, which has had de facto control of the country and flatly refused to acknowledge the NLD's democratic victory in 1990, to let go of old habits and recede from power.<sup>57</sup> The military also has several "red lines" that it will not allow to be crossed in pursuit of democratic reform, including the preservation of its constitutionally guaranteed 25% bloc of parliamentary seats, retention of the current Constitution and ongoing military action against ethnic rebel groups.<sup>58</sup> The military will also resist threats to its business interests, which are numerous.<sup>59</sup>

### **IV. Economic Development**

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

On December 17, 2015, Myanmar's Parliament passed a much-anticipated law to formally combine the country's two key investment laws, the Myanmar Citizens Investment Law (enacted in July 2013) and the Foreign Investment Law (enacted in November 2012).<sup>60</sup> As a result of the new law, state and regional governments will have more input in the foreign direct investment approval process.<sup>61</sup> In addition, the Myanmar Investment Commission is now authorized to delegate, pending national approval, certain investment decisions to local and state authorities.<sup>62</sup>

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

In December 2015, there were several notable developments. First, on December 9, 2015, the Yangon Stock Exchange, Myanmar's new stock exchange, officially opened.<sup>63</sup> However, the exchange will not be operational until early 2016. Six companies were named to the initial slate of companies that will trade on Myanmar's new stock exchange; ten other companies have applied for underwriting licenses.<sup>64</sup> Second, Myanmar established a special economic zone in the Rakhine state, which is expected to attract investors from ASEAN countries.<sup>65</sup> Finally, TPG Capital, a U.S.-based private equity firm, was reported to have acquired a 50% stake in the distilling business of the country's largest spirits maker.<sup>66</sup>

Myanmar's central bank was reported to be willing to permit more foreign banks to operate in the country, with banks from neighboring countries and close economic partners to be favored in the application process.<sup>67</sup> Continued liberalization of the country's banking sector would be consistent with recent developments, including when nine foreign banks were awarded service licenses in October 2015, the first in more than 50 years.<sup>68</sup>

## **C. Land Seizures**

The leader of the Myanmar Farmers Union, Su Su Nway, was arrested this month on charges of organizing an unauthorized protest against land confiscation in 2014.<sup>69</sup> Su Su Nway was arrested on December 6, 2015 after participating in a human rights workshop for local farmers at a hotel.<sup>70</sup> Eight farmers who took part in the 2014 protest were also charged, but were released from custody.<sup>71</sup> Su Su Nway has been detained several times in the past on similar charges.<sup>72</sup>

Land tensions rose in two other districts. In Pyin Oo Lwin, officials snubbed farmers by not appearing at a scheduled negotiation.<sup>73</sup> The farmers stated they had been summoned by the Township Farmland Management and Statistics Department to discuss the return of farmland deemed returnable.<sup>74</sup> When the farmers appeared at the appointed time, they were turned away.<sup>75</sup> The disputed plot was seized in 1982, and talks have dragged on since 2013.<sup>76</sup> In response, the farmers have begun demonstrating by plowing the confiscated land.<sup>77</sup> Meanwhile, in Mandalay, officials rejected an application from villagers seeking to legally protest the government's refusal to return land confiscated in 2001.<sup>78</sup> Villagers allege the land was taken for a bridge construction project, and that they were told any unused land would be returned.<sup>79</sup> The government used the land at least in part to build housing, and it refused to issue the protest permit due to security concerns.<sup>80</sup>

To mark the one year anniversary of the death of Khin Win this month, the woman shot by police while protesting seizure of land near the Letpadaung copper mine, her family held a commemoration.<sup>81</sup>

## **V. Ethnic Violence**

### **A. Peace Talks**

After two days of debate, the Myanmar parliament approved the ceasefire agreement on December 10, 2015, without making any changes to the agreement signed in October.<sup>82</sup> The parliamentary approval was unanimous.<sup>83</sup>

In December, politicians and representatives from armed ethnic groups set a date of January 12, 2016 for the so-called “Union Peace Conference.”<sup>84</sup> The conference will convene more than 700 stakeholders for a political dialogue to aimed at bringing an end to the world’s longest-running civil war.<sup>85</sup> Among the 700 participants, representatives will be divided equally between the Myanmar Army, signatory ethnic groups, and political parties, with 150 delegates each. Each of President Thein Sein’s outgoing administration and Parliament will be allotted 75 seats, and 50 seats will go both to leaders of non-signatory ethnic groups and experts from a variety of fields, who will attend as observers.<sup>86</sup> Two non-signatory groups, The Myanmar National Democratic Alliance Army and the Arakan Army, will not be invited to attend in any capacity.<sup>87</sup> These two groups have engaged in hostilities with the Myanmar Army in recent months and have been shut out of the ceasefire negotiations.<sup>88</sup> The continued exclusion of these two groups is at odds with statements made by the vice chairman of the government’s Union Peacemaking Working Committee that the “government would not leave behind any group in the peace process.”<sup>89</sup> Civil society organizations have complained that, in addition to being left out of the framework drafting process, they have also been allocated too few seats in the Union Peace Conference.<sup>90</sup>

The role of women in the peace process has also been a topic of discussion this month.<sup>91</sup> Out of the 48 members of the group that drafted the framework for the January discussions, only three were women.<sup>92</sup> Many leaders view the inclusion of women as important because women are frequently the main victims of the armed conflict and may be more aware of certain issues.<sup>93</sup>

The NLD has also been active this month, meeting with both signatories of the ceasefire agreement<sup>94</sup> and the government’s chief peace negotiator.<sup>95</sup> In the meeting with the signatories of the agreement, Aung San Suu Kyi explained that her desire “to avoid additional disunity between ethnic armed signatories and non-signatories” was the main reason why she opted not to sign the “contentious pact.”<sup>96</sup> The content of the discussion between Aung San Suu Kyi and the government’s chief peace negotiator are unknown, but there is speculation that the meeting focused on the future of the country’s peace process.<sup>97</sup> Non-signatory groups re-expressed a hope that the incoming NLD government will “give them a full seat at the negotiating table.”<sup>98</sup>

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

Fighting has continued between the Shan State Army-North (SSA-N) and government troops.<sup>99</sup> After two days of talks, both the SSA-N and the government agreed to withdraw troops from certain contested areas and refrain from establishing new bases.<sup>100</sup>

Since November 2015, there had been simmering military tension between the Restoration Council of Shan State (RCSS), a ceasefire signatory, and the Ta’ang National Liberation Army (TNLA), a non-signatory, over territory in Namkham Township near the



Chinese border.<sup>101</sup> Both sides had accused the other of instigating the conflict, which occurred in an area that has traditionally been under the TNLA's control.<sup>102</sup> The TNLA maintains that the Shan State Army-South—the armed wing of the RCSS—and the Myanmar Army cooperated in attacking its forces, a claim strongly denied by Yawd Serk.<sup>103</sup> However, in mid-December, representatives from both the RCSS and TNLA met in Chiang Mai in an attempt to defuse the recent tension.<sup>104</sup> These talks reportedly “smoothed over the dispute,” at least temporarily.<sup>105</sup>

The RCSS is also reportedly at odds with the Kachin Independence Army's 4th Brigade, also based in northern Shan State.<sup>106</sup> The KIA, a member of the UNFC, is not a party to the government's ceasefire accord.

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- 13 *Id.*
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- 16 *Id.*
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- 21 *Id.*
- 22 *Id.*
- 23 DW, January 2, 2016: <http://www.dw.com/en/artists-in-myanmar-the-challenges-of-newly-gained-freedom/a-18919483>
- 24 Daily Mail, January 12, 2016: <http://www.dailymail.co.uk/wires/afp/article-3395106/Myanmar-cartoonists-sharpen-pencils-satire-makes-comeback.html>
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- 30 *Id.*
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