

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

FEBRUARY 2016 REPORT

Summary. This report reviews the February 2016 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 Developments and Power Transition

On February 1, hundreds of new Parliament members, mostly from the National League for Democracy (“NLD”) but also some smaller parties, were sworn in and took their positions.¹ Min Oo, an NLD MP from Pegu constituency, said the day felt very special. “It’s the second time I have been elected but this time it feels different, because the NLD is [the] majority. It’s an overwhelming majority, but we all come from different backgrounds and we can guarantee diversity.”² Win Myint, a close aide to Aung San Suu Kyi and NLD MP, was sworn in as house speaker.³ Notably, however, T Khun Myat, a member of the outgoing Union Solidarity and Development Party (“USDP”), was also elected as deputy speaker in a sign of the political pragmatism Aung San Suu Kyi has adopted in recent years.⁴ President Thein Sein, a former general who implemented gradual reforms since 2011, will stand down in March or April when an NLD president takes over.⁵

Soon after being sworn in to their new positions, new members of Parliament participated in a five-day training course where they discussed the themes of democracy, public leadership, ethics and the responsibilities and challenges facing lawmakers.⁶ During the opening session of the course, Aung San Suu Kyi warned that Parliament should not be a perch for lawmakers’ personal interests.⁷ “It’s not a stepping stone for a position. It’s also not a call to fight people with different opinions. It’s a place where we have to try our best to collaborate for the sake of the country and people,” Aung San Suu Kyi told participants, made up of civilian and military representatives of the Union Parliament.⁸

Among the most contentious issues facing the new Parliament will be the selection of Myanmar’s next president. On February 8, officials announced that Parliament would consider presidential nominations on March 17, more than four months since the November general election.⁹ The Lower House, Upper House and the bloc of military-appointed lawmakers would each nominate one candidate, and following discussions of the candidates, Parliament would meet to elect a president from among the three candidates.¹⁰ The remaining two candidates will become the country’s vice presidents.¹¹ With the NLD holding a majority in both houses, the party will be able to select two candidates.¹² With the March 17 date still more than one month away, observers have speculated that the NLD may be buying time for possible negotiations with the military on amending or suspending Article 59(f), the clause of the charter which effectively rules out a Aung San Suu Kyi presidency.¹³ In the previous Parliament dominated by the army-backed USDP, a pool of three candidates was selected on February 3, 2011, with Thein Sein appointed as president the following day.¹⁴

The question of who will be appointed president in lieu of Aung San Suu Kyi continues to go unanswered, although certain potential candidates have emerged.¹⁵ One possible candidate is Dr. Tin Myo Win, a former political prisoner who is close to Aung San Suu Kyi and has been privy to meetings between the NLD and the military.¹⁶ Another is Tin Oo, a former military chief who was forced to retire and served seven years in prison for charges of treason.¹⁷ At 89 years of age, Tin Oo would be one of the world’s oldest serving presidents.¹⁸ While these appear to be the main candidates, other names mentioned in the local and international news include Dr. Myo Aung, Win Htein and Htin Kyaw.¹⁹ Some optimists also note the chance, however remote, that

the military relents and permits the Constitution to be amended or waived to allow the NLD head herself to fill the role, whether from April or at some later point.²⁰

As talks continued throughout February regarding the presidential nominees, tensions have arisen between the military junta and NLD leaders.²¹ The NLD and the military have bickered via the media over whether Myanmar's junta-drafted constitution, which bars Aung San Suu Kyi from becoming president, should be amended to let her take the highest office.²² Ye Htut, the outgoing Minister of Information and presidential spokesman, said Aung San Suu Kyi should respect the military as, essentially, the country's second biggest party, and urged her administration not to dwell on the issue of the presidency, instead focusing on economic reform.²³ Meanwhile, the NLD appointed Shwe Mann, a former speaker of the Lower House who was purged from the USDP last year, as the head of the Legal Affairs and Examination of Special Matters Commission, a powerful panel that advises on legislation.²⁴ According to some parliament members, this choice could be problematic for former members of outgoing President Thein Sein's government if the NLD decided to use the commission's expertise to try to amend laws or revisit contracts approved by his administration.²⁵ Perhaps in a sign of anxiety, the former USDP-dominated Parliament passed a bill just days before disbanding granting life-long immunity from prosecution to President Thein Sein for actions taken in office, sparking protests from human rights organizations.²⁶ Despite these tensions, when Aung San Suu Kyi met former junta leader Than Shwe in December and gave him assurances that the NLD would not focus on the past, Than Shwe endorsed her as the future "leader" of the country.²⁷

B. Constitutional Reform

Until March 17, when the Union Parliament is finally scheduled to consider nominations for Myanmar's next president, speculation will continue as to possible contenders and, more specifically, whether Aung San Suu Kyi will be among them.²⁸ With the NLD chairwoman constitutionally barred from the role, her supporters continue to hold out hope, however faint, that the offending clause, Article 59(f), may somehow be sidestepped.²⁹ The article in part bars anyone with a foreign spouse or children from assuming the presidency, disqualifying Aung San Suu Kyi as her two children are British nationals, as was her late husband.³⁰ As negotiations between the NLD and the military continue behind closed doors, one notion first introduced late last year centers on the possible suspension of the clause.³¹ Opinions are divided as to whether suspension would be a realistic possibility, with several military representatives expressing their opposition to such a move.³²

However, Myanmar's outgoing information minister, Ye Htut, introduced another possibility in February, stating that in his view, "if her two sons and their spouses seek Burmese citizenship, everything will be alright. If her children want her to become the president, all they have to do is apply for citizenship according to the 1982 Citizenship Law."³³ In fact, Ye Htut's suggestion has been referred to by Aung San Suu Kyi herself in the past, including during a rally for constitutional change in mid-2014. At the rally, Aung San Suu Kyi stated that "it doesn't matter whether I become president or not. We want to change it as it is not fair from a legal point of view."³⁴ She further explained that her two sons were registered as Myanmar citizens when they were born, a classification revoked by the military regime following the nationwide pro-democracy uprising in 1988.³⁵

Nevertheless, not all voters are in support of lifting the Article 59(f) restriction. In late February, a group of Buddhist nationalists held a rally in support of Article 59(f), arguing that any attempts to suspend the provision could cause Parliamentary gridlock and lead to a military coup.³⁶ Rally organizers expected to obtain over 1,000 signatures for a petition against suspending the provision, and former Upper House lawmaker Khin Wine Kyi, lawyer Aye Paing and chairman of the Peace and Diversity Party Nay Myo Wai were scheduled to give speeches at the rally.³⁷

C. International and Community Sanctions

At a mid-February meeting of Southeast Asian leaders in California, Vice President Nyan Tun urged U.S. President Barack Obama to further ease sanctions on Myanmar.³⁸ Nyan Tun claimed that although the U.S. has been giving economic support to other ASEAN countries, Myanmar has received relatively little developmental assistance due to the U.S. sanctions.³⁹ Furthermore, Nyan Tun claimed that although economic sanctions were eased for some sectors and individuals, many businesspeople remain on the Treasury Department's Specially Designated Nationals list, resulting in Myanmar businesspeople being unable to compete effectively with others in the ASEAN region.⁴⁰ Meanwhile, the American Chamber of Commerce's Myanmar chapter hosted a meeting in Yangon on February 17 with leaders from the health care, manufacturing and retail sectors. Maung Maung Lay, vice chairman of the Union of Myanmar Federation of Chambers of Commerce and Industry ("UMFCCI"), reported that delegates discussed the limits placed on money transfers between the U.S. and Myanmar due to sanctions.⁴¹

II. Civil and Political Rights

A. Press and Media Laws/Restrictions

Despite the victory by the NLD in the November elections, members of the Myanmar media continue to experience restrictions on free expression and press freedom.⁴² In particular, reporters continue to encounter difficulties covering the political process in this crucially important time period of power transition.⁴³ Under the prior regime, reporters could not ask questions to lawmakers, according to Aung Htet, a senior reporter of the local Voice Weekly publication.⁴⁴ In April 2015, after photos of sleeping lawmakers were published online, journalists were barred from entering the Parliament chambers until they negotiated with government officials to restore their access one month later.⁴⁵ Since then, reporters in the capital have had to make do watching the proceedings from a television in the parliament's corridor.⁴⁶

On February 5, the Union Parliament Office ("UPO") exacerbated the situation by releasing a set of guidelines for the media which reporters say limit their ability to cover parliamentary affairs.⁴⁷ In the release, the UPO called on the Ministry of Information, the Myanmar Press Council ("MPC"), the Myanmar Journalists' Association and the local Foreign Correspondents Club to cooperate in submitting a list of no more than five journalists from each registered media outlet to cover parliamentary affairs.⁴⁸ In addition, the release instructed journalists "to dress in clothes suitable for the dignity of Parliament," warning that those who did not would be barred from covering Parliament.⁴⁹ Other constraints included prohibitions against filming and photography in restricted buildings and certain areas without express permission,

and limitations on access to the parliamentary grounds on non-sitting days.⁵⁰ The Myanmar Journalist Network released a statement on Monday rejecting the new reporting guidelines and urging the UPO to ensure media freedom and negotiate on any reporting rules, stressing that it was the right of all reporters to freely cover affairs of the Parliament.⁵¹

Hla Phone of Yangon's Mayangone Township was arrested on February 10 for allegedly sharing a post online deemed critical of the military and the outgoing government.⁵² Hla Phone is being charged for defamation under Article 66(d) of Myanmar's Telecommunications Law, the same law under which several cases have been prosecuted in recent months.⁵³ Other individuals recently prosecuted under Article 66(d) have included Kachin activist Patrick Khum Jaa Lee, who was sentenced in January to six months' imprisonment for a Facebook post about army chief Senior General Min Aung Hlaing, and NLD supporter Chaw Sandi Tun, who was sentenced in December 2015 to six months' imprisonment for a Facebook post that likened military uniforms to women's apparel.⁵⁴ In Hla Phone's case, the user in question posted under the account name "Kyat Pha Gyi," and Hla Phone has claimed that he is being held wrongfully due to a mistaken identity.⁵⁵

B. Official Corruption

Jade mining companies in Myanmar's northern Kachin state have agreed to work toward adopting safety measures after the region witnessed the deadliest landslide in decades last year.⁵⁶ An administrator at Hpakant Township stated that a group comprised of local officials, representatives from twelve companies and members of civil society organizations discussed how to avoid further landslides at the piles of debris and waste soil left over from mining activities.⁵⁷ The worst landslide in decades struck the area in November last year, killing at least 115 people. According to the Myanmar Red Cross Society, at least 300 people were killed in 38 landslides in Hpakant in 2015.⁵⁸ Jade continues to be a powerful industry within Myanmar. Myanmar exported approximately \$31 billion worth of jade last year, according to anti-corruption non-governmental organization Global Witness. In a report released in October titled "Jade: Myanmar's Big State Secret," the group alleged that the country's political elite were directly involved in the jade industry.

III. Political Prisoners

Members of the NLD have indicated that freeing political prisoners will be among the party's top priorities when they take the reins of government.⁵⁹ However, some observers, including ex-political prisoners, say that emptying the country's jails of prisoners of conscience will be a difficult task given the entrenched political position of the military.⁶⁰ Under the country's 2008 Constitution, the army controls three powerful ministries, including the Ministry of Home Affairs which oversees the police force and the prisons department, among other state apparatus.⁶¹ Ye Aung, a former member of the Committee for Scrutinizing the Remaining Political Prisoners and an ex-political prisoner himself, stated that Parliament must negotiate with the home ministry to release political prisoners.⁶² There are currently 87 political prisoners behind bars and 409 political activists awaiting trial, according to Assistance Association for Political Prisoners ("AAPP").⁶³

On February 24, Nilar Thein, a leading member of the 88 Generation Peace and Open Society, was arrested by police and charged under Article 18 of the Peaceful Assembly Law for allegedly participating in a protest in Yangon in February last year in solidarity with students demanding education reform.⁶⁴ Frequently used to imprison peaceful activists, Article 18 of the Peaceful Assembly Law prescribes sentences of up to six months for individuals found guilty of participating in an unlawful protest.⁶⁵ Local lawyers and civil society leaders have accused the administration of outgoing president Thein Sein of dredging up old charges against activists under oppressive laws as the government's term nears its end.⁶⁶

IV. Governance and Rule of Law

The NLD this month fully realized its win at the ballot in last November's elections, taking a majority of the National Assembly seats for the first time while meeting with no overt resistance from either the outgoing USDP or the Myanmar military.⁶⁷ Aung San Suu Kyi, who is constitutionally barred from becoming president but who intends to pull the strings from "above the president," has attempted to work with the military toward a cooperative transition by saying that changes would be gradual and not needlessly antagonistic.⁶⁸

This does not necessarily mean, however, that shift of power is complete or will proceed unimpeded, nor does it herald a complete transition to an open democracy: the military still controls one quarter of the seats—enough to entitle it to a constitutional veto—and is well entrenched within Myanmar's bureaucratic and economic machinery, having enjoyed practically unchecked power that elements of the military will be loath to cede.⁶⁹ The military also retains the right to assume control of the government in an emergency, and controls the nation's defense, interior and border affairs.⁷⁰ Perhaps the greater challenge will be clashing legislative arms with the vastly more experienced military appointees, who have recently seen their ranks reinforced with both seasoned and senior legislators in what appears by the military to be an attempt to compensate for its numerical disadvantage with greater individual firepower.⁷¹ In contrast, the NLD, which has been sidelined until now, may find its lack of experienced negotiators to be a difficult weakness to overcome when legislative debates get tough.⁷²

Nevertheless, the military's outward-facing message continues to be that it will support a peaceful transition of power to the NLD. This message accompanies another meeting between Aung San Suu Kyi and military commander-in-chief Senior General Min Aung Hlaing, the third since the NLD's November victory, during which they discussed "the rule of law and achieving everlasting peace."⁷³ While the exact contents of these meetings have not been disclosed, according to a source close to the previous talks' briefings, the appointment of chief ministers to Rakhine, Shan and Kachin states, as well as to Yangon, is likely to be one of the topics discussed.⁷⁴ The meeting lasted for approximately one hour, and was held shortly after a report by local media that Min Aung Hlaing had been renewed as commander-in-chief for another five-year term.⁷⁵

The NLD's victory in the national election may be the biggest current topic in Myanmar democracy, but there are important local contests across Myanmar that may be going unnoticed by the international community.⁷⁶ These elections for ward and village-tract administrators are to take place in March, while President Thein Sein still holds office, and while the timing has raised concerns among some that the overseeing General Administration Department ("GAD") is

attempting to install local loyalists to frustrate the new majority party, the GAD has downplayed its role, noting that the local elections would in any case have taken place in January.⁷⁷ The electoral process is less democratic than the general elections, with household heads voting in clusters to nominate household leaders, who in turn elect ward and village-tract administrators, all conducted by secret ballot overseen by village elders.⁷⁸ In addition to providing a link between locals and higher tiers of government, these administrators are tasked with local-level duties including general election oversight and, importantly for the many recent disputes as to claims of land-grabbing, chairing the local land management committee.⁷⁹

V. Economic Development

A. Land Seizures

Nay Pyi Taw has seen a recent spate of land-related cases whereby former landowners have fenced off their old properties, but officials from the Nay Pyi Taw City Development Committee have stated that the dispossessed owners must go through proper legal channels if they want to get back their old properties.⁸⁰ Although officials instructed original landowners who fenced their confiscated land that they must dismantle the fences by February 5, many who had not removed the fences by mid-February had yet to face legal action.⁸¹ The landowners, on the other hand, argued that they were following guidelines set by President Thein Sein issued in 2014, which stated that confiscated land that was unused and left vacant for a period of at least four years would be returned.⁸²

In Pegu Division's Taungoo Township, twelve farmers publicly demanded that thousands acres of land allegedly confiscated by the Kaung Myanmar Aung ("KMA") group of companies be returned, and that charges issued against them in connection with trying to regain their land (including trespassing, defamation, and unlawful protest) be dropped.⁸³ Earlier this year, farmers from four villages say that a verbal consensus was reached with KMA's deputy general manager, Saw Maung.⁸⁴ The farmers presented seven key demands and the meeting concluded when the company promised to "release" the land, according to one local.⁸⁵ However, since the agreement was not in writing, villagers' are concerned about its validity.⁸⁶

Land-related disagreements continued in Yangon. The government paid compensation to 66 Yangon landowners to partially cover losses incurred during the construction of a bridge connecting downtown Yangon with Dala Township.⁸⁷ However, the amounts paid compensated landowners only for land loss, and did not cover other expenses such as for the destruction of buildings in the project area or the cost of rebuilding structures after the bridge is finished.⁸⁸

Plans to clear squatters from certain areas of the Yangon region continue.⁸⁹ The government reported that they had demolished squatter homes in Dagon Seikkan Township and Pynma Pin Village Tract, Mingladon Township.⁹⁰ In Mingladon, a number of people were thrown off land apparently owned by a military conglomerate.⁹¹ Some had lived there for twenty years and had no idea that the land was owned by the military.⁹² A witness reported that: "[t]he day after the order to vacate expired, bulldozers arrived. With them were about 200 policemen and around four times as many other men, some carrying sticks."⁹³ Another publication reported that over 500 homes had been demolished in Yangon and that close to 1000 were left homeless.⁹⁴

Authorities indicated that temporary food, shelter and medical care would be given to those in need but “no such support was forthcoming.”⁹⁵

In Mandalay, there were disputes over access to water. Residents of Hsa Khar village “protested ... against the destruction of the Mya Nandar reservoir, the only source of water for the village’s residents.”⁹⁶ The reservoir’s waterways have been “blocked due to an ongoing land expansion project by the Myingyan municipal department.”⁹⁷ The land expansion project was “supposedly for housing and farming.”⁹⁸ However, residents have indicated that “[w]e don’t want the project. We just want our water back.”⁹⁹

In Kachin state, land allegedly confiscated for grazing grounds was instead believed by villagers to be “a ploy by officials who planned to profit from renting out 300 acres to a Chinese company for a banana plantation.”¹⁰⁰ Villagers claimed that they have been threatened by local administrators with lawsuits for “refusing to move to accommodate ‘village expansion.’”¹⁰¹ Analysts believe that Kachin “land disputes have been fueled by the outgoing Thein Sein government’s liberalization policies that have driven up land prices and attracted foreign and domestic investment.”¹⁰²

VI. Peace Talks and Ethnic Violence

For much of February, fighting continued in northern Shan State between the Restoration Council of Shan State (“RCSS”) and the Palaung State Liberation Front (PSLF).¹⁰³ Some believe that the fighting is a direct outcome of the peace process “which has allowed the Tatmadaw to gain territory in Shan State while ceasefire talks continued, then use ‘divide and rule’ tactics against the PSLF which was excluded from the ‘nationwide’ pact.”¹⁰⁴ Both the Shan State Progressive Party and the United Nationalities Federal Council (“UNFC”) have been involved in reducing the tension between the RCSS and PSLF.¹⁰⁵ The UNFC has created a five member negotiation team with the aim of reducing tension between the PSLF and RCSS.¹⁰⁶ The peace pact joint monitoring committee has claimed that the RCSS violated the peace agreement, but the RCSS denies this claiming that they “never started to fight [and] just fight to protect our troops while ... under attack.”¹⁰⁷ Military members of parliament have also accused both the RCSS and PSLF of breaching military codes of conduct.¹⁰⁸ Violence reportedly reduced after February 19,¹⁰⁹ but as of February 26 two thousand Myanmar Army troops had been deployed to the area suggesting that fighting is continuing in the area.¹¹⁰

Discussions between the government and non-signatories to the peace pact were proposed.¹¹¹ Some news sources report that a series of talks between the chief government negotiator and ethnic group leaders occurred.¹¹² Others report that the trip of the chief government negotiator was postponed because of disagreements about how the talks should proceed.¹¹³ The government reportedly “wanted to negotiate with armed groups individually.”¹¹⁴ The non-signatory groups have instead “demanded collective talks.”¹¹⁵ The UNFC set up a new negotiating body “to lead talks between non-signatories and the government. The 11-member team includes one representative from each UNFC member, and two representing the bloc as a whole.”¹¹⁶ The delegation will negotiate with both the new and current governments.¹¹⁷ Reportedly, President Thein Sein is “likely to try to hold another ceasefire signing ceremony before he leaves office on March 30.”¹¹⁸

The ethnic groups and new NLD government met to discuss “the current political situation and [to find] ways to have an all-inclusive peacebuilding process.”¹¹⁹ In an interview, the chief government negotiator stated that “[s]he [Aung San Suu Kyi] also wants peace and expressed that she wants the MPC [Myanmar Peace Center, a secretariat for the current government which has been heavily involved in the peace process] to keep going.”¹²⁰

Lastly, the Peace Support Group—a consortium of donors that includes the United States, European Union, United Kingdom, Finland, Switzerland, Italy and Australia—agreed to donate US\$75,000 to “keep the peace process running until the National League for Democracy-backed government takes office at the end of March.”¹²¹ The donation will be contributed in connection with the Joint Peace Fund, an October 2015 commitment by the Western governments to help implement the nationwide ceasefire agreement.¹²² Although officials have estimated that approximately US\$23 million will be required to fully implement the ceasefire agreement over the next three years, the immediate donation of \$75,000 will provide bridge funding to support the establishment and operation of joint monitoring committees under the ceasefire agreement before the full amount is contributed.¹²³

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