

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

JANUARY 2016 REPORT

Summary. This report reviews the January 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 Laws and Developments

On January 28, 2016, in a final address to the Myanmar parliament, outgoing President Thein Sein hailed the “triumph” of Myanmar’s transition of power following the November elections.¹ “Even though there were difficulties and challenges, we were able to bring a democratic transformation eventually. This is a triumph for all of Myanmar’s people,” President Thein Sein said.² Myanmar’s new parliament will convene on February 1, 2016, more than two months after the landslide victory by Aung San Suu Kyi’s National League for Democracy (“NLD”) in the November elections.³ After convening, the new parliament will begin the process of selecting a president to replace Thein Sein in late March.⁴

On January 25, Aung San Suu Kyi and commander-in-chief Senior General Min Aung Hlaing held closed-door discussions in Naypyidaw, the second such talks between the pair since the November elections.⁵ According to a senior NLD official who was present at the meeting, the two sides quickly reached decisions on which NLD representatives should assume key roles in the next parliament, but fell into a heated argument when discussing roles to be filled by representatives from the junta-linked Union Solidarity and Development Party (“USDP”).⁶ Eventually, NLD leaders agreed to nominate T Khun Myat, a USDP member of parliament and leader of a people’s militia group in northern Shan State, for deputy speaker of the lower house, and Aye Thar Aung, a longtime political comrade of Aung San Suu Kyi and leader of the Arakan National Party (“ANP”) for deputy speaker of the upper house.⁷ Attendees also confirmed that the NLD will nominate Win Myint, an NLD member of parliament and former High Court advocate, for speaker of the lower house, and Mahn Win Khaing Than, an ethnic Kayin and NLD member of parliament, for speaker of the upper house.⁸ Mahn Win Khaing Than is a grandson of Mann Ba Khaing, a national hero who was assassinated, together with Aung San Suu Kyi’s father Aung San, in 1947.⁹

Because of the constitutionally reserved parliamentary bloc for unelected military officials, as well as the commander-in-chief’s ability to select three powerful ministerial positions (the ministers of home affairs, defense affairs and border affairs), many recognize the importance of cooperation between Aung San Suu Kyi and the military to ensuring that the delicate political handover stays on track.¹⁰ However, the appropriate extent of cooperation with former foes is a contentious issue within the NLD, with the potential to threaten or even derail Aung San Suu Kyi’s ambitious agenda.¹¹ “Breaking down the distrust and convincing everybody to work together represents the single biggest challenge for the incoming administration,” said Myint U, an independent consultant and expert on Myanmar bureaucracy.¹² “Failure here may slow down or even stop reforms and could cost the country billions of dollars in lost investment.”¹³

Min Aung Hlaing also appointed or re-appointed a total of 386 military delegates to the lower and upper houses of Parliament, as well as to the country’s 14 provincial assemblies.¹⁴ To address the challenge presented by the expected rebalancing of Myanmar’s parliamentary landscape and legislative process, the military has sought to improve its contingent of delegates by appointing a more senior and experienced group of officers to Parliament.¹⁵ The commander-

in-chief can appoint a maximum of 110 military delegates to the lower house and 56 to the upper house of Parliament.¹⁶

In a surprise move on January 26, just days before the February 1 inaugural parliamentary session, President Thein Sein asked parliament to expand the powers of the military-controlled Ministry of Home Affairs by giving it control over immigration.¹⁷ Zaw Htay, a director in the President's Office, said that President Thein Sein had decided to combine the Ministry of Immigration and Population with the Ministry of Home Affairs and had written to Parliament asking for its approval.¹⁸ If approved, the proposal would significantly add to the military's power even under an NLD administration.¹⁹ According to Zaw Htay, President Thein Sein's plan would give the military control over immigration issues such as identity cards, visas and passport control.²⁰ The President's Office claimed that the move was intended to reduce spending, increase the focus on security and strengthen border defense, and although the NLD has vowed to streamline Myanmar's vast bureaucracy, it is unclear whether the party would support such a move to augment the military's still substantial political influence.²¹

On January 27, hundreds of newly-elected Myanmar members of parliament took lessons in lawmaking from the outgoing army-dominated parliament.²² The new members of parliament include democracy activists from all walks of life and dozens of former political prisoners, but few have any legislative background.²³

B. Constitutional Reform

In late January, the NLD, through its the 15-member Central Executive Committee ("CEC"), instructed its parliamentary representatives not to leave the capital, according to eight of the party's rank-and-file members.²⁴ According to one of the parliamentary sources, "One of the NLD CEC members said there may be some important matters or emergency bills coming up next week."²⁵ The directive has intensified speculation among lawmakers that the NLD could propose legislation to suspend Article 59(f) of the 2008 Constitution, which effectively prevents Aung San Suu Kyi from becoming president.²⁶ Such a temporary suspension, according to the speculation, could allow Aung San Suu Kyi to become president without formally amending the constitution, which requires the votes of more than three-quarters of parliamentarians (a nearly unreachable threshold given the military's 25% bloc and effective veto power) and a national referendum.²⁷

Ko Ni, the NLD's legal expert, as well as Nyan Win, a senior NLD official and Aung San Suu Kyi's legal advisor, said they thought the parliament could suspend the article with a simple majority.²⁸ Senior NLD figures either declined to comment or said they were not aware of such a move, which would represent a major shift in their strategy and could pose a direct challenge to the still-powerful military.²⁹ Meanwhile, representatives of the outgoing government said any attempt to circumvent the provision would be unlawful.³⁰

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.³¹ In particular,

reporters continue to encounter difficulties covering the political process in this crucially important time period of power transition.³² Under the prior regime, reporters could not ask questions to lawmakers, according to Aung Htet, a senior reporter of the local Voice Weekly publication.³³ 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.³⁴ Since then, reporters in the capital have had to make do watching the proceedings from a television in the parliament's corridor.³⁵ Despite complaining to the new NLD regime about this lack of access, the reporters have not yet received a reply.³⁶

On January 22 2016, a court in Hlaing township in Yangon sentenced Kachin activist Patrick Khum Jaa Lee to six months in prison for a Facebook post about army chief Senior General Min Aung Hlaing.³⁷ Patrick Khum Jaa Lee was arrested on October 14 2015 at his home in Yangon and has been in prison since then. He was charged under Section 66(d) of Myanmar's 2013 Telecommunications Law for sharing a photo of a man dressed in traditional Kachin longyi (sarong) stepping on the image of the army chief.³⁸ Since he was detained, Patrick Khum Jaa Lee has been denied bail on numerous occasions despite appeals on the grounds of his deteriorating health in prison. His wife said that the bail was denied "without giving any proper reasons."³⁹

B. Freedom of Association/Religion

On December 31, 2015, authorities in Myanmar denied an application for a planned seminar "Consideration on the Ethnic Identity of So-called Rohingya" on the ethnic identity of Rohingya Muslims, in which internationally sourced historical and cultural evidence about the Rohingya was to be discussed.⁴⁰ A senior official, speaking on conditions of anonymity, stated that the government feared that the seminar would spark anger among the public.⁴¹

On January 4, Myanmar's Independence Day, local authorities banned the Sunni Jameh Mosque in Yangon's Teikgyi Township from celebrating its 75th birthday.⁴² This decision followed on the heels of a complaint by Wirathu, an influential Myanmar monk accused of inciting anti-Muslim sentiment over the past few years. Wirathu had posted on Facebook that the celebration organizers planned "to preach about the Rohingya at the platinum jubilee at the mosque" and that this act was "testing the waters" in advance of the National League for Democracy taking power in March.⁴³ The mosque's caretaker denied that the mosque had any plans to discuss the Rohingya at the event, and that the precise date had been chosen to correspond with the national holiday to facilitate high attendance.⁴⁴

On January 7, Global Engage published a press release on the 10-day Religion and Rule of Law certificate program that had been hosted by the Sitagu International Buddhist Academy and the Institute for Global Engagement, a US-based NGO that works to promote religious freedom.⁴⁵ The program was held from November 30-December 9, 2015, and offered lectures from noted professors and scholars from Australia, China, Indonesia, Myanmar, Singapore, Thailand, USA, and Vietnam.⁴⁶ Although initially designed for 30 participants,⁴⁷ over 120 people attended the conference, including a panel of international observers.⁴⁸ The opening and closing ceremonies of the event were broadcast on national television in Myanmar.⁴⁹

On January 22, the Sitagu International Buddhist Academy begins hosting a three-day World Buddhist Conference in Sagaing Township.⁵⁰ The conference is expected to bring approximately 700 religious and spiritual leaders together—200 international experts and 500 local scholars from around the country—to discuss how to build and maintain peace and how to solve problems when they arise.⁵¹ The conference will feature case studies from countries that have experienced religious problems with an aim of learning from those experiences.⁵² Wirathu stated that, as of January 21, he had not received an invitation to attend the conference.⁵³

C. Official Corruption

Myanmar submitted the country's first report under the Extractive Industries Transparency Initiative (the "EITI") on January 2, 2016.⁵⁴ The EITI is a voluntary initiative through which countries commit to publish reports on how their respective governments manage the oil, gas, and mining sectors.⁵⁵ These reports include a reconciliation of revenues paid by extractive companies and revenues received by governments.⁵⁶ The process is managed in each country by a multi-stakeholder group (the "MSG") which consists of government, civil, and industry representatives.⁵⁷ Myanmar was accepted as an EITI candidate at the International EITI board meeting on July 2, 2014.⁵⁸ EITI candidacy is a temporary status which is intended to lead to timely compliance with the EITI requirements.⁵⁹ When the EITI board admits an EITI candidate, it establishes deadlines for publishing the first EITI Report, typically around 18 months following the country's admittance to the EITI.⁶⁰

The report submitted by Myanmar focuses on three sectors: Oil and Gas, Gems and Jade, and other minerals.⁶¹ The Myanmar report profiles extractive companies and details their legal ownership,⁶² listing their applicable licenses and providing overviews of the awards process through which licenses are granted.⁶³ Although civil groups have high hopes for Myanmar's engagement with the EITI, some observers noted certain shortcomings of the inaugural effort.⁶⁴ A representative from the Myanmar Alliance Transparency Accountability Coalition ("MATA"), which was part of the MSG involved in preparing Myanmar's EITI report, stated that "not all the companies active in the natural resource sector are covered in the report" and that the report "left out many small-scale companies."⁶⁵ Min Zar Ni, a senior technical policy analyst at EITI in Myanmar, noted that "in order to make a comprehensive reconciliation process within the time frame, you have to decide on a threshold but the scope of the report would expand with every year."⁶⁶

III. Governance and Rule of Law

Commander-in-chief Min Aung Hlaing has responded to the shift in power following last November's general elections by packing political power and experience into the military's constitutionally guaranteed parliamentary seats, committing an overall higher-ranked and tested contingent to the legislative battlefield.⁶⁷ This appointment of military officers to governmental roles—which does not require that the appointees resign from their military role, but rather has them seconded to parliamentary duty—continues the reversal of Min Aung Hlaing's predecessor's record of appointing more junior officers to the role, and may signify a response to the loss by the USDP of its political advantage.⁶⁸ Three two-star generals, 12 brigadier generals and 11 colonels were appointed to the military's parliamentary bloc, many of whom have served in the legislature previously and bring significant political experience to bear.⁶⁹ By contrast, the

recently victorious NLD and sorely defeated USDP are fielding many legislative newcomers.⁷⁰ The military is guaranteed 25% of parliamentary seats, as well as up to one-third of seats in the provincial parliaments.⁷¹

Myanmar's Union Attorney General's Office ("UAGO") unveiled a new "strategic plan" aimed at bolstering the rule of law through the establishment of new laws to protect human rights, the execution of fair and accountable prosecution, the combatting of corruption and the implementation of general reform intended to bring the UAGO into line with international rule of law standards.⁷² Carrying out the strategic plan may be necessary to revive public confidence in the UAGO, which confidence is currently at a low and reflects the widely-held belief that the office is under the military's control.⁷³ The International Commission of Jurists expressed their approval of the plan, as well as their hope that the inbound NLD would appoint an appropriate and responsible Attorney General to the position.⁷⁴ The position has the capacity to wield great influence over, or stifle, the expansion of rule of law to which the NLD has committed, whether through provision of legal advice, participation in legislative drafting, or in particular through its involvement in judicial proceedings.⁷⁵

One positive step along the way to greater rule of law is the establishment of the Independent Lawyers' Association of Myanmar ("ILAM"), which held its inaugural meeting this month.⁷⁶ Launched after three years of preparation by Aung San Suu Kyi and the International Bar Association, the ILAM boasts over 2,000 members and is charged with upholding and upgrading standards of professional conduct and ethics, as well as promoting public awareness of the availability of rule of law and access to justice.⁷⁷

IV. Economic Development

A. Developments in the Legal Framework of Economic Development

On January 5, 2016, Myanmar's Parliament passed legislation that gives effect to the Convention on the Recognition of Foreign Arbitral Awards, the so-called "New York Convention," to which Myanmar acceded in April 2013. The law is expected to be seen as a positive development for international investors, which had historically used arbitration clauses in favor of Singapore or Hong Kong for Myanmar-related disputes.⁷⁸

On January 25, 2016, the Banks and Financial Institutions Law was passed by Myanmar's Parliament. The legislation adopts key components of the Basel III Accord, including heightened capital and risk management requirements, and represents a significant step in the country's transition to international banking standards.⁷⁹

B. Developments in Foreign Investment and Economic Development Projects

The conclusion of Myanmar's historic elections last November, together with a smooth transition of political power, is expected to lead to increased investor confidence and, ultimately, foreign direct investment ("FDI"), according to statements from representatives of the Myanmar Centre for Responsible Business and other organizations.⁸⁰ Increased FDI is also expected to follow the signing of the Myanmar-European Union investment protection agreement in the first half of this year.⁸¹

On January 15, 2016, Myanmar announced new requirements for evaluating the environmental and social impacts of development projects. The requirements were drafted with assistance from the Asian Development Bank and, among other features, specify the type and scope of environmental assessments required for all investment projects that could cause environmental and social harm.⁸²

C. Land Seizures

In January, after protracted negotiations with landowners who will be affected by a bridge development plan near Yangon, the Ministry of Construction agreed to compensate those landowners.⁸³ No funds have yet been paid, however, and affected landowners are hoping the payments are made before the new government forms in March.⁸⁴ Farmers in a different area near Yangon have also negotiated the sale of their lands, which they have agreed to give up so that a new city can be built.⁸⁵ As compensation, the farmers will receive a new area of land equal to 20% of the land they signed over and an apartment in the new city.⁸⁶ In Bago Region, in a rare instance of restitution, a company called KMA Group returned seized land to owners, and paid cash compensation to residents whose land had been retained.⁸⁷

Simultaneously, the government continues to crack down on land-related protests. Approximately 200 farmers had planned to protest land abuses related to the Chinese-owned Letpadaung copper mine in January, but were obstructed by police before being able to organize their protest.⁸⁸ The group intended to protest the mine company's decision to forego compensation for crops that had been destroyed or displaced by the controversial mine.⁸⁹ Farmers in Shan State held a press conference on January 3rd to protest against unfair treatment received when trying to reclaim seized lands.⁹⁰ The farmers claimed that they faced threats when trying to retake lands taken from them in southern Shan State and in some cases were prosecuted in court instead of reaching a settlement of their complaints.⁹¹

In the Mandalay Region, locals and their supporters reclaimed land that was seized by a mining company.⁹² After the government ignored their repeated complaints, some 300 people retook the land by placing flags along its boundaries.⁹³ One villager claimed that the group will now begin their own gold mining work there.⁹⁴ The mining company did not attempt to impede this action; when asked, representatives had no comment, merely stating that the government would resolve the dispute.⁹⁵

Meanwhile, the NLD announced that it will compile a list of seized land in Kayah State.⁹⁶ Despite being Myanmar's smallest state, Kayah state has the highest incidence of seized farmland, according to one committee member of the Karenni State Farmers' Union ("KFSU").⁹⁷ KFSU is compiling the list for the NLD and expects to finish by March.⁹⁸

V. Ethnic Violence

A. Peace Talks

From January 12–16, over 700 delegates from various constituencies convened for the Union Peace Conference with goals of ending the country's armed conflict through peace talks, political dialogue and national reconciliation.⁹⁹ Initial reports on the conference suggested that "[a] string of proposals were raised, but no decisions were made."¹⁰⁰

A number of non-signatories refused to attend the Conference as observers.¹⁰¹ The United Wa State Army, the country's largest armed ethnic group, refused to attend the "meaningless political dialogue" on the basis that the "ongoing conflict and the government's refusal to recognize three ethnic armed groups undermine the peace process."¹⁰² Further, The United Nationalities Federal Council, a coalition of ethnic minorities, "has resolved not to participate in the peace process until it is all-inclusive and after the incoming government steps in."¹⁰³ Civil organizations have continued to object to the peace talks, in part because of ongoing conflict in Arakan, Kachin and Shan states.¹⁰⁴

At the conference, the Myanmar Army stood firm in its demands "to establish a single federal army, while urging some ceasefire non-signatories to join the peace process"¹⁰⁵ and that the 2008 Constitution be kept as the cornerstone of political decisions related to defense and security.¹⁰⁶ The 2008 Constitution has been a recurring obstacle in the peace process, because it does not provide the level of state autonomy desired by ethnic minorities.¹⁰⁷ The government is reportedly afraid that states may attempt to secede if they are given too much autonomy.¹⁰⁸ This disagreement led to the talks winding down "with a feeling of skepticism among many ethnic representatives."¹⁰⁹

Continued military action in some parts of the country has added tension to the peace process. The "first reported breach of the nationwide ceasefire agreement" occurred on December 31, 2015.¹¹⁰ The Restoration Council of Shan State (RCSS) accused the government of violating the agreement by attacking RCSS forces in southeast Shan State.¹¹¹ A spokesperson for the Shan State Army-South, the military wing of the RCSS, stated that there may be "something wrong" with the ceasefire agreement if the group did not receive an explanation for the attacks on their troops.¹¹²

Women continue to be underrepresented in the peace process, constituting only 7% percent of participants in the Union Peace Conference.¹¹³ Some reports alleged that comments made by women were not adequately reflected in the daily records and meeting minutes.¹¹⁴ At the end of the Peace Conference, "attendees agreed on a four-point path forward, including a vague commitment to 'enable at least 30% participation by women at different levels' in accordance with the ceasefire agreement."¹¹⁵

In January, the NLD indicated that they had plans to expand the reach of the peace accord, and expressed the party's desire to "bring all groups to the nationwide ceasefire agreement that is already signed by some groups."¹¹⁶ According to NLD officials, the peace process will be the "first priority" of the new NLD government, when it takes power.¹¹⁷ The chief of the Myanmar Army has "promised greater transparency throughout the peace process."¹¹⁸

B. Conflicts with Muslims and Ethnic Groups

Stability after the elections will likely be tested by the government's treatment of an estimated 1.2 million ethnic Rohingya Muslims.¹¹⁹ Since the violence in 2012 between Rakhine Buddhists and Muslims displaced over 140,000 people, there has been renewed persecution of the Rohingya, including the loss of partial citizenship rights when ID cards were revoked, and

the stripping of their voting rights.¹²⁰ This disenfranchisement was noted as one of the democratic deficiencies for an otherwise fairly smooth 2015 elections.¹²¹

Amid rising anti-Muslim sentiment fueled by ultra-nationalist monks since 2013, Aung San Suu Kyi was caught between growing international calls for her to speak out on behalf of the Rohingya and domestic fears that any voicing of support for them, or Muslims in general, would diminish her domestic electoral appeal.¹²² Her response to the persecution has been largely one of silence.¹²³

The NLD has stated that the government needed to “address the issue of citizenship fairly, transparently, and as quickly as possible.”¹²⁴ However, the government has failed to do this and, at a press conference days ahead of the November 8 elections, Aung San Suu Kyi said, “I think it’s very important that we should not exaggerate the problems in this country ... I would promise everybody who is living in this country proper protection in accordance with the law and in accordance with the norms of human rights.”¹²⁵ In response to a pointed question on amending the 1982 Citizenship Law, which has been used to deprive Rohingya of full citizenship, she said that repealing any law was up to parliament.¹²⁶

Apart from the uncertainty the Rohingya community faces in post-election Myanmar, there has been a large increase in the number of severely malnourished children in northern Rakhine, an area that is 90% Rohingya.¹²⁷ According to a European Union agency, after floods destroyed crops, damaged rice paddies and contaminated water sources six months ago, malnutrition has spread.¹²⁸ The number of severely malnourished children under the age of five newly admitted to a European Commission-backed feeding program in Maungdaw district shot up after the floods, but the regional nutrition coordinator noted that the real number of malnourished children is far higher than the number in the feeding program.¹²⁹

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