

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

APRIL 2016 REPORT

Summary. This report reviews the April 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 April 1, Myanmar began a new era under a National League for Democracy (“NLD”)-led government.¹ The newly elected officials were sworn in on March 30, but did not officially take up their duties in full until April 1.² The NLD promised to begin work to achieve its goals set out in a 25-page election manifesto, which included striving for ethnic affairs and internal peace, a Constitution that ensures that all the people of Myanmar can live together in tranquility, a system of government that will fairly and justly defend the Myanmar people and the freedom and security to prosper.³

On the first day of officially taking office, the Upper House of the NLD-controlled Parliament approved a bill that would formalize Aung San Suu Kyi’s role as the country’s leader by creating a new post for her as “state counselor,” which some analysts have compared to prime minister.⁴ Known as the State Counselor Bill, the bill specifically names Aung San Suu Kyi as the country’s State Counselor, with a term equal to that of the President.⁵ In the new role, Aung San Suu Kyi would be able to collaborate with any government organization, department or individual in order “to help a multi-party democracy flourish, to generate a vibrant market economy, to establish a federal Union and to spur peace and development in the Union.”⁶ The bill states that the State Counselor could give “suggestions” in the interests of the people and nation, as long as those proposals do not contravene the Constitution. The bill does not specify to whom those suggestions would be directed toward, and does not include any lawfully binding mechanism ensuring that the State Counselor’s suggestions are implemented.⁷

Military lawmaker Brig-Gen Khin Maung Aye spoke in opposition to the bill, saying it violated the 2008 Constitution and would create conflicts of interest for Aung San Suu Kyi, given the extensive role she has carved out for herself in the new cabinet.⁸ According to Khin Maung Aye, clause 5(b) of the draft bill, which states that the state counselor shall be responsible to the Union Parliament, is in conflict with Article 232(h) of the 2008 Constitution, which states that the Union ministers shall be responsible to the President.⁹ He also argued that the bill would create a situation that allowed Aung San Suu Kyi to straddle the legislative-executive divide, taking power in both branches of government.¹⁰ Others, including Lawmaker Myint Naing from the Arakan National Party, suggested that the legislation should not be drafted to include a specific name, but rather should be amended to designate the “chairperson of the election-winning party” as State Counsellor.¹¹

The State Counsellor bill was passed in the Lower House of Parliament on April 5, without any amendments to the legislation as passed by the Upper House despite aggressive push-back from the military bloc.¹² Military lawmakers boycotted the proceedings by refusing to cast ballots and accused the NLD legislators of “democratic bullying.”¹³ Military lawmakers in the Lower House echoed concerns expressed by their colleagues in the Upper House, arguing that Parliament should not pass a law that would allow an individual to possess both legislative and executive powers.¹⁴ Brig-Gen Maung Maung also called for amending the term “Federal Union,” which the bill used to describe Myanmar, to “Union Country,” because the word “federal” is not used in the 2008 Constitution.¹⁵ The request put on display the sensitivity

surrounding the idea of a federal system of government, a constitutional reform that the NLD supports but which military leaders have opposed.

One day later, on April 6, President Htin Kyaw signed the State Counselor Bill into law.¹⁶ The coming months will reveal the ultimate impact of the bill on the politics and policies of Myanmar.

Soon after assuming her role as Myanmar's foreign minister, Aung San Suu Kyi hosted dignitaries from several countries.¹⁷ On April 7, Aung San Suu Kyi met with Canadian Foreign Minister Stephane Dion, who congratulated Myanmar on installing its first civilian government in decades and on its transition from military rule to democracy.¹⁸ Aung San Suu Kyi said Dion had offered to help efforts to end longstanding armed insurgencies against the Burmese-majority government by minority groups demanding autonomy and control over their natural resources in the north, northeast and east of the country.¹⁹ Aung San Suu Kyi also hosted the foreign ministers of China and Italy earlier this week.²⁰ The week's meetings advanced the perception that Aung San Suu Kyi will be the face of the country in international relations, with President Htin Kyaw playing a supporting role.

B. Constitutional Reform

In a nationally televised address to mark the start of the Buddhist New Year on April 18, Aung San Suu Kyi vowed to push for constitutional amendments to build a true democracy in Myanmar as it emerges from decades of military control.²¹ "Our policies and principles are to ensure national reconciliation, internal peace, the rule of law, amendments to the constitution and keeping the democratic system dynamic," she said.²² She stated that the constitution must be amended, so that it may "be one that will give birth to a genuine democratic union."²³

C. International Community and Sanctions

United States sanctions targeting Myanmar remain in place, although hope exists that the NLD's assumption of power will lead to the easing and eventual removal of the sanctions regime.²⁴ Global sanctions have been effective in prodding Myanmar to make democratic and human rights reforms, including the democratic elections that led to the NLD's victory, but the concern now is that the U.S. may aim to keep sanctions in place in order to coerce further change and prevent "backsliding", or the return to a more authoritarian government.²⁵ A former employee of the U.S. Office of Foreign Assets Control ("OFAC") suggested that the U.S. should work towards streamlining its decision-making process with respect to Myanmar in order to respond to sanctions-related issues as they arrive, de-listing certain individuals from OFAC's list of Specially Designated Nationals and Blocked Persons in coordination with the Myanmar government, and eventually lifting the sanctions regime.²⁶ Ideally, these efforts would facilitate U.S. banks and other businesses seeking to expand their economic presence in Myanmar as the country begins to open up and admit foreign investment.²⁷ One issue still standing in the way is the treatment of Myanmar's Rohingya and other ethnic minorities, a sore point for the NLD as party leader Aung San Suu Kyi has been criticized internationally for failing to speak out on the issue for fear of undermining support for her party.²⁸

II. Civil and Political Rights

A. Press and Media Laws/Restrictions

Several members of the media were released from prison this month under a government amnesty program implemented by the new NLD-led administration.²⁹ Among those pardoned by President Htin Kyaw were four reporters and the CEO of weekly publication *Unity*, who served two years and two months of seven year sentences for breaching the 1923 State Secrets Act.³⁰ On April 24, the co-founder of the Myanmar Times, Myat Swe (Sonny), was also released from Taunggyi Prison in Shan State. He had received a 14-year sentence in 2005 for bypassing censorship regulations and had already served eight-and-a-half years when he was released.³¹

On May 2, the secretary of the Myanmar Media Council met with Information Minister Pe Myint to discuss how to establish a better relationship between the Ministry of Information and media organizations across the country.³² During the meeting, the Information Minister pledged to reform the controversial Broadcasting Media Law, which was approved by parliament last August but not implemented according to plan, and promised to hold workshops throughout the coming year to gather input on how to change the law, foreshadowing a lengthy reform process.³³ He also said that each government ministry will appoint a spokesperson to make information public and that ministers would begin holding press conferences for special announcements.³⁴

On May 3, World Press Freedom Day, media organizations urged the government to implement a Freedom of Information Act in a joint address to the Information Minister during a ceremony in Yangyon.³⁵ The address criticized the new government for its lack of communication with the media during the month of April and for issuing a ban that prevents MPs from speaking to the media and closes parts of parliament from the press.³⁶

B. Freedom of Association/Religion

The month of April saw the new government of Myanmar release many political prisoners, but hardships remain for many imprisoned under laws repressing freedom of association and freedom of religion.

During his first week in the Cabinet, Religious Affairs Minister Aung Ko gave an interview with Voice of America regarding the new government's plan for religious minorities in Myanmar. In his statement, Aung Ko denied government abuse based on religion, noting that in Myanmar religious minorities, including Christians, Hindus and Muslims, had not been "deliberately oppressed."³⁷ He also stated that Buddhists are "full citizens" and that Muslims made up the majority of "associate citizens," implying that religious minorities are considered partial citizens or foreigners.³⁸

On April 8, a court in Mandalay sentenced two Muslim inter-faith activists, Pwint Phyu Latt and Zaw Zaw Latt, who had been sentenced to two years in prison in 2016, to an additional two years in prison with hard labor.³⁹ The two activists had been convicted on charges under the Unlawful Association Act section 17(a) after photos circulated on social media of two visits they allegedly made: one across the India-Myanmar border to Mizoram State in 2014, and the other a charity visit to a war-torn area of the Kachin state in 2012 during which the pair met with members of the Kachin Independence Army.⁴⁰ Speaking to the press before he returned to prison, Pwint Phyu Latt stated that they did not plan to

file an appeal, believing instead that the new government would soon abolish the Unlawful Association Act as part of its peace process.⁴¹ Both activists had formerly worked with the NLD⁴² but had most recently been members of Thint Myat Lo Thu Myar (Peace Seekers and Multiculturalist Movement), a foundation created to promote tolerance between Myanmar's different religious groups.⁴³

On April 28, hundreds of Myanmar nationalists and Buddhist monks participated in a march in front of the United States embassy, protesting the US's use of the word Rohingya.⁴⁴ An official statement from the United States expressing its condolences for the deaths of 21 Rohingya, including nine children, from Rakhine state earlier in the month as they travelled from Sin Tet Maw camp by boat to buy food in Rakhine's state capital, Sittwe.⁴⁵ The protesters did not make mention of the conditions that led to the deaths of the Rohingya and instead asserted that there are no Rohingya in Myanmar and that if the United States uses the term, it should take the people who call themselves that to the U.S.⁴⁶

C. Official Corruption

On April 2, Aung San Suu Kyi issued guidelines for the acceptance of gifts by Myanmar's civil servants to eradicate bribery and corruption in Myanmar.⁴⁷ The guidelines are intended to provide guidance to public officials on when the receipt of gifts in a personal or social context is permissible, and when the acceptance of a gift may instead be deemed to be an act of bribery.⁴⁸ Historically, Myanmar has been criticized internationally for a culture of bribery and corruption.⁴⁹ The previous government, led by the Union Solidarity and Development Party, introduced the Anti-Corruption Law, but the interpretation and enforcement of this law were often vague and inconsistent.⁵⁰ As a basic principle, the new guidelines expressly forbid public officials from accepting any gift from a person or organization which has been offered or given to the public official on account of their official position.⁵¹ The guidelines emphasize a prohibition against gift giving in the context of the giver trying to do business with an agency under the supervision of the recipient, or the giver potentially benefitting from an act which the recipient has the authority to control.⁵²

III. Political Prisoners

Since taking office, the NLD-led government has prioritized relief for political prisoners.⁵³ On April 8, 199 activists and student protesters on trial were released on orders from Aung San Suu Kyi.⁵⁴ Another 83 political prisoners were freed on April 17 after they were pardoned by President Htin Kyaw.⁵⁵ Between April 1 and April 17, a total of 282 political prisoners had been released or had charges against them dropped.⁵⁶ As of April 22, however, observers estimated that over 40 political prisoners remained behind bars and at least 100 more activists remained on trial for political actions.⁵⁷ As previously mentioned, among those pardoned were four reporters and the chief executive officer of weekly publication *Unity*, who served two years and two months of seven-year sentences for breaching the 1923 State Secrets Act.⁵⁸ In televised remarks to mark the start of the Buddhist New Year on April 18, President Htin Kyaw vowed to continue efforts "to release political prisoners, political activists, and students facing trials related to politics."⁵⁹

On the legislative front, Myanmar's Legal Affairs and Special Cases Assessment Commission recommended that the government abolish or amend 142 laws that have been used as tools to arrest political activists for decades.⁶⁰ The commission suggested abolishing laws that were most often used to imprison activists, including the 1950 Emergency Provisions Act, the Penal Code's Section 505(b), and Article 18 of the Peaceful Assembly Law.⁶¹ These laws were widely used to arrest dissidents, politicians and activists under the previous military regime as well as under Thein Sein's quasi-civilian government.⁶² Peaceful protesters were often detained under Article 18 of the Peaceful Assembly Law, which requires organizers to obtain government permission prior to protesting.

Following the recommendation of the Legal Affairs and Special Cases Assessment Commission, the Bill Committee of Parliament's Upper House began reviewing the Peaceful Assembly Law and the Emergency Provisions Act on April 26.⁶³ Members of the Bill Committee reported that the committee would review 15 of the 142 laws flagged by the Legal Affairs and Special Cases Assessment Commission.⁶⁴ "We are now starting to review the Peaceful Assembly Law and Emergency Provisions Act. After reviewing these laws, we will decide whether to amend or abolish them, and then later we will submit these recommendations to the Parliament," said committee member Aung Kyi Nyunt, adding that the two bills would be prioritized throughout the review process.⁶⁵

Although Parliament took a lengthy recess at the end of April for the annual Thingyan water festival, members will reconvene on May 2, after which the Bill Committee's recommendation would likely be submitted for parliamentary consideration. After reconvening, the Lower House is also expected to consider a bill that would rescind Myanmar's 1975 State Protection Law.⁶⁶ The 1975 law, also known as the "Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts," was enacted during Myanmar's socialist era and was used to oppress political activists who did not share the same opinion or vision of the government.⁶⁷ The law currently allows a "central board" to pass orders "restricting any fundamental right of any person suspected of having committed or believed to be about to commit, any act which endangers the sovereignty and security of the state or public peace and tranquility."⁶⁸

IV. Governance and Rule of Law

In the wake of NLD conflict with the military following the creation of Aung San Suu Kyi's new "State Counsellor" position, some observers have wondered whether Aung San Suu Kyi and the NLD have pushed the military bloc too hard, capitalizing on the NLD's victory too quickly at the expense of a working relationship with the military moving forward.⁶⁹ By establishing the "State Counselor" position, Aung San Suu Kyi may have effectively made an end-run around the constitutional bar to her direct presidency, but she had intended to do so even without the label of a state-endorsed position. This move instead seems designed to send a message to the Tatmadaw that they are on the way out—a move not conducive to building trust as the transition to democracy forges ahead.⁷⁰

Others outside of the military have been critical of Aung San Suu Kyi and of how she has deployed the power now enjoyed by the NLD. The *Centre for Research on Globalization* has questioned whether the NLD can really be said to champion democracy while leading from a position higher than the nation's highest elected official, citing Aung San Suu Kyi's ties to foreign interests as the reason for barring her from occupying the seat herself.⁷¹ While the question fails to ask whether championing democracy necessarily requires obedience to an

undemocratically drafted constitution, the piece does raise the issue that skirting the rule of law—even when it may appear to suit the will of a nation’s people at present, and especially to establish an elevated position of rule—may lead to unforeseen and decidedly undemocratic consequences.⁷²

The NLD continues to face one of the same major challenges that its predecessor government tried to address: the representation and administrative integration of Myanmar’s many ethnic groups, some of which continue to resist the central Myanmar government through armed rebellion.⁷³ The challenge is a balancing act, with the ethnic groups on the one hand seeking regional autonomy and decentralization of national power, and the military on the other hand unhappy to embrace the idea of federalism, which it fears would embolden Myanmar’s various states to resist the union government.⁷⁴ *Nikkei Asia Review* writer Robert H. Taylor has suggested that one solution may lie in decentralizing beyond even the state level and adopting a framework where elected power rests at the district level.⁷⁵ Currently, the district administrations are run by unelected officials reporting to the General Administration Department of the Ministry of Home Affairs (one of the sectors constitutionally under the perpetual purview of the military). Taylor submits that by replacing appointed district-level administrators with elected councils, local citizens—including the various ethnic groups who are not contained at the regional level but spread out nationally—will be better able to participate in the day-to-day bureaucracy, while the individual districts will never amass enough power to threaten the union government or military directly.⁷⁶ Such a balance may give ethnic rebels a reason to put away arms and participate peacefully in government, as was the case with Indonesia’s decentralization over a decade ago.⁷⁷

V. Economic Development

A. Developments in the Legal Framework of Economic Development

As noted in previous reports, the Yangon Stock Exchange (“YSX”) was launched on March 25. Although the YSX continues to have only one listed company (First Myanmar Investment), the reaction by Myanmar investors to the YSX continues to be positive.⁷⁸ Other companies are expected to soon list on the YSX, including Myanmar Thilawa SEZ Holdings in May, and several banks and construction firms by the end of the year.⁷⁹ Firms seeking to trade on the YSX must satisfy a number of requirements, including an examination process that reviews a firm’s management and accounting practices.⁸⁰

On April 4, the Central Bank of Myanmar, “[i]n order to create an enabling regulatory framework for efficient and safe mobile financial services in Myanmar,” issued regulations on mobile financial services.⁸¹ According to press reports, the new regulations would permit mobile financial service providers to offer a number of services to underbanked citizens, including kyat-denominated cash-in, cash-out transactions, money transfers and domestic payments.⁸²

B. Developments in Foreign Investment and Economic Development Projects

In April, it was reported that foreign direct investment (“FDI”) in Myanmar increased 18% for the year ended March 31, with “the capital inflow fueled by economic growth expectations for a country making a historic break from its military-led past.”⁸³ The increase in

FDI is expected to continue this year due to, among other things, the expected easing of U.S. sanctions during the first year of the National League for Democracy's rule.⁸⁴

On April 5, Aung San Suu Kyi met with the Chinese Foreign Minister, Wang Yi, in Nay Pyi Taw, Myanmar.⁸⁵ The meeting focused on strengthening bilateral relations between Myanmar and China, and the two leaders expressed a desire to resolve disputes on business related matters through "friendly consultations."⁸⁶ Days after the meeting, it was reported that a Chinese state-affiliated company plans to open an oil refinery near a special economic zone in Dawei, Myanmar.⁸⁷

C. Land Seizures

Protests in Arakan State were planned in April to demand "compensation for land [allegedly] damaged to make way for a contentious oil and gas pipeline laid by China National Petroleum Corporation ("CNPC")."⁸⁸ Reportedly, more than 100 hectares were spoiled by the CNPC during the construction of the pipeline. More than 200 people were affected by the pipeline and 111 of them had not yet received compensation for the damage to their land, despite seeking compensation since 2013.⁸⁹ At least 100 protestors were expected to join the April protests.⁹⁰

Two farmers in Nay Pyi Taw who are challenging charges brought against them for "squatting" on land they say was confiscated from them by the government have been told that the adjudication of their case would be postponed for the 18th time.⁹¹ Each of the two farmers had between 20 to 30 acres of land confiscated.⁹² One received only partial compensation, while the other received no compensation at all for the confiscated land. Both were charged after continuing to till the land for which they were not compensated.⁹³ Eight additional farmers in the same area have been charged with squatting since the new government came to power, and their cases are set to be adjudicated at the end of April.⁹⁴

In Yangon, residents who had been labelled as unlawful squatters are appealing to the new administration to end its policy of violent evictions.⁹⁵ Tenants in one housing complex, who had been given eviction notices, indicated that they could not move because they had no alternative homes.⁹⁶ At a press conference held on April 5, residents encouraged the NLD-led government to enact legislation to address Yangon's pressing need for affordable housing and to create proper sewage and waste-disposal systems.⁹⁷ Also in Yangon, there were reports of approximately 6,000 outstanding complaints of farmland seizures that remained unaddressed.⁹⁸ The committee tasked with addressing the complaints indicated that it had received 80 additional complaints since early April.⁹⁹ Lawmakers have indicated that they are developing plans to form a commission with relevant members of Parliament to review the complaints and conduct field investigations.¹⁰⁰

In Mon State, over 16,000 acres of confiscated land are in the process of being returned by the military and other government departments, including the Ministry of Industry, to the land's original owners.¹⁰¹ Despite this mass return of property, some landowners received cash compensation in lieu of their previously owned land, and many complained that the soil on much of the returned land had been spoiled, rendering it "unusable" for farming.¹⁰²

In northern Shan State, the Manpang People’s Militia reportedly “coerced” leaders and residents of several villages to attend a meeting about coal excavations, seeking to extract signatures from the residents for an agreement which would allow coal excavation on the residents’ land.¹⁰³ Although no residents signed the agreement, there were unconfirmed reports that the militia may be working for outside companies in attempting to pressure villagers into signing off on coal excavation.¹⁰⁴

The Myitsone dam project was not discussed during the first meeting between Aung San Suu Kyi and her Chinese counterpart.¹⁰⁵ However, reports indicate that the “fate of Myitsone is likely to loom large over the bilateral relationship in the months to come.”¹⁰⁶

VI. Ethnic Rebel Groups and Peace Talks

The NLD-led government has continued to indicate that the peace negotiation process is a “government priority.”¹⁰⁷ At an April conference attended by ceasefire agreement signatories, Aung San Suu Kyi called for a peace conference “within two months” and encouraged “all stakeholders to help make that happen.”¹⁰⁸ She proposed renaming the Myanmar Peace Center, a key player in the peace talks, as the National Reconciliation and Peace Center (“NRPC”).¹⁰⁹ Her personal physician has been tapped to lead the renamed organization.¹¹⁰

The NLD has also extended an olive branch to non-signatories of the nationwide ceasefire agreement, indicating that the inclusion of non-signatory groups in the nationwide ceasefire deal would be a government priority.¹¹¹ Nine ethnic armed groups that did not sign the ceasefire agreement with the USDP government held a four-day meeting in Chiang Mai, Thailand to discuss preparations for negotiations with NLD officials.¹¹² Members of these nine ethnic groups welcomed Aung San Suu Kyi’s speech in which she promised to build a “genuine, democratic federal union,” seeing the speech as an auspicious sign for peace talks.¹¹³ In early April, it was reported that talks had been arranged between “peace process luminaries,” who were not officially representatives of the NLD, and three ethnic armed groups that the former government shut out of the ceasefire negotiations.¹¹⁴ Ultimately, however, the ethnic groups decided against the meeting since any discussion would not be considered “official.” The groups indicated that they want to meet those who can “really work for peace,” such as official representatives of the NLD government.¹¹⁵

The Joint Monitoring Committee (“JMC”), comprised of representatives from the government, the Myanmar military and the parties to the ceasefire agreement who were tasked with policing violations of the ceasefire agreement, plans to resume work without any representatives from the NLD government.¹¹⁶ Two state-level JMCs have been formed so far and it is expected that state-level JMCs will be proposed for three additional states in the near future.¹¹⁷ The national-level JMC has reported 500 complaints of violations of the ceasefire agreement, mostly from Shan State and Karen State.¹¹⁸ The JMC continues to work on drafting the “terms of reference,” which will aim to provide unbiased ways of addressing the problems that are brought forward.¹¹⁹

The JMC does not cover non-signatories areas, but there were also reported clashes between the Burmese Army and the Arakan Army in northern Arakan State, which was not a signatory to the ceasefire agreement.¹²⁰ The Arakan Army communications officer described the

ceasefire agreement as a “failed” agreement and indicated that his group would participate in talks with the government only if the other excluded groups were also invited.¹²¹

A recent report criticized the lack of transparency in the spending of funds earmarked for the peace process.¹²² Over US\$100 million was contributed to Myanmar’s peace programs by foreign governments and institutions, but critics argue that this aid has provided war-affected ethnic communities with little to no benefit.¹²³ Going forward, Aung San Suu Kyi stated that she would seek international assistance to fund the NRPC and would make sure those funds were used properly.¹²⁴

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