

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

DECEMBER 2016 REPORT

Summary. This report reviews the December 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. Governance and the Rule of Law

Vijay Nambiar, special advisor to United Nations Secretary-General António Guterres, has appealed to State Counselor Aung San Suu Kyi to visit Rakhine State, where military security forces have been accused of committing human rights abuses against Rohingya Muslims while in the process of responding to violent attacks on border guard posts in the region that occurred earlier in the year.¹ Nambiar's appeal was joined by the diplomatic missions of 14 Western countries, including the United States, and also called on Suu Kyi to urge peace and cooperation between the majority Buddhist and minority Muslim communities in Myanmar.²

Security forces have prevented international humanitarian groups and independent journalists from entering Rakhine State to conduct their own investigations into the allegations of human rights abuses, despite calls by the U.N. to defer to the rule of law and to allow unfettered access.³ The U.N.'s resident coordinator of humanitarian matters in Myanmar, together with several foreign ambassadors, had visited Rakhine State in November 2016 and called on the Myanmar government to launch its own independent investigation into the allegations.⁴ Members of the Rakhine Advisory Commission, formed by Suu Kyi and headed by former U.N. Secretary-General Kofi Annan, also visited the region in December 2016.⁵ Annan urged Myanmar security forces to act within the rule of law, adding that security operations must not compromise citizens' civil rights.⁶ He stressed that civilians must be protected at all times during the security forces' crackdown.⁷

An investigative commission headed by Vice President Myint Swe, however, concluded that the military operations in Rakhine State have been conducted "lawfully."⁸ The statement followed a three-day investigative trip to the region by commission members, although the secretary of the commission called for additional visits and fact-gathering before the commission would publish a report detailing its findings.⁹ In addition to noting that no further attacks or burnings had occurred since late November, the commission refuted claims that the military had been involved or complicit in the systematic arson of Rohingya homes and the killing and raping of Rohingya civilians, calling the international community's claims "an exaggeration" and claiming that "[i]t could not be hidden if those amounts of rapes and burned [building] cases had really happened."¹⁰

The apparent impunity with which the military has acted in its heavy response to the Rakhine State attacks is likely a result of the lack of military oversight by, and accountability to, civilian organizations and individuals.¹¹ For example, the Myanmar Constitution prevents the elected civilian president from leading the military, instead reserving top military leadership to the chief of the army.¹² In addition, three security-related ministries (the Ministries of Defense, Border Affairs and Home Affairs) are under the exclusive authority of the military and have the ability to override the civilian government when they consider the nation's security to be threatened.¹³ The Myanmar Constitution provides for the creation of defense and security legislative committees in both houses of the Myanmar Parliament, but no action to implement the committees has yet been taken.¹⁴ Observers have even been disappointed by Suu Kyi's relatively complacent stance toward the military and her defense of the military's response in Rakhine State.¹⁵

B. Official Corruption, Sanctions and the International Community

Official Corruption

In an interview with Channel NewsAsia on December 8, State Counselor Suu Kyi reassured the public that the country's ministers were not corrupt, but conceded that some of the junior officers in government "are not quite what we would wish them to be."¹⁶ She was however quick to add that "the practice of corruption has not become embedded in our culture and that's very encouraging."¹⁷ Attempts by the National League for Democracy ("NLD") to eradicate official corruption in the Myanmar government have been viewed as largely successful by the general public.¹⁸

Last month, a Swedish court found that documents from Myanmar's state-owned timber company, Myanmar Timber Enterprise ("MTE"), did not adequately prove the legality of its timber throughout its entire supply chain.¹⁹ The lack of information about the supply chain was deemed especially problematic because Myanmar is classified as a 'high risk' country for illegal logging due to, among other things, its rank on the Corruption Perception Index published by Transparency International.²⁰ According to Peter Cooper, a forest campaigner with the UK-based Environmental Investigation Agency, "[t]he ruling means no Burmese timber can be legally placed on the EU market until the [MTE] addresses illegality and transparency within the supply chain."²¹ In a statement responding to the verdict, MTE stated that it "already has clear instructions [and] procedures for the traceability of [its] timber supply chain," but added that a "more reliable and data-based system will be developed."²² Myanmar is currently in the midst of a large-scale deforestation crisis which experts believe has been caused by corruption within the timber industry, particularly the government-assisted distribution and sale of illegally logged timber by MTE.²³ Observers believe that the deforestation issue has been fueled, in part, by the lack of requirements for MTE to publicize data on extracted timber amounts, subcontractors and revenues, even though it operates within the Union budget.²⁴

In early December, Susan Coppedge, the ambassador-at-large in the U.S. Office to Monitor and Combat Trafficking in Persons, spent two days in Yangon and Nay Pyi Taw to meet with government officials, NGOs, and international organizations regarding Myanmar's efforts to combat human trafficking.²⁵ The visit came a few months after Myanmar dropped to the lowest level in the latest annual Trafficking in Persons ("TIP") Report, published in July 2016, and a week before the Myanmar Parliament ratified the ASEAN Convention against Trafficking in Persons.²⁶ The TIP Report noted that, among other things, 'pervasive' corruption in Myanmar was hindering the enforcement of human trafficking laws.²⁷

Sanctions and the International Community

As noted in previous reports, the lifting of U.S. sanctions and reinstatement of preferential tariffs under the U.S. Generalized System of Preferences ("GSP") has been criticized for destroying the last bit of diplomatic leverage held against the Tatmadaw.²⁸ This month, the minister for mining in Kachin State, which is the heart of Myanmar's "jade tract," was quoted as calling the U.S. decision to lift sanctions a "mistake."²⁹ Despite the lifted sanctions, the jade industry in Myanmar appears to be in decline as a result of decreased demand from China.³⁰

Notably, neither U.S. nor European buyers attended the first gems emporium to be held since the lifting of sanctions in late November 2016.³¹

Banks and financial institutions in Myanmar remain only in the initial stages of developing relationships with their U.S. counterparts.³² While the Central Bank of Myanmar allows any local lender with the requisite license to engage in overseas foreign currency transactions, local lenders are finding the administrative and documentary requirements to be complicated.³³ This complexity means that many Myanmar banks are waiting for U.S.-Myanmar trade to pick up before setting up facilities for direct transactions and money transfers.³⁴ Analysts have predicted that U.S. firms will remain cautious in their dealings with Myanmar due to the continued listing of several Myanmar individuals on a U.S. narcotics blacklist, so as to minimize the risk of inadvertently doing business with a blacklisted individual.³⁵

Ongoing violence in Rakhine State has led to the deterioration of relationships between Myanmar and many of its ASEAN counterparts, most publicly Malaysia.³⁶ After an announcement that the Malaysian prime minister Najib Razak would be attending a protest condemning the ongoing military operations in Rakhine State, deputy director general of the Myanmar President's Office, Zaw Htay, warned Malaysia to respect the Myanmar's sovereign affairs in accordance with ASEAN non-interference principles.³⁷ Despite this warning, Prime Minister Razak led a rally in Kuala Lumpur to show solidarity with the Muslim Rohingya and labelled the violence against them as genocide.³⁸ In response, the Ministry of Labor, Immigration and Population published a statement that the Myanmar government will stop sending Myanmar workers to Malaysia.³⁹ A ministry official quickly hedged this position, stating his belief that the suspension would be lifted "within a short period."⁴⁰ Additionally, both President Htin Kyaw and Senior General Min Aung Hlaing met with the chief of Malaysia's armed forces in an attempt to repair fraught relations between the two ASEAN countries.⁴¹

II. Civil and Political Rights

A. Freedom of Speech and Assembly

Free speech observers have continued to criticize the frequency with which charges have been brought under Section 66(d) of Myanmar's controversial Telecommunications Law, which imposes fines and up to three years' imprisonment for online defamation and other publication offences.⁴² According to PEN, an international writers' advocacy group, cases filed under Section 66(d) increased to 38 during 2016 under the NLD administration, compared to only seven between 2013 and 2015 under the previous administration.⁴³

A proposed bill to amend Section 66(d) has been submitted by the Union Parliament Legal Affairs and Special Case Assessment Commission for consideration by the Myanmar Parliament.⁴⁴ The draft bill reportedly focuses on reducing maximum penalties to two years' imprisonment, narrowing the definition of defamation and permitting the grant of bail for those accused while investigations are carried out.⁴⁵

In December, ARTICLE 19, an international nonprofit focused on freedom of expression issues, issued a report analyzing the draft Interfaith Harmonious Coexistence Law proposed by the Ministry of Religious Affairs and Culture of Myanmar for its compliance with international

human rights standards.⁴⁶ The report finds that the draft law does not meet international human rights standards and advocates that it should not be introduced to the parliament of Myanmar (the Pyidaungsu Hluttaw) in its current form.⁴⁷ Specifically, ARTICLE 19 noted that, although the draft law aims to promote “harmonious coexistence,” it prioritizes vague, far-reaching restrictions on freedom of expression that will in reality restrict inter-communal dialogue and increase distrust between (and within) groups.⁴⁸ The law’s measures include broad criminal prohibitions on “hate speech” with mandatory prison sentences for blasphemy and “misusing of religion for political purposes.”⁴⁹ As such, the report argues that the law will be counter-productive to combating discrimination and violence that is motivated by or perpetrated against people on the basis of religion or belief.⁵⁰ The report advocated for withdrawing the draft law and instead focusing efforts on developing positive policy measures, reforming the Penal Code and developing a comprehensive non-discrimination legal framework to ensure both the right to freedom of expression and equality.

On December 12, Myanmar’s Ministry of Religious Affairs and Culture announced its decision to sue the Moe Pya Buddhist sect for its preparations to publish a doctrine on what it calls “present karma Buddhism” despite a warning from the state’s Sangha Maha Nayaka Committee (the highest Buddhist religious authority).⁵¹ The Ministry opposes the concept of “present karma Buddhism” because it focuses only on the present—arguing that one’s actions and deeds at present determine one’s life in both the present and immediate future.⁵² The doctrine’s critics argue that this contradicts the idea of rebirth in Buddhism, which they argue teaches that one’s karma in previous lives shapes current and future lives.⁵³ One of the authors, Nay Win, who self-describes as a layperson of the Moe Pya sect, published advertisements in state-run newspapers for the upcoming books, and he told the Irrawaddy that he “sent a letter to [President] Htin Kyaw and [State Counselor] Daw Aung San Suu Kyi stating that I would publish the doctrine since freedom of religion is enshrined in the Constitution.”⁵⁴

B. Freedom of the Press

Soe Moe Tun, a journalist for Eleven Media Group, was found beaten to death on December 13, 2016 in Myanmar’s Sagaing region.⁵⁵ International organizations and the victim’s family have called for authorities to investigate whether Soe Moe Tun’s killing was in retaliation for articles written by the journalist.⁵⁶ Two of three suspects remanded to date are associated with a karaoke lounge.⁵⁷ While Soe Moe Tun was investigating alleged illegal logging immediately prior to his death, he had previously reported on the alleged surge in karaoke lounges illegally doubling as brothels.⁵⁸

The defamation suit filed against the CEO of Eleven Media Group, Than Htut Aung, and chief editor, Wai Phyo, remains ongoing.⁵⁹ Bail continues to be denied, despite Than Htut Aung’s poor health.⁶⁰ As detailed in November’s report, Than Htut Aung and Wai Phyo were charged under Section 66(d) of the Telecommunications Law in relation to an article alleging that Yangon Chief Minister, Phyo Min Thein, had accepted a luxury watch from the winner of a bid for a Yangon expansion project. While Eleven Media Group has issued an official apology for the article’s publication, the article remains on the Eleven Media website.⁶¹ It is unclear whether the government will drop the charges following the apology.⁶²

C. Economic and Social Empowerment

Violence against the Rohingya population of Rakhine State continued to escalate in December, accompanied by heightened international scrutiny of the government of Myanmar's actions to improve the condition of the beleaguered people within its borders.

On November 29, the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) expressed alarm over reports of serious rights violations in Rakhine, Kachin, and northern Shan states, citing allegations of extrajudicial killings, arbitrary arrests and sexual violence, and a renewed spike in hate speech.⁶³ OHCHR spokesperson Ravina Shamdasani noted that U.N. High Commissioner for Human Rights Zeid Ra'ad Al Hussein has said the Government needs to condemn these events and rhetoric around them, regardless of who is responsible.⁶⁴ “Protection of civilians and unfettered humanitarian access to conflict affected areas is critical,” the U.N. rights chief stated, continuing that “[m]easures that may heighten the vulnerability or pose threats to the safety and security of internally displaced people—such as requiring internally displaced persons (“IDPs”) to cross conflict lines—must be avoided.” The U.N. Rights Office also stressed that the authorities must respect international humanitarian law and the rights of IDPs, pointing out that continued failure to do so would draw a sharp response from the international community.

The reports of violence were echoed by several Rohingya women who were interviewed in the Leda refugee camp in Cox's Bazar district in Bangladesh.⁶⁵ They described attacks on their village, citing a military assault that included shooting and burning down houses, killing as many as 1,500 people there.⁶⁶ One woman tearfully described what happened to her: “They started shooting and burning houses. In the dead of night the military entered my room. They divided the males and the females, and the women were taken into the forest. I was raped by two soldiers and my husband was slaughtered.”⁶⁷

On December 19, Aung San Suu Kyi convened a meeting in Yangon of foreign ministers from the Association of South-East Asian Nations in an attempt to assuage their concerns about the treatment of the Rohingya, but she continued to avoid using the word “Rohingya,” calling it “controversial.”⁶⁸

On December 29, 23 Nobel laureates (including Desmond Tutu, Shirin Ebadi and Jose Ramos-Horta), politicians, philanthropists and activists composed an open letter addressed to the U.N. Security Council stating that “a human tragedy amounting to ethnic cleansing and crimes against humanity is unfolding in Myanmar,” and comparing the situation to the genocides that took place in Rwanda and Bosnia.⁶⁹ The letter also criticized fellow Nobel Peace laureate Aung San Suu Kyi for her lack of “any initiative to ensure full and equal citizenship rights of the Rohingyas” to protect the Rohingyas.⁷⁰

On December 28, the Alliance for Gender Inclusion in the Peace Process continued to advocate for women to play an increase role in the peace process for Myanmar. One of the committee's members, Mi Kun Chan Non, said: “We hope that 30 per cent of stakeholders in peace process are women. We enabled them to get a 30-per-cent participation in reviewing framework for political talks and in the UPDJC [Union Peace Dialogue Joint Committee]. We always remind the organisers to not forget women's role in the process. We take it as a success when the organisers keep the women's role in their mind.”⁷¹

These comments followed a gender equality conference hosted by “U.N. Women Myanmar” and the “Alliance for Gender Inclusion in the Peace Process.”⁷² At the conference, Jean D' Cunha, the head of U.N. Women Myanmar, stated that men are “not the problem” but need to be “part of the solution” to gender inequality in the peace process.⁷³ Although

Myanmar's nationwide ceasefire agreement mandates that women fill 30% of positions during political negotiations with armed ethnic groups, female attendees at the Panglong Conference itself comprised only 13% of the 75 participants.⁷⁴

III. Economic Development

A. Legal Framework and Foreign Investment

According to a recent survey, companies operating in Myanmar are somewhat optimistic for future growth potential in the country but remain concerned about government policies and regulation.⁷⁵ The survey, which received responses from almost 200 executives at 179 local and international companies representing a wide range of sectors, highlighted a number of government-related issues that would have to be addressed in order to ensure continued economic growth. Such issues include Myanmar's unclear economic policy, unpredictable legislative environment, selective enforcement of regulations, restrictions on investment and access to markets, insufficient intellectual property rights protection, and public corruption.⁷⁶ The survey also identified several other necessary conditions to economic growth in Myanmar, including the need for a stable electricity supply and internet connectivity, reliable transportation infrastructure, financial sector reform, and a business environment conducive to fair competition.⁷⁷ However, 73% of respondents expressed their belief that Myanmar's economy would improve over the next 12 months, especially given its young population and abundant natural resources.⁷⁸

Myanmar's government has announced a plan to ease certain trade restrictions on joint ventures between local business people and foreign investors.⁷⁹ Under the plan, foreign companies may operate joint ventures with local companies to trade fertilizer, seeds, pesticides and hospital equipment. Building materials may be traded in the same manner beginning in July 2017. In addition, the administration revoked certain regulatory caps on foreign investment amounts.⁸⁰

The World Bank approved a US\$100 million line of credit to support Myanmar's efforts in improving access to financial services for small businesses and low-income families.⁸¹ Such efforts to improve banking access include Myanmar's Financial Sector Development Project, which aims to promote the provision of banking products and services across the country and to develop the country's nascent microfinance and insurance sectors.⁸² In addition, Myanmar has continued its efforts to foster the private banking sector, which has grown rapidly since 2012. More than 1.4 million debit cards have been issued to first-time users, and thousands of ATMs have been installed. Private sector financial credit markets have grown steadily, albeit from a low base.⁸³ Still, Myanmar's financial sector does not yet effectively meet the demands of the country's growing economy. Fewer than 30% of adults can access financial services, and the rates are even lower in rural areas.⁸⁴ Businesses identify the lack of access to financial services as one of the largest obstacles to conducting business in Myanmar.⁸⁵

According to a recent report issued by the Myanmar Investment Commission ("MIC"), the Thilawa Special Economic Zone ("SEZ") in Yangon's Thanlyin Township has received more than US\$900 million in foreign investment since its launch in 2014.⁸⁶ Since 2014, the MIC has permitted 75 businesses from 17 countries to operate in the economic zone. So far, 19 factories

have started production.⁸⁷ Japan is the largest investor in the Thilawa SEZ, followed by Hong Kong, China, Korea, Singapore and the United States.⁸⁸

Myanmar received total foreign investment of approximately US\$3.46 billion in 2016, representing a decrease of over \$1 billion from the total foreign investment amount of 2015.⁸⁹ Observers have attributed this decrease to investors' wait-and-see attitude on new laws and regulations of the NLD administration, and expect the foreign investment numbers to increase in 2017.⁹⁰

B. Infrastructure and Major Projects

Eden Group, a Myanmar conglomerate that does business in the construction, agriculture, and finance sectors, is further expanding its core construction businesses as it looks to provide more affordable residences in Myanmar. These projects may be critical for Myanmar as a result of the country's rapid growth.⁹¹ The company's chairman said in an interview that it is necessary for Myanmar to develop its infrastructure and real estate, and said that, in pursuing these development projects, he is not only looking to big cities, but also rural areas.⁹² For example, Eden Group plans to introduce affordable housing on the outskirts of Yangon, where middle and lower-middle income workers are living. The group is also considering offering housing loans through its banking unit and proposing to the government that the government provide reasonably priced land to assist the group in building affordable housing.

Government administrations in Myanmar are beginning to increase their use of digital technologies in providing services. Specifically, Myanmar is trying to apply recent advances in digitization to ease the burden of manual, paper-based administrative and business procedures.⁹³ The country's first digital customs management system was launched in mid-November at the customs offices near the Port of Yangon. The office has been working with importers and exporters to help familiarize them with the new system.⁹⁴ The digitized system has helped to streamline workflow, and, while most of Myanmar's other administrative procedures still depend on manual processing, digitized systems are increasingly being introduced in Myanmar to facilitate efficiency in government. For example, one company has developed a digitized payment system for the Central Bank of Myanmar, and another won a contract to introduce a digital management system at the Myanmar Port Authority.⁹⁵ However, additional efforts to digitalize administrative processes may be stalled, given the fact that the government is primarily focusing its funding on electrical power development and road construction.⁹⁶

The Myanmar Department of Agriculture plans to begin a public awareness campaign to help farmers use a "Good Agricultural Practices" ("GAP") system in an attempt to help Myanmar's agricultural industry access export markets.⁹⁷ The GAP system involves specific farming methods designed to ensure that food that reaches consumers is of a certified level of quality and safety. These methods include a focus on environmental sustainability and food safety. It is the Department's hope that if Myanmar farmers adopt these methods, they will gain access to new export markets, improve the use of natural resources in Myanmar, and improve overall safety and quality standards.⁹⁸

C. Land Seizures

A parliamentary commission has advised an “overhaul” of the National Land Use Policy.⁹⁹ While the current policy only covers the use and management of farmland, the commission has called for an expanded policy covering land use and management more generally, including for village and residential land, pasture, land allotted for religious purposes, economic and industrial zones, military areas, and cultural heritage sites.¹⁰⁰ The commission also stated that the Myanmar policy approach should be conformed to international norms and standard operating procedures, including by clarifying the permissible use of private land by the state, the rights of citizens to own or use land, and the supervision of state-owned land resources.¹⁰¹

In Kutkai township in northern Shan State, approximately 500 civilians in two villages were ordered to leave their homes within two days.¹⁰² No additional information was given to the villagers as to why the sudden move was required, although some speculated that the order was related to military clashes in the nearby area.¹⁰³ Displaced villagers expressed concern that the education of children would be disrupted by the sudden displacement.¹⁰⁴

In Ye Bu village in Shan State, 72 farmers were jailed for a month for trespassing on land they insisted they owned.¹⁰⁵ The farmers continue to consider next steps but “vowed to fight on despite the convictions.”¹⁰⁶ One legal advocate indicated that filing trespass charges is used as a tool to dissuade farmers from seeking justice because, in part, it imposes costs on them by requiring them to “travel repeatedly to court.”¹⁰⁷

Land currently occupied by diplomats in Dekhinathiri township has also been the subject of disputes this month.¹⁰⁸ Farmers claim that the property was unlawfully seized from them during military rule with inadequate compensation.¹⁰⁹ Although some farmers were compensated under an old sliding scale compensation regime, approximately 75 acres was reportedly never paid for.¹¹⁰ A team of government officials has been put together to “resolve confusion over who owned what, and how much they should be paid for it.”¹¹¹ However, as is common in these land disputes, documentation of land ownership is lacking and many of the farmers do not have evidence of ownership.¹¹²

In Mandalay, twenty-one farmers were arrested as part of an ongoing land dispute trial.¹¹³ The arrested farmers included sixteen women and a six month old child. The farmers were charged with trespassing and destroying property.¹¹⁴ The farmers were protesting the seizure of their land in 2001 and claim they received “minimal compensation for their crops.”¹¹⁵ After appealing, they were told in 2015 that “most of the confiscated land would be returned to farmers.”¹¹⁶ However, the confiscated land has reportedly not been returned.¹¹⁷

In Bagan, residents are once again concerned about the possibility of eviction due to an expected October 2017 bid for UNESCO status.¹¹⁸ In 1990, over 4,000 residents were evicted from the city with only one week’s notice.¹¹⁹ Old residents of the city remain upset that parts of the land they were evicted from are now used by hotels.¹²⁰ With the new bid, Bagan residents have expressed their concern that after leaving their homes in 1990 “to make way for a world heritage site,” they will now be told that their current homes are again within the site zone, requiring yet another move.¹²¹

IV. Peace Talks and Ethnic Violence

Growing distrust not only in relation to the Tatmadaw's commitment to peace process efforts, but also the government's position was evidenced in mid-December in a statement made by the United Nationalities Federal Council ("UNFC"), a coalition of ethnic armed organizations that have not signed the October 2015 nationwide ceasefire agreement ("NCA").¹²² The UNFC statement claimed that the new government had done little to steer the peace process it inherited onto a better course, and had failed to intervene in Tatmadaw aggressions.¹²³ The statement directly criticized Suu Kyi for not abiding by campaign pledges relating to the peace process.¹²⁴ A later statement by the Shan Nationalities League for Democracy argued that the NLD government should negotiate peace process terms with the Tatmadaw before discussing such terms with ethnic armed groups, on the view that the Tatmadaw's continued aggressions had undermined the peace process progress to date.¹²⁵

Against the backdrop of the escalating violence in northern Shan State in close proximity to the Chinese border, neighboring China has changed from a traditionally passive role to a more active stance in supporting the Myanmar peace process.¹²⁶ Among other initiatives, a nine-member delegation from Myanmar, which included peace commissioner chair Tin Myo Win and generals of the Myanmar military, was invited to Beijing to meet with Chinese Foreign Minister Wang Yi at the end of November.¹²⁷ According to a statement made by the Myanmar National Peace Commission Secretary Khin Zaw Oo at a press conference in Yangon on December 3, Beijing tried to arrange peace talks between the delegation's members and representatives of the Northern Alliance of ethnic armed groups during the delegation's visit.¹²⁸ While the Myanmar delegation had reportedly agreed to meet separately with each of the four ethnic armed groups that constitute the Northern Alliance—the Kachin Independence Army ("KIA"), the Myanmar National Democratic Alliance Army ("MNDAA"), the Ta'ang National Liberation Army ("TNLA"), and the Arakan Army ("AA")—the MNDAA and KIA objected to this approach of conducting separate meetings.¹²⁹ Commission Secretary Khin Zaw Oo stated that while the Myanmar government was seeking to hold talks with the Northern Alliance on the ongoing conflict in northern Shan State as quickly as possible, it could only start peace talks once the ethnic armed groups stopped their offensive and allow the situation in northern Shan State to return to normal.¹³⁰

After these initial efforts to hold peace talks on the situation in northern Shan State had failed in late November and early December, both the Myanmar Peace Commission and the Northern Alliance expressed a willingness to renew efforts to meet.¹³¹ The Northern Alliance groups reiterated their condition to meet the Peace Commission as a group, and proposed inviting the United Wa State Party ("UWSP") as a third-party witness to the discussions.¹³² The Myanmar Peace Commission agreed to the Northern Alliance's proposal for discussions witnessed by both the UWSA and Chinese negotiators, but the meeting scheduled for December 28 ultimately did not occur.¹³³ A Peace Commission member was quoted as saying that the Northern Alliance's representatives did not appear at the planned meeting, but that the commissioners were nevertheless willing to meet.¹³⁴ Subsequent meetings on December 30 and December 31 were more successful, but included only the Peace Commission and representatives of the UWSP and the MNDAA.¹³⁵

The status of the several ethnic armed groups forming the Northern Alliance with regard to the general peace process further complicates the situation. While the KIA is a member of the UNFC's Delegation for Political Negotiation and as such participates in the peace process, the Tatmadaw has blocked the TNLA, the MNDAA and the AA from such participation.¹³⁶ These three excluded groups were not invited to the signing ceremony of the NCA in October 2015, and were also excluded from participating in the 21st-century Panglong Conference in August 2016.¹³⁷ While the NLD government has promised to adopt a more inclusive approach at the second Panglong Conference planned for February, the Tatmadaw remains opposed to peace talks with non-signatories of the NCA.¹³⁸ Likewise, a bill proposed in the Myanmar Parliament which would have invited all ethnic groups to attend the Union Peace Conference in February was rejected by the Parliament's office director, who refused to allow the issue to be debated or voted upon.¹³⁹

The strain on the peace process caused by the ongoing conflict in northern Shan State was further aggravated by a resolution of the Shan State Parliament labeling three ethnic armed groups fighting in the conflict—the KIA, the MNDAA, and the TNLA—as terrorist organizations.¹⁴⁰ The Myanmar army controls a significant number of seats in the Shan State parliament, and the resolution was proposed by a member of Parliament who is a former Tatmadaw general.¹⁴¹ A spokesman for the TNLA stated that the resolution “only proves how the Burma Army does not have genuine intentions for the peace process”.¹⁴² The United Wa State Army (“UWSA”), which was not among the groups subject to the “terrorist organization” label, also criticized the resolution as damaging to the peace efforts.¹⁴³

A proposal to label the member groups of the Northern Alliance as “terrorist organizations” was also put on the agenda of the national Parliament's Lower House and supported by Defense Minister Lieutenant-General Sein Win, but ultimately was not approved by the NLD-dominated Lower House.¹⁴⁴

On December 20, a new oversight body was established to effectively, and more transparently, spend the more than US\$100 million provided by international donors to fund Myanmar's peace process.¹⁴⁵ The decision to establish the new Joint Coordinating Body (“JCB”) was made at a meeting in Nay Pyi Taw between the government and ethnic armed groups including both signatories and non-signatories to the NCA.¹⁴⁶ The JCB, comprising 16 representatives, eight from the government and eight from the armed groups, will oversee expenditures related to the peace process and coordinate the running costs of the NRPC, a government institution for the peace process that will be funded by a mix of government and donor money.¹⁴⁷

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- 7 *Id.*
- 8 Myanmar Times, December 16, 2016: <http://www.mmtimes.com/index.php/national-news/24250-commission-probing-rakhine-says-rule-of-law-being-observed.html>.
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- 14 *Id.*
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- 18 *Id.*
- 19 Myanmar Times, November 16, 2016, <http://www.mmtimes.com/index.php/national-news/23699-swedish-court-rules-against-importer-of-myanmar-timber.html>.
- 20 Myanmar Times, December 16, 2016, <http://www.mmtimes.com/index.php/national-news/24249-when-selling-is-more-lucrative-than-protecting-myanma-timber-enterprise-and-the-deforestation-crisis.html>.
- 21 *Id.*
- 22 *Id.*
- 23 *Id.*
- 24 *Id.*
- 25 The Irrawaddy, December 16, 2016, <http://www.irrawaddy.com/news/burma/us-special-ambassador-on-human-trafficking-visits-burm.html>.
- 26 The Irrawaddy, December 15, 2016, <http://www.irrawaddy.com/news/politics/burmas-parliament-ratifies-asean-anti-trafficking-convention.html>.
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