

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

JUNE 2017 REPORT

Summary. This report reviews the June 2017 developments relating to human rights in Myanmar. Relatedly, it addresses the interchange between Myanmar’s reform efforts and the responses of the international community.

I.	Political Developments.....	2
A.	Governance and the Rule of Law.....	2
B.	Official Corruption, Sanctions and the International Community.....	2
II.	Civil and Political Rights.....	3
A.	Freedom of Speech and Assembly.....	3
B.	Freedom of the Press and Censorship.....	4
C.	Economic and Social Empowerment.....	4
III.	Economic Development.....	5
A.	Legal Framework and Foreign Investment.....	5
B.	Infrastructure and Major Development Projects.....	6
C.	Land Seizures.....	6
IV.	Peace Talks and Ethnic Violence.....	7
A.	Ethnic Violence.....	7
B.	Peace Talks.....	8

I. Political Developments

A. Governance and the Rule of Law

In June, critics of the National League for Democracy (“NLD”) renewed requests to improve the ability of Myanmar citizens to observe court hearings and trials.¹ According to these critics, increased transparency in court proceedings would lead to increased judicial accountability and an enhanced public trust in the rule of law, including by introducing a check against corrupt or arbitrary judgments.² A report published in June by Justice Base detailed the various difficulties that reporters encountered when attempting to observe Myanmar court proceedings, including confined courtrooms unable to fit observers and, more troubling, efforts by court officials and police to intimidate visitors.³ According to Justice Base, members of the public should not be limited to observing only cases where the observer has a direct connection to the case being heard.⁴

Sein Hla, a Myanmar lawyer, recently made a more sweeping suggestion to reform the Myanmar judicial system away from the current British-derived system to one that more closely reflects Myanmar’s culture and tradition.⁵ He suggested that the government form a special committee to conduct a study on how Myanmar had traditionally approached matters of jurisprudence and individual rights prior to the imposition of the British legal tradition.⁶

B. Official Corruption, Sanctions and the International Community

Official Corruption

In June, the manager of a hotel in Yangon alleged that the Secretary of the Ministry of Hotels and Tourism had demanded a payment of Kyat 10 million (approximately US \$7,336) in exchange for a recommendation letter to banks regarding the provision of loans.⁷ The hotel manager, who said he had made the payment, allegedly received death threats after speaking publicly about the payment.⁸ The Ministry of Hotels and Tourism published a statement which did not address the allegations of bribery but said that the hotel was a state-owned building and that the manager had leased it, had fallen behind on payments, and was required to repay his debt.⁹

In another case of alleged corruption, a businessman publicly claimed that he had paid Kyat 1.2 million (approximately US \$880) to a regional government official to ensure that farmers he planned to do business with would have their previously confiscated land returned to them.¹⁰ Following the corruption accusations, the accuser was arrested and is now reportedly facing five charges across three townships, including three under the little-used Habitual Offenders Act.¹¹ At the time of the news report, the government had not commented publicly on the accusations.¹² According to the news report, the government official accused of receiving the payment had initially denied any knowledge of the accusations, or even knowing his accuser. When asked to explain phone messages he apparently sent to the accuser, however, the official later reportedly admitted to a local newspaper that he had hurriedly sent the messages while in a meeting and without realizing the subject of the conversation.¹³

As of June 2017, the number of complaints received by Myanmar’s Anti-Corruption Commission has exceeded 3,200 since its formation in March 2014.¹⁴ The commission said in a

statement that it had looked into 41 complaints and found most were about civil servant mismanagement, land issues and controversial court cases.¹⁵ More than 760 complaints were transferred to state and regional governments and in 32 cases the accused were prosecuted.¹⁶

Sanctions and the International Community

On June 16, the U.S. Department of the Treasury removed sanctions regulations against Myanmar from the U.S. Code of Federal Regulations.¹⁷ This final step by the U.S. Office of Foreign Assets Control finalized the lifting of sanctions undertaken by the Obama administration in October 2016.¹⁸ This step does not, however, end the obligation for U.S. financial institutions under Section 311 of the USA PATRIOT Act to undertake enhanced due diligence when processing financial transactions involving Myanmar, since the country remains categorized as a “jurisdiction of primary money laundering concern.”¹⁹ Furthermore, a visa ban targeting a non-disclosed list of Myanmar military officials and “any other Burmese persons who provide substantial economic and political support” to the military remain in place under the U.S. Jade Act, and the U.S. State Department’s Directorate of Defense Controls continues to maintain its policy to deny exports of defense articles and services to Myanmar.²⁰

On June 27, the U.S. State Department removed Myanmar from the annual Trafficking in Persons Report “blacklist,” a list of countries with the worst human trafficking records, and instead ranked Myanmar in the report’s “Tier 2 watch list” of countries making significant efforts to combat human trafficking and forced labor.²¹ According to the report, the upgrade reflected a recognition of Myanmar’s continued progress in stopping the recruitment and use of child soldiers. The report noted, though, that sanctions to penalize military officials who have engaged in child soldier recruitment still remain unsatisfactory.²² The report also recognized an increase in Myanmar law enforcement personnel dedicated to anti-trafficking and the first prosecutions of government officials since the enactment of the 2005 Anti-Trafficking in Persons Law.²³ According to the report, ethnic minorities (including the persons displaced by conflicts in Kachin and northern Shan states, as well as in Rakhine State) still remain particularly vulnerable to trafficking, including forced labor perpetrated by government authorities.²⁴

The decision to remove Myanmar from the “blacklist” of the Trafficking in Persons Report reportedly was due to an unusual personal intervention by U.S. Secretary of State Rex Tillerson against the recommendations of his senior advisers.²⁵ According to officials, the U.S. State Department’s Bureau of Democracy, Human Rights, and Labor, which researches the Trafficking in Persons Report’s issues, had concluded that the evidence merited keeping Myanmar on the blacklist.²⁶ Human Rights Watch stated that removing Myanmar from the blacklist would be a “completely premature and disastrous action that will effectively betray more children to continued servitude and rights abuses.”²⁷

II. Civil and Political Rights

A. Freedom of Speech and Assembly

Students have been protesting the expulsion of Zaw Ye Htut, who was expelled from the Sagaing Education College for taking part in a political protest on May 18, 2017.²⁸ He and his supporters alleged that the administration at Sagaing Education College was oppressive and

cited human rights abuses. The Chan Aye Tharzan township court found the students guilty of disturbing the peace. Altogether, they were sentenced to five months in jail, four under Section 19 of the Peaceful Assembly and Peaceful Procession law initially and an additional month under section 228 of the Penal Code, which addresses intentional insults or interruption of public servants sitting in a judicial proceeding. Nevertheless, they were released after being granted amnesty during the second session of the 21st Century Panglong Conference. Zaw Ye Htut is negotiating with the college administration to rejoin classes.²⁹

Since 2013, there have been 72 defamation cases filed under the infamous Article 66(d) of the Telecommunications Law—seven cases under former President Thein Sein’s administration, which enacted the statute, and 65 cases under the NLD government.³⁰ On June 4, 2017, Tun Tun Oo, leader of the Human Rights Activists Association, was arrested on charges of violating Article 66(d) for live-streaming the play “We Want No War” on Facebook.³¹ The play was staged by high school students and undergraduate students of Patheingyi University during a peace discussion in Patheingyi on January 9. Nine of the students involved were also sued by the Myanmar Army for defamation.³²

The NLD government has continued to resist efforts to repeal Article 66(d).³³

B. Freedom of the Press and Censorship

On June 6, more than 100 Myanmar journalists gathered to call on the government to drop lawsuits filed against reporters under Article 66(d).³⁴ They formed a 21-member Committee for the Protection of Journalists to demand the abolition of the notorious law. Efforts to organize this committee were motivated in large part by the June 2 arrest of the chief editor of The Voice Daily newspaper, Kyaw Min Swe, and its regular columnist, Kyaw Zwa Naing (who writes under the pseudonym British Ko Ko Maung).

The Voice Daily journalists were arrested for a satirical article questioning the country’s armed struggle and peace process.³⁵ On June 8, The Committee for the Protection of Journalists organized a march from the Bahan courthouse (where the journalists’ trial was scheduled to be held) to the offices of Eleven Media Group and The Voice Daily.³⁶ The author of the article, Kyaw Zwa Naing, has since been released from jail after his editor, Kyaw Min Swe, testified that he was solely responsible for it.³⁷ While Kyaw Min Swe has publicly apologized, he is still being held without bail.

On June 26, a group of seven journalists were detained as they were returning from observing a ceremony held in northern Shan state by the Ta-ang National Liberation Army, an officially illegal organization and one of several groups fighting the Myanmar military.³⁸ Toe Zaw Lat, Aye Naing and Pyae Bone Naing, each a journalist at the Democratic Voice of Burma, and Lawi Weng, a reporter with The Irrawaddy online news service, have all been officially charged and are scheduled to appear in court on July 11.

C. Economic and Social Empowerment

The Myanmar government is now giving birth certificates to children of Myanmar migrant workers who had been working illegally abroad and have returned to Myanmar, so that those children can have Myanmar citizenship and attain citizens’ rights.³⁹ However, the

government will be issuing birth certificates to eligible children only after their parents legalize themselves in Myanmar after returning from working abroad.⁴⁰

In June, UNICEF said that investments in the health, nutrition and well-being of the youngest children in Myanmar are proving successful.⁴¹ According to UNICEF, in recent years, children in Myanmar have been benefiting from a rise in the breastfeeding rate, improvements in health care coverage and quality, and an increase in the national vaccination rate.⁴² However, the United Nations also urged the Myanmar government to do more to protect children in the country.⁴³ The United Nations emphasized that this obligation extended to all children within its jurisdiction, including all those from the Rohingya minority living in Rakhine state.⁴⁴ A U.N. human rights expert expressed concerns over the detention of at least 13 children by police in Rakhine, frequent allegations of child labor exploitation in Myanmar, and a recent reported rise in the number of child brides.⁴⁵

III. Economic Development

A. Legal Framework and Foreign Investment

Because of its belief in the strong growth prospects of the Myanmar economy, the Ministry of Planning and Finance has again expressed its intention to reform the current economic legal framework to further attract foreign investments. According to Union Minister Kyaw Win of the Ministry of Planning and Finance and other observers, it believes the economy will take off this year.⁴⁶ As the de facto gate keeper to foreign investment in Myanmar, the Myanmar Investment Commission (“MIC”) has recently stated that it will focus in large part on whether a proposed foreign investment would support Myanmar small and medium enterprises (“SMEs”) when deciding whether to approve or reject foreign investment proposals.⁴⁷

Under the recently passed Myanmar Investment Law, however, the MIC’s role and responsibilities have changed.⁴⁸ Specifically, the Investment Law grants state and regional investment commissions the authority to approve investment proposals of up to US\$5 million without having to seek permission from the MIC.⁴⁹ The MIC would retain the authority to review proposals that involve strategic investments, capital-intensive investments, investments with possible environmental impacts and investments in certain business sectors that the Myanmar government has determined merit additional scrutiny.⁵⁰ Although the categories of investments under the MIC’s purview has been limited, the scope of review to be conducted by the MIC has been broadened under the Investment Law. The MIC can now reject investment proposals from investors which it deems irresponsible, and may exclude investors who have abused human rights in any foreign jurisdiction.⁵¹

On June 8, more than 300 Myanmar government officials, along with European business leaders, participated in the first Myanmar-European Union Economic Forum.⁵² Filip Lauwerysen, executive director of the European Chamber of Commerce in Myanmar, said that many European companies are looking to Myanmar as a potentially promising investment destination, as they expect the Myanmar government to continue improving the country’s legal and political stability.⁵³

The International Finance Corporation and the Securities and Exchange Commission of Myanmar organized a forum at the Yangon Stock Exchange where they informed listed companies that transparency and reliable disclosure practices are crucial to build trust with stakeholders, attract investors and ensure accurate media reporting.⁵⁴ According to the associated press release, the Myanmar government intends to further develop the Yangon Stock Exchange and improve the ability of local companies to raise capital.⁵⁵ Currently, the Myanmar government is working on a legislative framework to improve risk governance in listed companies and to strengthen shareholder protection.⁵⁶

B. Infrastructure and Major Development Projects

The Myanmar government is currently focusing on improving and growing the country's energy sector and is attempting to establish policies to ensure the country's energy security.⁵⁷ In formulating a national energy policy, the government plans to take into account environmental and social impacts of energy projects, as well as the costs of power generation, so that citizens and corporations have access to affordable electric power. The NLD has advocated for clean coal as a viable energy option for the country's immediate needs, while proposing hydropower projects as a more sustainable long-term solution.⁵⁸ Although clean coal is relatively expensive, the NLD contends that it would be the fastest way to provide access to electricity for the regions in Myanmar that are not currently connected to the national grid.⁵⁹

Myanmar has recently been considering ways to make Yangon a more attractive and sustainable city.⁶⁰ Specifically, the city is considering plans to develop pedestrian walkways through central business district areas, while also redeveloping the city's railroad system and adding a water-bus transportation system.⁶¹ The city plans to include new rapid transit technology in its development efforts, with the hopes of resolving a number of transportation and accessibility issues in the city.⁶² Consultants assessing the projects have also noted that a focus on pedestrian areas will likely attract more tourists to the region.

Technology firm Vertiv, which supports mobile and cloud computing, is planning for an expansion of its operations in Myanmar.⁶³ Vertiv's vice president for Asia said that recent reform in the telecommunications sector in Myanmar has motivated the firm to expand in the country. The company's data centers and other technologies are specifically designed for developing countries where there is limited electricity and frequent blackouts.⁶⁴ In its efforts to expand in Myanmar, Vertiv has recently signed a deal with a Myanmar technology firm and is cooperating with two Myanmar banks.

C. Land Seizures

In Mandalay, more than 1,000 farmers staged a protest against lawsuits filed against them for allegedly trespassing on land seized by the government.⁶⁵ The farmers claim that their land was seized for "state projects," but was ultimately sold by the government, including, in some cases, to tenant farmers.⁶⁶ The farmers protested in an attempt to bring government attention to their plight and to try to hasten the government's resolution of the issue.⁶⁷

In Nay Pyi Taw, an investigation into land owned by former government officials is underway.⁶⁸ The investigation is looking into whether former government officials are

cultivating 140 acres of land previously owned by farmers.⁶⁹ The farmers in question either received insufficient or no compensation.⁷⁰ The farmers are demanding that their lands are returned.⁷¹ Although by law the land was not allowed to be cultivated until 2015, the farmers claim that the government “really worked the land in 2011.”⁷²

Farmers from four villages have demanded that the Kyaukphyu Special Economic Zone committee compensate them for seized paddy fields.⁷³ The committee did not comment on the amounts requested by the farmers as compensation.⁷⁴ A Chinese-owned conglomerate plans to develop the industrial zone on nearly 4,300 acres, and the seized land forms a portion of that.⁷⁵ The farmers felt that the meeting was too short and were hoping to get a firmer commitment than just a verbal promise that compensation would be paid.⁷⁶

In the Ayeyarwady Region, farmers demanded that 200 acres of land confiscated, and subsequently abandoned, by the military be returned to its original owners.⁷⁷ The land, owned by 32 farmers, had previously been used as a cashew plantation, but was seized in 1996 due to “security concerns.”⁷⁸ It was declared abandoned in 2016.⁷⁹ The farmers paid rent to the military and continued to farm until 2009, at which point the military forbade them from continuing to access the cashew trees.⁸⁰ The farmers continued to farm, rent free, starting in 2013.⁸¹ Over 200,000 acres of land were seized in the region overall, and 90,000 acres have been returned to their original owners.⁸²

Meanwhile, in the Yangon region, squatters are being driven out of their homes in a state-coordinated effort to clear land for construction projects. The eviction efforts are said to be the first NLD-led forced eviction.⁸³ The government has begun clearing a large number of thatched houses on the land and, within one week, authorities estimated that 90% of the structures had been cleared.⁸⁴ Four men and one woman were arrested for resisting eviction.⁸⁵ Nearly 200 police troops and 700 hired civilians armed with clubs, swords and axes were deployed to clear the site.⁸⁶ Nearly 1,500 evicted people are now living in temporary shelters or monasteries.⁸⁷

The evicted squatters are protesting through various means, arguing that they should be provided with land based on “citizen rights, the humanitarian treatment of the homeless, the end of forcible eviction of poor people, and help for people who have no way to make a living.”⁸⁸ The displaced squatters have also opened a fraud case against the development committee that sold them land allegedly already owned by the government.⁸⁹

IV. Peace Talks and Ethnic Violence

A. Ethnic Violence

Amnesty International issued a new report in June highlighting abuses suffered by minority ethnic groups in the Kachin and northern Shan States.⁹⁰ The report, titled “All the Civilians Suffer: Conflict, Displacement and Abuse in Northern Myanmar,” describes how soldiers from the Myanmar military punish civilians by torture, extrajudicial killings, enforced disappearances, and indiscriminate shelling of villages.⁹¹ The report also described abuses by armed groups, including forced conscription, extortion, and abductions.⁹²

Locals and workers fled seven mining areas around Tanai Township in Kachin after the Myanmar Army dropped leaflets announcing that villagers who remained past June 15 would be labeled insurgents.⁹³ The Kachin Independence Army (“KIA”) derives most of its income from amber and gold mines in Tanai.⁹⁴ Clashes between the Myanmar Army and KIA fighters were reported on June 16 in several townships.⁹⁵ While many civilians followed the government’s warnings and relocated, thousands are still stranded in the conflict zone.⁹⁶ On June 21, the Myanmar military ordered the leaders of four Kachin communities to tell villagers not to leave their villages.⁹⁷ All four villages are located along Ledo Road, where the Northern Alliance reportedly clashed with the Tatmadaw on five separate occasions on June 20.⁹⁸

In Rakhine State, the Myanmar military and border police raided a suspected militant camp in the forests of the Mayu mountains.⁹⁹ The fighting left three suspected militants dead.¹⁰⁰ According to border police officials, Muslim militants were suspected of trying to establish militant training camps in the area.¹⁰¹ Approximately 100 residents from Tarein village left their homes following the killing of two Muslims in a machete attack earlier this year.¹⁰² The incident has added to tensions between the Buddhist Rakhine and Muslim communities in the area.¹⁰³ Another, similar attack left one dead near Maungdaw town on June 25.¹⁰⁴ Earlier in the month, lawmakers from Rakhine State urged the government to build more ethnic Rakhine villages in Muslim-majority townships.¹⁰⁵

In Shan State, Myanmar military forces arrested seven men, including three reporters, on suspicion of ties to the Ta’ang National Liberation Army (“TNLA”), which is active in the area.¹⁰⁶ The Tatmadaw has clashed five times with insurgents since discovering a TNLA training camp on June 20.¹⁰⁷

Myanmar’s army and police opened an investigation into the deaths of three ethnic Kachin men who were detained by government troops.¹⁰⁸ The men were found dead three days after having been taken into custody.¹⁰⁹ Examination of their corpses showed signs of torture and knife and gunshot wounds.¹¹⁰

B. Peace Talks

At the second 21st Century Panglong Conference (the “Panglong Conference”), which was held in May, the Union Peace and Dialogue Joint Committee (“UPDJC”) laid out 45 basic principles for discussion by delegates concerning a future federal state.¹¹¹ Of these 45 principles, 37 were agreed at the end of the six-day conference, with the remainder left for future talks.¹¹² The critical issues of secession and self-determination were among the eight that were not agreed to in May, and instead were deferred until the next round of peace talks which are expected to be held by the end of 2017.¹¹³

The issue of committing to remaining in the Union was hotly debated between the government, the Tatmadaw and signatory groups to the nationwide ceasefire agreement (“NCA”) at the Panglong Conference.¹¹⁴ The Tatmadaw has repeatedly insisted that ethnic armed organizations (“EAOs”) commit to not seceding from the Union. By contrast, EAOs such as the Shan Nationalities League for Democracy (“SNLD”) have resisted including any non-secession commitment in the Panglong Conference’s basic principles.¹¹⁵ The impasse over secession resulted in a one-day extension of the Panglong Conference.¹¹⁶ Despite Aung San Suu Kyi

holding a separate closed-door meeting with the Tatmadaw during the conference in an attempt to mediate the disagreement, the parties were not able to resolve the conflict over secession rights.¹¹⁷ Moreover, in response to the EAOs' unwillingness to commit to non-secession the government refused to agree to principles related to ethnic groups having their own state constitution or political self-determination.¹¹⁸

As mentioned in last month's report, the Union Peace Accord reached at the Panglong Conference included agreements on issues related to sovereignty and the exercise of sovereign power through local and regional legislatures, judicial systems and executive authorities.¹¹⁹ The Union Peace Accord included a guarantee that all ethnic nationalities would have equal political and social status in Myanmar society and an agreement to protect, preserve and promote ethnic languages, literature, traditions and cultural heritage.¹²⁰ Participants also agreed to set up an independent constitutional tribunal to resolve disputes related to the Myanmar Constitution between the national government and the local and regional governments.¹²¹

On economic matters, participants at the Panglong Conference reached agreements on issues such as the sharing of tax revenues and financial resources, as well as the delegation of economic decision-making power between the national government and the local and regional governments.¹²² Participants also agreed to various best-practices related to drafting land policy, including commitments to respect owners' property rights, fairly manage farmland, and preserve land that is of high social, cultural, historical and ethnic value.¹²³

Lastly, the participants agreed to protect civilians affected by internal armed conflicts, and to find lasting solutions for persons internally displaced by such conflicts or by natural disasters. Participants also agreed to commitments related to the protection of vulnerable groups (including the elderly, disabled, women and children) and the eradication of narcotics.¹²⁴

In a statement released on June 8, the former vice chairperson of the Karen National Union ("KNU"), Zipporah Sein, was critical of the 37 basic principles agreed to at the Panglong Conference.¹²⁵ According to Sein, the principles are not inclusive enough, particularly for those in Rakhine and Shan states who were not allowed to participate in national level political dialogues before the conference.¹²⁶ In addition, she argued that not all stakeholders agreed to the principles, the principles were not discussed thoroughly and some participants were pressured by the Tatmadaw into signing the Union Peace Accord.¹²⁷

The future of the United Nationalities Federal Council ("UNFC") is in doubt after one of its chairs and co-founders, the Kachin Independence Organization ("KIO"), as well as the Wa National Organization ("WNO"), requested to withdraw from the bloc in order to join the Northern Alliance.¹²⁸ The UNFC's membership has decreased from thirteen EAOs in 2014 to just seven.¹²⁹ The division arises from arguments regarding the direction of Myanmar's peace process, with five members of the bloc in favor of signing the NCA, and the KIA and WNO opposed to the NCA.¹³⁰ The bloc's role in the peace process is uncertain as NCA-signatories are participating in negotiations with the government and the Tatmadaw, and the Northern Alliance is attempting to advance an alternative peace-process outside of the NCA for itself.¹³¹

Members of the UNFC rejected an invitation to attend the Panglong Conference as "special guests." Special guests to the Panglong Conference were not permitted to participate in

discussions or vote on matters.¹³² In contrast, the Northern Alliance unexpectedly decided to attend the conference.¹³³

In early June, members of the government's peace commission met with representatives of the Delegation for Political Negotiation ("DPN"), the bargaining body of the UNFC, in Chiang Mai, Thailand.¹³⁴ At the meeting, the peace commission presented the outcomes of the second Panglong Conference, while the DPN argued for the strengthening of the NCA by forming a joint ceasefire monitoring committee composed of government officials, EAO representatives and civilians.¹³⁵ The UNFC also called for more involvement from the international community in the peace discussions, while the Tatmadaw wishes to restrict the level of international involvement as it fears that the international community's role may undermine the state's sovereignty.¹³⁶

The UNFC subsequently held an internal conference in Chiang Mai, Thailand in late June, followed by meetings with other EAO's, including signatories and non-signatories to the NCA.¹³⁷ The agenda for the internal conference included the election of a new chairperson and central committee, the resignation of the KIO and WNO, and the membership applications of four new EAO's.¹³⁸ A peace aide for the government met with UNFC officials and communicated the government's unwillingness to accept new members joining the UNFC during peace negotiations.¹³⁹

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