

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

AUGUST 2017 REPORT

Summary. This report reviews the August 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**
- II. Civil and Political Rights.....2**
 - A. Freedom of Speech and Assembly.....2**
 - B. Freedom of the Press and Censorship.....3**
 - C. Economic and Social Empowerment.....3**
- III. Economic Development.....5**
 - A. Legal Framework and Foreign Investment.....5**
 - B. Infrastructure and Major Development Projects.....5**
 - C. Land Seizures.....7**
- IV. Peace Talks and Ethnic Violence.....8**
 - A. Ethnic Violence.....8**
 - B. Peace Talks.....9**

I. Political Developments

A. Governance and the Rule of Law

In August, a discussion panel consisting of Parliament members, media representatives and other political observers discussed the status of Myanmar's democratic transition, evaluating the progress made since the 2015 elections and recommending further action to achieve the goal of a fully functioning democratic society.¹ The panel assessed Myanmar's progress in promoting human rights and ensuring the rule of law, including the country's attempts to improve government transparency and repeal laws that are widely considered to be affronts to human rights. Overall, the panelists were optimistic about Myanmar's progress to date. A representative from the Myanmar Development Resource Institute estimated that the country's democratic transition had made approximately 50% progress, but emphasized that further action is required to successfully instill democratic norms in Myanmar.²

In particular, the panel found that Myanmar must continue its efforts to ensure that (i) each governmental institution has a clear role in governance, (ii) the nation's administrative bureaucracy operates transparently, (iii) the rule of law and human rights are respected, and (iv) constitutional and legislative reform efforts continue to advance.³ According to the panelists, these efforts must be governed by a well-defined plan, including both indicators of progress and time-sensitive objectives, that push the transition forward on a clearly established schedule.⁴

"Winston" Set Aung, the recently appointed Deputy Minister for National Planning and Finance and a former economic advisor in the previous Thein Sein administration, argued on the panel that Myanmar should implement significant regulatory and policy reforms to advance the country's economic development.⁵ He also criticized the persistence of crony capitalism in Myanmar, calling for stronger corporate governance rules intended to promote transparent competition over incumbent personal relationship-based success.⁶

II. Civil and Political Rights

A. Freedom of Speech and Assembly

After the Upper House of Parliament voted against a complete repeal of the controversial section 66(d) of the Telecommunications Law, the Myanmar Parliament made minor changes to the Telecommunications Law on August 18. However, human rights monitors argued that such minor amendments will do little to address concerns that the law is used to curb criticism of the authorities and reporting of corruption.⁷

Under the amendments approved in August, judges can release on bail those charged under the Telecommunications Law. In addition, only people directly affected by an alleged offense, or those with the permission of an affected person, can press charges under the law.⁸ The maximum prison sentence was also cut from three years to two years.⁹

Still, the law's most contentious clause, which broadly prohibits the use of telecommunications networks to "extort, defame, disturb or intimidate," remains in place.¹⁰ "Freedom of expression is still being threatened as long as clause 66(d) exists," said activist Maung Saung Kha, who was jailed for six months for defamation under the law.¹¹ A senior party

member, Han Tha Myint, said a majority of parliamentarians liked the protection against online criticism the law provided.¹²

B. Freedom of the Press and Censorship

In an August 7 address to villagers in central Myanmar, which was transmitted on state broadcaster Myanmar Radio and Television (“MRTV”), Aung San Suu Kyi encouraged the public to follow official statements on the government’s activities received through state-run media outlets, rather than reports received through independent media.¹³ Referring specifically to official reports about the government’s response to the crisis in western Rakhine state, Aung San Suu Kyi told Myanmar citizens to “read the newspapers and listen to the news on MRTV released by the government.”¹⁴

Official outlets, including a social media account run out of Aung San Suu Kyi’s office, have published running denials of the violence occurring in Rakhine state, quickly dismissing reports in independent media of alleged government atrocities as “fake news” and “fake rape.”¹⁵ In her August 7 address, Aung San Suu Kyi claimed that citizens “will always hear (on official broadcasts) what the government is doing for peace and stability in Rakhine.”¹⁶

Myint Kyaw, a member of the Myanmar Press Council, said Aung San Suu Kyi seems to favor state-run media, which he described as “still at the propaganda stage.”¹⁷ Aung San Suu Kyi has not given interviews to local media and typically breezes past reporters attempting to pitch questions, including on a visit to a village in central Myanmar that Reuters joined on Monday, the second recent press tour arranged by her officials.¹⁸ Bidhayak Das, an Indian journalist and academic who has trained reporters in Myanmar, said Aung San Suu Kyi was in danger of jeopardizing her support among the fast-growing independent media that has emerged since censorship was lifted in 2012. “Instead of building on it by having regular interface with media and clarifying doubts about her government’s position or her opinions on issues ranging from the peace process to the Rakhine communal strife to the problems of the faltering economy, she has chosen to avoid the media.”¹⁹

C. Economic and Social Empowerment

In early August, the Burma Human Rights Network released a letter, co-signed by twenty religious and human rights organizations, to State Counsellor Aung San Suu Kyi demanding the protection of Muslims’ right to practice their religion freely in Myanmar.²⁰ The letter specifically noted several troubling incidents that have taken place over the past months to highlight the widespread exploitation of Myanmar’s laws by anti-Muslim forces to restrict Muslims’ freedom to worship.²¹ In their recommendations to the government, the signatory organizations demanded that authorities “maintain the rule of law rather than appeal to the ultra-nationalist groups,” and called on the government to invite Ahmed Shaheed, the UN special rapporteur on freedom of religion or belief, to visit Myanmar and observe its various religious communities.²²

On August 11, reports emerged that the government of Myanmar had air-dropped hundreds of troops into Rakhine state in preparation for a full-scale attack on accused Muslim rebels and insurgents.²³ The United Nations warned aid workers in the area of rising hostility and imminent protests, and the office of the UN’s resident coordinator in Myanmar confirmed

that 300 staff members of UN agencies and non-governmental organizations working in Rakhine had been warned of the “increased likelihood of civil unrest.”²⁴

Amidst this rising tension, news unexpectedly leaked from the Vatican that Pope Francis planned to make the first-ever papal visit to Myanmar on November 27, after an invitation from President Htin Kyaw.²⁵ It is expected that during his visit, Pope Francis will focus on efforts to improve the troubles of the Rohingya population in Myanmar, which is also home to approximately 700,000 Catholics.²⁶ Myanmar’s Catholic bishops had previously invited the Pope to visit Myanmar in late 2014, prior to the 500th anniversary of Catholicism in Myanmar.²⁷ Since that time, relations between Myanmar and the Vatican have improved, though hardline Buddhist groups in the country continue to oppose the Pope’s visit.²⁸

The Pope’s announcement was made official by the Vatican on August 28, just after thousands of Myanmar refugees attempted to flee into Bangladesh due to renewed violence between local insurgents and the Myanmar army.²⁹ While the Myanmar government claimed that 100 people had been killed as a result of the renewed violence, advocates for the Rohingya told Al Jazeera that the number killed was actually over 800, including dozens of women and children. However, these claims have not yet been independently verified.³⁰ The Pope publicly decried the “sad news about the persecution of the religious minority of our Rohingya brothers,” and urged worshippers gathered in St. Peter’s Square in Rome to pray that God “saves them.”³¹

On August 17, Aung San Win, the head spokesperson of the Ministry of Religious Affairs and Culture, said that an October 2016 religious freedoms report from the United States Secretary of State did not accurately reflect the situation in Myanmar.³² Aung San Win objected to the report’s characterization of the Myanmar constitution and Myanmar’s existing laws, as well as the report’s designation of Myanmar as a “Country of Particular Concern.”³³ Former ambassador Sein Win Aung also argued that the US report “is not 100 percent true. Freedom of faith is ensured under the Constitution. It was not a violation of religious freedom, for example, when the religious building in Kachin State’s Hpakant was seized according to law, because it was an illegal building.”³⁴

News articles and editorials have continued to focus on the greater need for implementation of rights for women in Myanmar, noting that the nation’s current laws and policies are insufficient and poorly implemented. Several of these were reactions to an article that appeared in Tea Circle Oxford, which presented the controversial thesis that the “disempowered Myanmar woman” is a myth.³⁵ The ensuing debate has brought to light many other studies highlighting the significant problems faced by women in Myanmar.³⁶ For example observers argued that laws and policies regarding sexual violence and harassment, domestic labor, and requirements for sexuality and sex education are vague and weakly implemented. Although Myanmar maintains some laws that seek to protect women from rape and sexual harassment, observers contend that these laws are poorly implemented. In 2016, UNFPA reported on the lack of protections against cyber exploitation and rape in Myanmar. Additionally, there are no laws protecting women against marital rape, where perpetrators are treated with impunity, and women typically lack access to gynecological services.³⁷

III. Economic Development

A. Legal Framework and Foreign Investment

Myanmar and Singapore have entered negotiations to reach an agreement regarding the promotion and protection of bilateral investments.³⁸ The objectives of the agreement are to

fully protect bilateral investments between the two countries, to avoid obstacles in conducting cross-border business, and to provide additional rights to investors making international investments.³⁹ Myanmar is also in the process of negotiating similar agreements with the European Union and Hong Kong, and has already finalized similar agreements with China, India, Laos, Thailand, Vietnam, the Philippines, Israel, Kuwait, Japan, Indonesia and South Korea.⁴⁰

The Ministry of Planning and Finance has announced that companies listed on the Yangon Stock Exchange (“YSX”) will only pay 20% corporate income tax rather than the general 25 per cent corporate income tax other companies have to pay.⁴¹ This 5% discount is being introduced as an incentive for companies to list their shares on the YSX, as the stock exchange requires more listed companies in order to further develop a functioning market.⁴² Currently, ten companies are being considered for listing on the YSX.⁴³ Furthermore, because listing on the YSX takes approximately 18 months and requires companies to meet a range of stringent conditions, 55 public companies have been permitted to trade their shares in local over-the-counter markets while they await admission to the YSX.⁴⁴

For the first time in its history, Myanmar will receive fiscal support from the World Bank.⁴⁵ On August 18, the World Bank and the Myanmar government signed a US\$200 million credit facility to promote macroeconomic stability and fiscal policy resilience.⁴⁶ The World Bank noted that it views its support as facilitating the economic changes needed for long-term peace and prosperity in Myanmar.⁴⁷ The credit was provided by the International Development Association, the bank’s fund for low income countries, and is repayable over 38 years.⁴⁸

To bolster foreign investment, the Myanmar government is working on four laws related to protecting intellectual property.⁴⁹ Draft laws pertaining to trademark, patent, copyright and design rights have been sent to the Myanmar Parliament for a vote.⁵⁰ Myanmar remains the last ASEAN country to enact comprehensive intellectual property law reform.⁵¹

The American Chamber of Commerce in Myanmar is urging the US government to remove sections 311 and 312 of the USA PATRIOT Act, which prohibit US banks from doing business in Myanmar.⁵² The American Chamber of Commerce has argued that when US banks begin doing business in Myanmar, trade relations between the US and Myanmar will quickly improve.⁵³

B. Infrastructure and Major Development Projects

The government of Myanmar has continued to focus on pushing economic development efforts forward in the country. The country’s economy was projected by the World Bank to grow by an average of 8% between 2017 and 2019, among the fastest growing economies in Asia, but on the ground government spending on infrastructure and development has fallen over the past three years, while the fiscal deficit has continued to skyrocket.⁵⁴ The Myanmar Times recently suggested a handful of major economic overhauls for the government to execute, including: lowering the fiscal deficit, deepening capital markets, enacting new and better laws to protect businesses and encourage innovation, and reducing inflation.⁵⁵ On August 21, the World Bank signed a zero-interest \$200m credit with Myanmar to help with programs that include better public debt management, increased tax collection and stronger public finance management.⁵⁶ Reports have also emerged that there were several significant cabinet changes forthcoming, while detailed economic strategies are being finalized and several changes in the bureaucracy are already underway.⁵⁷

The recent appointment of Winston Set Aung as an additional Deputy Minister of Planning and Finance is meant to rectify gaps in coordination between the ministries and improve economic policy, implementation and communication.⁵⁸ Set Aung is also a member of the National Economic Coordination Committee, and it is hoped that he may be able to leverage the two roles to better coordinate the ministries.⁵⁹ The Minister of Electricity and Energy, Pe Zin Tun, has officially resigned and has been replaced by the Construction Minister, Win Khaing, who will now oversee both ministries, with a deputy minister expected to be appointed to focus on electricity alone.⁶⁰ Insiders claim that the changes around the electricity and energy ministry are a significant indication that Aung San Suu Kyi understands that the provision of electricity is pivotal to the country's ability to build a prosperous business sector and placate the electorate.⁶¹ The new minister will have to decide the future of the controversial Chinese-backed Myitsone Dam and other proposals from Chinese state-owned companies, while also considering the possibility of using coal-fired power stations, imported natural gas, or other options to fulfill Myanmar's electric needs.⁶²

Recently, the government in Myanmar has been working to make electricity and other forms of power available to farmers in the country. The government has set a goal of achieving 100% electrification in the country by 2030, but the national power grid is not currently equipped to supply the projected increased demand for electricity.⁶³ As a result, a US-based solar system provider, Greenlight Planet, has opened its first outlet in Bago, north of Yangon. The US company sells power systems aimed at farmers that combine solar panels, efficient light-emitting diode lighting and batteries to supply nighttime electricity.⁶⁴ Greenlight offers a "pay as you go" system for its customers that lets them use the products by paying an upfront fee and then daily installments thereafter.⁶⁵

A state-owned telecommunications operator, Myanmar Posts and Telecommunication, is arranging to provide free Wi-Fi services in public areas starting in 2018.⁶⁶ As Myanmar Posts and Telecommunications prepares to launch this project, there are concerns regarding the stability of the Wi-Fi networks and the security of such networks. The general manager of sales and marketing at 5BB Broadband, a company in Myanmar, noted that the public should avoid using the public Wi-Fi networks for any commercial transactions, such as mobile banking and online shopping.⁶⁷ Still, this technological development will increase access to technology in Myanmar.

The Ministry of Construction is planning new urban development projects to create six satellite townships as part of a plan to further develop Yangon.⁶⁸ The six new townships are necessary to cater to the rising population and increasing number of migrants in the country. In addition to the development of these new townships, the government in Myanmar has also implemented a series of additional urban development projects, such as infrastructure development projects and special economic and industrial zone development projects.⁶⁹ The Ministry of Construction is also planning on implementing new satellite township development projects in other states in the country.⁷⁰ These projects are all meant to accommodate and stimulate population growth and economic growth in Myanmar.

The Taunggyi municipal area in Shan State has been piloting a program that uses a mobile application to assist with municipal water readings and bill administration.⁷¹ Using the application, photographs of residential water meters taken by municipal workers are processed by computers, and bills are then automatically generated based on such readings.⁷² The program has already dramatically reduced the amount of time needed to administer water readings in the municipality, which used to involve preparing three separate handwritten reports per household.⁷³

The municipality's previous attempt to reduce the administrative burden was to simply charge a flat rate to all households, regardless of the amount of water actually used. However, this policy soon led to overuse and water shortages. With the new pilot program, bills are now assessed based on actual water usage, which has both raised the amount of money generated and lowered incidents of water shortages, and, since the readings are processed automatically by computers, there is less concern about fund misappropriation by individual staff.⁷⁴ Officials expect that the application could be used for other municipal functions, such as tax collection.⁷⁵

C. Land Seizures

In Rakhine state, a state legislator has been accused of asking for a bribe from three locals in exchange for abandoning his challenge to their claimed ownership of 15 acres of land.⁷⁶ The legislator brought the challenge more than a decade after the original purchase of the land, shortly after winning a seat in the state parliament.⁷⁷ He claimed that much of the land in question originally belonged to his late grandfather before it was seized to build a reservoir and ultimately sold to a private company.⁷⁸ Other villagers in a similar situation received compensation at the time, and the legislator claimed that he was therefore entitled to the same compensation.⁷⁹

The legislator was accused of accepting a bribe after the current owners transferred a portion of the land in question to the legislator.⁸⁰ However, the legislator argued that the amount received was not a bribe, but was instead compensation offered to him through village administrative officials for the loss of his land.⁸¹ In order to attract attention to their cause, the owners of the land released some of the pertinent documents in a Facebook post while accusing the legislator of abusing his governmental authority.⁸²

Allegations of similar abuses of power by National League for Democracy ("NLD") lawmakers appear to be relatively widespread.⁸³ A member of the NLD Complaint Committee reported that nearly 200 land seizure cases are related to NLD lawmakers and chief ministers.⁸⁴

IV. Peace Talks and Ethnic Violence

A. Ethnic Violence

In early August, government and regional sources reported that suspected insurgents killed at least six members of a Buddhist ethnic minority in western Myanmar.⁸⁵ While the government claimed that "extremists" were responsible for killing the six members of the Mro minority, two groups with observers in northern Rakhine state claimed that, according to local sources, Rohingya militants were not active in the area and that the killings could be linked to rampant methamphetamine trafficking.⁸⁶

After the United Nations expressed alarm at reports of a military build-up in Rakhine state, where authorities have already been accused of widespread rights abuses, the Myanmar government imposed new curfews and deployed another round of troops to the region.⁸⁷ The curfew and troop deployment were criticized by UN special rapporteur Yanghee Lee, who urged authorities to carry out their security operations in line with international human rights standards.⁸⁸

On August 24, an independent commission led by former UN chief Kofi Annan released a report which found that communities in Myanmar's Rakhine state face a "real risk" of radicalization if ethnic tensions are not addressed.⁸⁹ The report said communities in Rakhine were scared of each other and that segregation caused by the violence had made things worse.⁹⁰ The report calls for a calibrated approach that combines political, developmental, security and human rights responses to ensure that violence does not escalate and inter-communal tensions are kept under control.⁹¹ The Rakhine Commission was formed by Annan last year at the request of Aung San Suu Kyi to look into ethnic reconciliation and improving the state's welfare.⁹²

On August 25, Rohingya militants attacked police posts in Rakhine State, killing 12 members of the security forces.⁹³ More than 70 people were killed in clashes between militants and security forces in Rakhine State.⁹⁴ Myanmar's armed forces said the militants used knives, small arms and explosives in coordinated early-morning attacks on several police and military posts around Buthidaung and Maungdaw, near Myanmar's border with Bangladesh.⁹⁵ A militant group called the Arakan Rohingya Salvation Army claimed responsibility for the attacks, which it said were in response to recent raids by security forces.⁹⁶ The group, formerly known as Harakah al-Yaqin, is believed to have hundreds of fighters and to be led by Rohingya based in Saudi Arabia, according to an International Crisis Group report.⁹⁷ The violence erupted hours after the release of the report into the treatment of Rohingya by the Advisory Commission on Rakhine State led by Kofi Annan.⁹⁸

Military operation and clashes followed the attack and caused at least 109 deaths.⁹⁹ According to the government, most of the victims are Rohingya fighters although members of the security forces and civilians are also included in that figure.¹⁰⁰ According to satellite imagery collected by Human Rights Watch, at least 10 areas over about a 100 kilometer stretch in northern Rakhine State have been razed over the last five days in August.¹⁰¹

Following the attack, more than 18,500 Rohingya Muslims have fled their homes in the Rakhine state, while thousands more are stuck at the Bangladesh border or scrambling to reach it.¹⁰² Bangladesh coast guard crews have found the bodies of at least 20 people who drowned fleeing Myanmar.¹⁰³ Rakhine Buddhists, feeling unsafe after the upsurge in fighting, are moving south to the state's capital, Sittwe, where Buddhists are a majority and have greater security.¹⁰⁴

B. Peace Talks

On August 10 and 11, the United Nationalities Federal Council's ("UNFC") Delegation for Political Negotiation ("DPN") met with the government's Peace Commission for the sixth time to discuss joining the nationwide ceasefire agreement ("NCA").¹⁰⁵ It has now been 14 months since the UNFC and the government started ceasefire negotiations, but a deal remains elusive.¹⁰⁶ Further delaying the negotiations are disagreements between the Tatmadaw and the government on some of the proposals put forward by the UNFC, especially on political and military issues.¹⁰⁷

The UNFC has stood by a nine-point proposal that it insists must be met in order for its five members to sign the NCA.¹⁰⁸ The Myanmar government and the Tatmadaw have agreed to several of the UNFC's requests, including that (i) the government and Tatmadaw will

announce a nationwide ceasefire; (ii) a democratic and federal nation will be established, which would be based on democratic principles that keep with the Panglong spirit—including equal national rights and right for self-implementation; (iii) representatives from groups that were at each level of political discussions, from legal political parties, ethnic representatives, and other essential representatives would participate in the peace process; and (iv) laws and a constitution would be enacted that would be based upon the decisions made at the Panglong Conferences.¹⁰⁹

Nevertheless, the parties have not yet reached agreement on matters relating to ceasefire rules, the military’s code of conduct, terms of reference for ceasefire monitoring, and the relocation of troops.¹¹⁰

The UNFC has also requested that international experts and observers be involved in the Joint Monitoring Committee and the Joint Implementation and Coordination Meeting.¹¹¹ The UNFC underscored the importance of the international monitoring group to monitor the NCA amid sporadic outbreak of fighting between the Tatmadaw and ethnic armed groups within UNFC.¹¹²

The UNFC has also requested a change in the political dialogue composition at the Union Peace Conference, held twice a year, to a tripartite dialogue structure comprising the government, ethnic armed groups and political parties.¹¹³ The UNFC has stated that if its proposals are implemented, it will be close to signing the NCA.¹¹⁴ That said, Twan Zaw, spokesperson of the DPN, believes it is unlikely that a deal will be reached and stated that the UNFC is unwilling to make any compromises.¹¹⁵

The seventh round of talks between representatives of the Peace Commission and the UNFC is scheduled to be held in September.¹¹⁶

In a meeting of Federal Political Negotiation and Consultative Committee (“FPNCC”), the vice chair of the Shan State Progress Party (“SSPP”) stated that the SSPP had submitted a resignation letter to UNFC.¹¹⁷ The UNFC, however, denies having received such a letter.¹¹⁸ The withdrawal of the SSPP from the UNFC has been touted since the formation of the FPNCC and would leave the UNFC with only four remaining members.¹¹⁹

After the FPNCC’s first permanent committee meeting, the group indicated in a statement that it is willing to attend the third Panglong Conference, if invited, and has also urged China to become more involved in Myanmar’s peace process.¹²⁰ The FPNCC attributes its attendance of the second Panglong Conference to Chinese involvement.¹²¹ While China has always been an observer of Myanmar’s peace process, it was only after no ethnic armed groups based on the China-Myanmar border participated in the signing of the NCA that China took a more active role in Myanmar’s peace process.¹²²

Government officials representing the National Reconciliation and Peace Centre (“NRPC”) held a meeting with representatives of groups involved in the Panglong agreement, including political analysts and security experts.¹²³ Attendees discussed the management of the peace process, possible structures for a federal government and potential constitutional amendments.¹²⁴ In particular, attendees discussed the amendment of the schedules to the Constitution that stipulate the powers of the federal government and the state.¹²⁵ In their view, an

amendment to the schedules is more likely to be accepted by the Tatmadaw (whose vote is required to pass any constitutional amendment).¹²⁶ Once the schedules have been amended, then it may be possible to amend specific sections of the constitution, including section 436, which provides for the sharing of power between the central and state governments.¹²⁷

According to Than Soe Naing, who attended as a political analyst, recent military offensives against ethnic armed groups, including those along the China-Myanmar border and in Kachin and Shan states, have hindered the peace process.¹²⁸ He also outlined three prerequisites for peace, namely (i) signing bilateral ceasefire agreements between the government and the ethnic armed groups who are still fighting the government, (ii) inviting all ethnic armed groups to participate in the peace process, and (iii) reviewing the NCA and the peace negotiation process itself.¹²⁹

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