

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

JULY 2017 REPORT

Summary. This report reviews the July 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.

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I. Political Developments

A. Governance and the Rule of Law

At a July press conference, State Counselor Aung San Suu Kyi told attendees that Myanmar's goal is not only "rule of law, but rule of just law."¹ Although Aung San Suu Kyi went on to say that Parliament can amend any laws that the public believes to be unjust, some observers believe that Aung San Suu Kyi's government has failed to adequately address several of Myanmar's more problematic laws, including the Telecommunications Law and the Restriction of Movement and Probation of Habitual Offenders Act.² In a recent example, the Restriction of Movement and Probation of Habitual Offenders Act was used to prosecute Michael Kyaw Myint in what some observers believed to be an attempt to silence Michael Kyaw Myint in response to his public accusations of corruption against members of the National League for Democracy ("NLD").³ Any reform efforts to address these and other controversial laws remain in doubt, as Parliament has largely outsourced the legislative reform process to the opaque Legal Affairs and Special Cases Commission.⁴

Aung San Suu Kyi was also criticized in July for defending the Myanmar military's activities in Rakhine state by invoking the importance of rule of law.⁵ In particular, critics were disappointed in Aung San Suu Kyi's defense of the military's clearance operation against an ethnic rebel group in the region, her refusal to allow an investigation into the operation by a United Nations fact-finding team, and the administration's characterization of rape and torture allegations as mere "fabrications."⁶

Aung San Suu Kyi's supporters have noted that Aung San Suu Kyi does not have unlimited ability to unilaterally effect legislative reform or challenge the military, despite Myanmar's recent democratic progress under NLD leadership. Rather, given the constraints of the Myanmar Constitution and the threat of another military coup d'état, Aung San Suu Kyi's supporters argue that she must choose her causes carefully and advance the agenda of democratic reform at a slower pace than proponents may like.⁷ The military is constitutionally guaranteed key executive positions and a quarter of the seats in national, state and regional legislatures, can block constitutional reform, and, unlike most democracies, is not headed by a civilian commander-in-chief.⁸ Faced with these circumstances, supporters suggest that Aung San Suu Kyi's current approach is necessary, as taking an antagonistic stance toward the military could undo the progress achieved so far.⁹

B. Official Corruption, Sanctions and the International Community

Official Corruption

A spokesperson for the NLD announced on July 9 that the party will take action against underperforming, corrupt, or misbehaving government officials.¹⁰ The NLD plans to send warnings to relevant officials, informing them that the party will observe their work for one year.¹¹ If the officials do not meet the party's minimum standards within one year, the NLD plans to remove the relevant officials from their positions.¹² While observers welcomed the NLD's commitment to combat corruption, they noted that the party's potential interference in governmental or parliamentary affairs was likely to spark controversy.¹³

On July 10, the NLD government revealed its “Civil Service Reform Strategic Action Plan” for 2017 through 2020 (the “Strategic Action Plan”), which places a strong emphasis on tackling public corruption.¹⁴ In announcing the plan, Aung San Suu Kyi stressed that corruption remained a major problem in Myanmar and had the potential to undermine the country’s democratic process.¹⁵ The Strategic Action Plan was developed on the basis of a year-long consultation process with stakeholders from both governmental and non-governmental organizations on the national and regional level, conducted by the Union Civil Service Board and supported by the United Nations Development Program.¹⁶

To address the pressing issue of corruption, the Strategic Action Plan outlines proposals to strengthen the assets disclosure procedure for all senior government officials and other officials who are in positions with an increased risk of receiving bribes. The Strategic Action Plan also proposes to strengthen protections for whistleblowers and complainants, and to improve the processes for filing grievances and receiving responses.¹⁷

Aung San Suu Kyi also acknowledged that low salaries for civil servants are often a key reason for the persistence of bribery and corruption in the Myanmar government, but stated that pay increases were not scheduled at this time due to budgetary restraints.¹⁸ However, Aung San Suu Kyi indicated that the government was planning efforts to improve working conditions for civil servants in other ways, such as by upgrading existing offices and housing facilities and by constructing new homes for retired civil servants.¹⁹

On July 17, the State Counselor’s office announced that several officials had been indicted on corruption charges, including multiple officials with the Home Affairs Ministry.²⁰ The alleged corruption concerned the sale of a plot of land in Yangon worth an estimated Kyat 100 million (approximately US\$74,000) and the acceptance of two vehicles by Ministry officials in exchange for political favors.²¹

Sanctions and the International Community

In July, Joseph Y. Yun, the U.S. special envoy for North Korea, visited Myanmar’s capital and met with Aung San Suu Kyi and Min Aung Hlaing, the Commander-in-Chief of the Myanmar armed forces.²² The visit came as some observers speculated that the U.S. could consider re-imposing sanctions on Myanmar for failing to fully cut military ties with North Korea.²³

Prior to the 2011 administration of former President Thein Sein, Myanmar and North Korea maintained close military ties, including through arms trade and cooperation on the construction of defense facilities in Myanmar.²⁴ While Myanmar insists that military relations with North Korea ceased before its transition to a nominally civilian government in 2011, analysts have found that satellite images of military facilities in central Myanmar evidenced continued North Korean assistance in Myanmar’s development of surface-to-air missiles in 2014.²⁵ In addition, security experts have claimed that the Myanmar Army’s procurement body, the Directorate of Defense Industries (“DDI”), continues to engage in military business with North Korea in violation of United Nations Security Council resolutions.²⁶

In March of 2017, the U.S. Treasury imposed new sanctions against the DDI under the Iran, North Korea, and Syria Nonproliferation Act.²⁷ The DDI was previously sanctioned in 2012 and accused of materially assisting North Korea's regime, but had fallen off the sanctions list in October 2016 after the Obama administration dropped most measures against Myanmar in recognition of a successful political transition.²⁸

During Ambassador Yun's recent visit to Myanmar, a spokesperson for the Ministry of Foreign Affairs stated that Myanmar was complying with U.N. resolutions on North Korea and that there were no "military-to-military" relations between Myanmar and North Korea.²⁹ Observers have noted, however, that the Myanmar civilian government may not be fully aware of the military's business activities, given the military's often secretive operations and the lack of civilian oversight.³⁰ Following Ambassador Yun's meeting, a senior U.S. State Department official stated that the U.S. State Department would not rule out the possibility of North Korea-related measures on Myanmar and that a variety of tools may be considered, including additional sanctions.³¹

II. Civil and Political Rights

A. Freedom of Speech and Assembly

Myanmar has become notorious in its control of the media, so much so that it has been dubbed a candidate for one of the world's worst media laws by the executive director of the Committee to Protect Journalists.³² With this backdrop, certain lawmakers and observers have continued to advocate for repealing or amending the notorious Telecommunications Law, which has been criticized for suppressing freedom of expression by enabling the prosecution of online "defamation" cases.

On July 6, Aung San Suu Kyi announced a planned revision to the Telecommunications Law.³³ On July 13, the Ministry of Transport and Communications submitted a draft bill to the Upper House of Parliament with recommendations for amending the law.³⁴ Thirteen lawmakers debated amendments to the law proposed by the Upper House Bill Committee, with seven lawmakers in favor of repealing the law altogether.³⁵ However, a number of lawmakers remained opposed to the proposed changes, or criticized the amendments for not achieving enough.³⁶ In particular, many argued that the proposed changes to section 66(d) of the Telecommunications Law, under which many reporters have been arrested, would not decriminalize defamation, and so would do nothing to limit prosecutorial abuses in silencing critics of the government or military.³⁷

Meanwhile, 61 national and international human rights organizations have recently urged the Myanmar authorities—the Ministry of Transport and Communication and Parliament, in particular—to repeal section 66(d) of the Telecommunications Law entirely.³⁸ Other changes that these organizations have advocated for include allowing bail for suspects, preventing third parties from filing defamation cases, and removing overly vague phrases such as "causing undue influence" from the text.³⁹ The military representatives in Parliament, however, have opposed many of these changes.⁴⁰

B. Freedom of the Press and Censorship

On July 26, the trial of two ethnic Kachin Baptist leaders, Dumdaw Nawng Lat and Langjaw Gam Seng, began at the Lashio Township Court.⁴¹ The two men have been detained since December 24, 2016 and face criminal charges for guiding journalists reporting on alleged Myanmar military airstrikes that severely damaged a Catholic church in northern Shan State in late 2016.⁴²

Separately, three reporters for the Irrawaddy and Democratic Voice of Burma were arrested and charged under the colonial-era Unlawful Associations Act following a reporting trip to cover a drug elimination event in Shan State held by the Ta'ang National Liberation Army.⁴³ Despite international outrage, Aung San Suu Kyi refused to condemn the arrests, asserting that her government could not interfere with the judicial process.⁴⁴ While detained in Hsipaw prison, the reporters were able to see a few colleagues, but access was limited and other efforts to see the reporters were met with resistance.⁴⁵ The date and location of the journalists' first court appearance was changed several times during July, to the frustration of Myanmar media attempting to cover the court proceedings.⁴⁶ At the July 28 hearing, the judge announced that it will consider their bail request.⁴⁷ If convicted, each could face three years' imprisonment.

On July 18, the ASEAN Parliamentarians for Human Rights ("APHR") issued a call for the Myanmar government to immediately release the detained journalists, saying that the continued use of the Unlawful Associations Act (in addition to the Telecommunications Act) to target media critics has raised concerns about the state of Myanmar's press freedom and highlighted the need for legislative reform.⁴⁸ On July 27, Amnesty International also called for the immediate release of the journalists, accusing the authorities of using "a slew of draconian laws to intimidate, harass, arrest and imprison critics and media workers."⁴⁹ Early in July, the European Union commented on the state of press freedom in Myanmar, urging Myanmar to protect journalists from "intimidation, arrest, or prosecution" and stating that the right to freedom of opinion and expression is a human right guaranteed to all.⁵⁰

Since the NLD took over a year and a half ago, 14 journalists have been charged under section 66(d) of the Telecommunications Law and 3 journalists under section 17(1) of the Unlawful Associations Act.⁵¹

Myanmar's Committee for the Protection of Journalists also filed charges on July 19 against Corporal Soe Myint Aung from the Yangong Region Military Headquarters. The Committee for the Protection of Journalists alleged that the Corporal illegally stalked them by taking photos outside a courthouse in the city's Bahan township on June 30 during a bail hearing for Kyaw Min Swe, chief editor of The Voice Daily charged with defamation of the military under the Telecommunications Law.⁵²

C. Economic and Social Empowerment

On July 5, the World Food Programme ("WFP"), a U.N. agency, stated that more than 80,000 young children may need treatment for malnutrition in part of western Myanmar where the Myanmar Army had cracked down on stateless Rohingya Muslims last year.⁵³ The WFP interviewed 450 families in 45 villages in Maungdaw district in March and April, and confirmed a worsening situation of food security.⁵⁴ One third of those surveyed reported extreme food insecurity such as going a full day and night without eating, while none of the children

surveyed were found to have a minimally adequate diet.⁵⁵ Although the WFP survey does not distinguish between ethnic groups, more than 90 percent of residents in Maungdaw are Rohingya.⁵⁶

Later in July, Yanghee Lee, the U.N. Special Rapporteur on Human Rights in Myanmar, stated that the Myanmar government is still using the same tactics to silence its people as the former junta, following a 12-day-trip to the country.⁵⁷ Lee warned that Myanmar police and military were still trying to intimidate and harass people for speaking out over rights abuses, and that she was still receiving reports of abuses by security forces from Rakhine State.⁵⁸ The Special Rapporteur, who recently visited Yangon and Nay Pyi Taw, as well as parts of Rakhine, Shan and Kayin States, said she had been “astonished” at government attempts to limit her activities and movements.⁵⁹ The Myanmar State Counselor’s office expressed disappointment over Lee’s statements, describing them as mere sweeping allegations that contained a number of factual errors.⁶⁰ The Myanmar Parliament approved a proposal to condemn the statement of Lee.⁶¹

III. Economic Development

A. Legal Framework and Foreign Investment

Recently, the World Bank appointed Ellen Goldstein as its new director for Myanmar, Cambodia and Laos and relocated the director to Yangon.⁶² According to Vice President Myint Swe, the Myanmar government aims to reach the top 100 on the World Bank’s “Ease of Doing Business” index within the next three years.⁶³ Currently, Myanmar is ranked 170th.⁶⁴

The NLD administration has set a target of achieving seven percent GDP growth in Myanmar for 2017 to 2018.⁶⁵ Given the substantial amount of debt accumulated under the previous Union Solidarity and Development Party administration, however, some observers are concerned that Myanmar may not be able to pay back its debt as it comes due, which may result in an economic crisis unless the NLD government finds appropriate solutions with the nation’s creditors.⁶⁶

The daily stock trading on the Yangon Stock Exchange (“YSX”) has declined significantly and the YSX and the Myanmar Securities Exchange Centre (“MSEC”) are looking at ways to revive the stock market.⁶⁷ Because allowing and increasing foreign investment in domestic companies will make it more attractive for new companies to become listed and will increase the trading volume on the stock market, the government is working on a new Companies Act to reduce the restrictions on domestic companies selling their shares to foreign investors.⁶⁸

The Myanmar Investment Commission’s foreign direct investment target for the financial year 2017-2018 is very likely to be achieved and may even be exceeded, given that half of the targeted amount has already been reached in the first four months of the fiscal year.⁶⁹ The targeted foreign direct investment amount is, however, considerably lower than the targeted and achieved foreign direct investment amounts in previous years.⁷⁰

B. Infrastructure and Major Development Projects

The Myanmar government is striving to build up digital technology to be used in all economic sectors in the country.⁷¹ Vice President Henry Van Thio stressed the need to upgrade the economic infrastructure and human resources in Myanmar as a first stage to build up the digital economy gradually in the country. As a second stage, the government plans to seek advice from leading international technology companies and will invite these companies to make investments and establish start-up companies in Myanmar to promote technological development. A digital economic development committee has been formed to provide government support for the emergence of a digital economy in the country.⁷²

Total SA, a French energy company, is in talks with the government of Myanmar to supply the country's most populous city, Yangon, with liquefied natural gas.⁷³ The French energy company may also build a power plant in Myanmar and has proposed this plan to the government in Myanmar. According to news reports, Myanmar has been seen as a bright spot for energy markets because of forecasts of increased fuel consumption in Myanmar over the next decade as businesses stabilize and the political climate fosters growth in energy-intensive sectors, such as transportation and manufacturing.⁷⁴

The Department of Civil Aviation in Myanmar is inviting bids from developers to upgrade three airports in the country. The government in Myanmar wants to establish a public-private partnership between government agencies and private-sector companies to finance, construct and operate these projects.⁷⁵ The goal is to develop these regional airports into major domestic airports, but this will require a lot of investment.⁷⁶ For this reason, the government is entering into talks with developers and investors at an early stage, and the breadth of the project will depend on the resources and investments the government receives.⁷⁷ The Myanmar government hopes that the development of these airports will help boost tourism in the airports' respective regions.

The government of Myanmar also plans to remodel the city of Yangon to accommodate the city's projected population growth.⁷⁸ Specifically, to cater for the increase in population, the government has determined that the city must expand in terms of geographical area and start building tower blocks to expand vertically as well. To implement the expansion project, a new Yangon Development Corporation will be established.⁷⁹ The Corporation will manage and make decisions regarding the project and will seek investments for the project from the World Bank, the International Monetary Fund, the International Financing Corporation and banks from abroad. The project marks a shift in the mindset of the regional administration in Yangon from focusing on transforming the existing downtown Yangon to building new urban centers bordering downtown.⁸⁰

Government officials in Myanmar are developing a plan to boost the fisheries sector in the country to boost GDP by developing a state-owned institution.⁸¹ According to news reports, the livestock and fisheries sector is currently one of the largest contributors to the country's GDP, and almost all of the production, processing and marketing of fish is carried out by the private sector. With the development of a state-owned fishery institution, government officials in Myanmar believe that the economy will progress faster and there will be more job opportunities for workers.⁸² This is because marine product breeding zones will be created with the support of a systematic security system and proper laws. Government officials plan to meet with businessmen in the fisheries sector to discuss plans going forward.⁸³

IV. Peace Talks and Ethnic Violence

A. Ethnic Violence

The U.N. Special Rapporteur on Human Rights in Myanmar, Yanghee Lee, “strongly urge[d] the government” to permit an independent, international body to investigate alleged rights abuses in Myanmar’s conflict areas.⁸⁴ Lee expressed particular concern over clearance operations carried out by security forces in the northern areas of Rakhine State.⁸⁵ These operations were undertaken in response to attacks by militants on police outposts in October 2016.⁸⁶ Lee commented on the government’s stance after having faced significant restrictions on her trip to meet with locals in Rakhine state during a twelve-day visit to Myanmar.

More than 700 villagers fled their homes in Shan State after members of the Ta’ang National Liberation Army (“TNLA”) requested over Kyat 70 million in bribes.⁸⁷ When some villagers said they were unable to pay, the TNLA allegedly abducted and threatened to kill three individuals.⁸⁸ TNLA representatives admitted that their troops raise “revolutionary” funds through taxes in the areas under its control, but denied any extortion.⁸⁹ On July 10, Myanmar security forces shot and arrested two members of the TNLA suspected of extorting money from local businesses.⁹⁰ One of the militants later died of his injuries.⁹¹

Myanmar Army forces killed two suspected militants and arrested one in Tin May village of Rakhine State on July 9.⁹² The incident occurred when insurgents opened fire and detonated an improvised explosive device against security forces who were patrolling the village.⁹³

In Kachin State, a two-year old child was killed by artillery fire in skirmishes between the Myanmar Army and members of the Kachin Independence Army (“KIA”) in Tanai Township on July 9.⁹⁴ Tanai has experienced an influx of displaced villagers from the region’s gold and amber mines following the Myanmar Army’s clearing operation in the mining areas that was launched on June 15.⁹⁵ The Tatmadaw has reactivated its “four cuts” strategy, cutting off food, funds, intelligence, and popular support of militants in Kachin State.⁹⁶ KIA and government forces also clashed in the Indawgyi region on July 5.⁹⁷

In Shan State, the Tatmadaw clashed with the Shan State Army-South (“SSA-S”), an armed wing of the Restoration Council of Shan State (“RCSS”).⁹⁸ While both sides suffered injuries, no fatalities were reported.⁹⁹ The RCSS is a signatory group of the nationwide ceasefire agreement.¹⁰⁰ The SSA-S claimed that government troops had entered RCSS-controlled territory without prior announcement in violation of the ceasefire agreement.¹⁰¹ SSA-S has furthermore clashed with the rival militant group TNLA in northern Shan State in recent weeks.¹⁰² The fighting has forced thousands of residents to flee and seek shelter in local Buddhist monasteries.¹⁰³

TNLA and KIA spokespersons recently denied reports by the Myanmar police that the two militant groups had jointly plotted to target public buildings with explosives in Lashio of northern Shan State.¹⁰⁴ The two groups spoke out in response to pamphlets distributed by the Tatmadaw which claimed that militants affiliated with the TNLA and KIA had planned to detonate bombs around the town.¹⁰⁵

B. Peace Talks

As reported last month, the future of the United Nationalities Federal Council (“UNFC”) is in doubt after a number of organizations have withdrawn from the coalition.¹⁰⁶ Only five member groups remain, down from the original twelve.¹⁰⁷ The chairperson of the UNFC, Naing Han Thar of the New Mon State Party (“NMSP”), told reporters in Chiang Mai that, despite the weakening of the UNFC, he will continue to push for the UNFC’s nine pre-conditions for signing the Nationwide Ceasefire Agreement (“NCA”).¹⁰⁸ According to Maung Maung Soe, an ethnic affairs expert, the recent resignations have weakened the UNFC, but the UNFC remains the strongest group in peace talks with the government.¹⁰⁹

The government’s Peace Commission has announced that an agreement has been reached in principle on the nine points requested by the UNFC. However, other demands are still under review, such as the relocation of the army, the designation of army bases and the involvement of international observers in the peace process.¹¹⁰ The government has asked the Delegation for Peace Negotiations of the UNFC for another meeting, which will be held in Yangon.¹¹¹ The UNFC is apparently not ready to set a date for the meeting, but preparations for such a meeting have begun.¹¹²

The NCA signatories’ Peace Process Steering Team (“PPST”) held a gathering in Chiang Mai, Thailand from June 28 to July 2, at which they reviewed the strengths and weaknesses of the current peace process.¹¹³ According to the PPST, the implementation of the NCA needs to be thoroughly reviewed, calling the current process a deviation from the path they had envisaged.¹¹⁴ The PPST formed a NCA “implementation review and reform team,” led by Karen National Union vice chairman, Padoh Saw Kwe Htoo Win.¹¹⁵ The team is aiming to present their recommendations to the next NCA signatory summit in August.¹¹⁶

In a joint statement released after the meeting, the PPST said that discrepancies in the interpretation of the terms of the NCA between the government and the signatory groups have affected the compliance with and implementation of its terms.¹¹⁷ In particular, disagreement over the use of the term “non-secession” have left the critical issues of self-determination and the rights of states to draft their own charters unresolved.¹¹⁸ The statement also indicated that many aspects of the proposed federal union are still undecided and remain on the dialogue table. These open issues include the role of states in a federal nation, separation of power between the federal government and the states, state constitutions and the joint implementation of peace agreements.¹¹⁹

According to a report released by the International Crisis Group (“ICG”), a Brussels-based think tank group, the path to the next peace conference will be “extremely difficult.”¹²⁰ The report cites issues over inclusion, the content of the next conference and the implementation of interim programs as the three key challenges facing the government-led peace process.¹²¹ The report goes on to say that the government peace negotiators need to “invest considerable efforts” to understand matters that might convince members of the UNFC and other non-signatories to sign the NCA.¹²² Currently, the government and the Tatmadaw have not acknowledged the legitimacy of the Wa-led northern groups’ alliance formed last February, while talks with the UNFC are ongoing.¹²³

Underscoring the possibility of disagreements over non-secession, self-determination and state constitutions resurfacing at the next conference, the report states that “it is also risky to move too quickly when most armed groups are not included in the process, undermining any agreement’s legitimacy. Decisions might need to be reopened if [non-signatories] join in the future.”¹²⁴

The ICG also believes China will need to use “considerable leverage and some sophisticated diplomacy” to push all sides for real compromises, but warns that Chinese intervention “holds risks for Myanmar of which its various constituencies should be aware: as a powerful neighbor, it naturally has political, strategic and economic interests that may not align with the best interests of the peace process.”¹²⁵

A planned meeting in Chiang Mai, Thailand of the Committee for Shan State Unity (“CSSU”) was cancelled due to objections from military representatives in the Myanmar embassy.¹²⁶ The CSSU is a coalition of Shan political parties, civil society organizations and two ethnic armed groups, the Restoration Council of Shan State/Shan State Army-South (“RCSS/SSA-S”) and the Shan State Progress Party/Shan State Army-North (“SSPP/SSA-N”).¹²⁷ They were scheduled to hold three-day talks from July 20 to July 22.¹²⁸ The Myanmar military objected to the meeting on the grounds that the CSSU discussions were not in line with the official peace process and because the CSSU included a non-signatory to the NCA.¹²⁹

In a surprise move, State Counselor Aung San Suu Kyi met with 12 members of the Kachin Baptist Convention (KBC) late this month.¹³⁰ According to reports, the meeting was productive but any resolution on halting the Tatmadaw offensive against the Kachin Independence Army (“KIA”) remains elusive.¹³¹ As the hope of achieving peace during the current government term appears to dim, the meeting with the KBC, which is an influential organization among the largely Christian Kachin, suggests that the government is turning to new sources to attempt to reconcile the divide between the government, ethnic nationalities and their respective armed groups.¹³²

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