

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

NOVEMBER 2017 REPORT

Summary. This report reviews the November 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. In Focus: Rohingya Refugee Crisis

In early November, U.S. lawmakers proposed renewed sanctions against Myanmar's military in response to the treatment of the Rohingya ethnic group in advance of US President Donald Trump's 12-day tour of east Asia.¹ The bipartisan legislation calls for renewal of trade and import restrictions on Myanmar and is widely viewed as punishment for the military's treatment of the Muslim Rohingya people in northern Myanmar's Rakhine State.² Senator John McCain said the Senate's legislation "would hold accountable the senior military officials responsible for the slaughter and displacement of innocent men, women, and children in Burma, and make clear the United States will not stand for these atrocities."³ U.S. House Representative Eliot Engel said lawmakers wanted to use sanctions to send a "clear message" to the Myanmar leadership, both military and civilian. "This violence must stop, perpetrators must be held accountable, and there must be meaningful civilian control over Burma's military and security forces," Engel said.⁴

If passed, the legislation would stop U.S. military cooperation with Myanmar in training and regional exercises, as well as reimpose bans on the country's lucrative gem trade that then-U.S. President Barack Obama lifted by executive order last year.⁵ If hostilities do stop, the bill also provides economic assistance to foster development in Myanmar and encourage the return of Rohingya.⁶

Soon after the introduction of possible renewed U.S. sanctions, the United Nations Security Council urged the Myanmar government on Monday to "ensure no further excessive use of military force in Rakhine state," where violence has forced more than 600,000 Rohingya Muslims to flee the Buddhist-majority Asian country.⁷ To appease council veto powers Russia and China, Britain and France dropped a push for the Security Council to adopt a resolution on the situation and the 15-member body instead unanimously agreed on a formal statement.⁸ The council expressed "grave concern over reports of human rights violations and abuses in Rakhine State, including by the Myanmar security forces, in particular against persons belonging to the Rohingya community."⁹ "The Security Council calls upon the Government of Myanmar to ensure no further excessive use of military force in Rakhine State, to restore civilian administration and apply the rule of law, and to take immediate steps in accordance with their obligations and commitments to respect human rights," it said.¹⁰ The Council further demanded that the Myanmar government allow immediate, safe and unhindered humanitarian aid and media access, asking U.N. Secretary-General Antonio Guterres to report back in 30 days on the situation.¹¹

In response to the formal statement by the U.N. Security Council, the Myanmar government claimed that the U.N. statement could "seriously harm" its talks with Bangladesh over repatriating more than 600,000 people who have fled there to escape a Myanmar military crackdown.¹² Aung Sang Suu Kyi said the issues facing Myanmar and Bangladesh in connection with the Rohingya refugee crisis could only be resolved bilaterally, a point which, according to Aung San Suu Kyi, was ignored in the U.N. Security Council statement.¹³ According to Aung San Suu Kyi's office, negotiations with Bangladesh were ongoing and the Bangladesh Foreign Minister Abul Hassan Mahmood Ali had been invited to visit Myanmar on November 16.¹⁴

However, Bangladeshi officials said that the minister's visit would likely take place at a later date.¹⁵

In the days prior to Aung San Suu Kyi's response to the U.N., Bangladeshi officials had voiced outrage over a suggestion by Aung San Suu Kyi's office that Bangladesh might delay cooperation in the repatriation process in order to first secure hundreds of millions of dollars in international aid money.¹⁶ Bangladesh Prime Minister Sheikh Hasina later called for more international pressure on Myanmar.¹⁷

In mid-November, a new report was issued by the United States Holocaust Memorial Museum and the advocacy group Fortify Rights, which found that there is "mounting evidence" of genocide against the Rohingya in Myanmar.¹⁸ It accused security forces and civilians of mass killings—including burning victims as young as infants alive—rape and other abuses, and called on the international community to take action.¹⁹ "These crimes thrive on impunity and inaction," said Matthew Smith, the head of Fortify Rights. "Condemnations aren't enough. Without urgent international action towards accountability, more mass killings are likely."²⁰

In the immediate wake of the report's release, U.S. Secretary of State Rex Tillerson briefly visited Myanmar as international pressure continued to mount against Myanmar in the wake of the Rohingya crisis.²¹ Speaking after his arrival, Tillerson described the images of Rohingya Muslims fleeing Rakhine as "horrific" and said that there had been "crimes against humanity."²² He went on to say that he was "encouraged" by the ongoing discussion between Myanmar and Bangladesh, and he pledged \$47 million in new aid from the U.S. to help the refugees.

In his five-hour visit in Myanmar, Tillerson met with Aung San Suu Kyi and Senior General Min Aung Hlaing, the nation's military commander, and urged both to investigate "credible reports of widespread atrocities" by Myanmar's security forces against Rohingya Muslims.²³ At the news conference with Tillerson, Aung San Suu Kyi defended her statements, saying, "I don't know why people say I've been silent" about the Rohingya, and suggesting that perhaps what she has said was not "interesting enough" or "incendiary."²⁴

Notably, during his visit to Myanmar Tillerson said that more information would be needed before the U.S. would agree with the U.N. that the Rohingya crisis in Myanmar constitutes "ethnic cleansing." "Whether it meets all the criteria of ethnic cleansing we continue to determine ourselves," said Tillerson. His hesitation to use the term "ethnic cleansing" in describing the Rohingya crisis followed a strong statement by a spokesperson for British Prime Minister Theresa May, which stated that the Rohingya crisis had been "created by Burma's military and it looks like ethnic cleansing."²⁵ Moreover, French President Emmanuel Macron has called the Rohingya violence "genocide." Amnesty International has called the violence in Myanmar "dehumanizing apartheid," and Human Rights Watch has termed it "crimes against humanity."²⁶

Later, however, Tillerson shifted his stance on the Myanmar government's actions against the Rohingya Muslim minority, labeling Myanmar's actions "ethnic cleansing" in a November 22 statement.²⁷ "These abuses by some among the Burmese military, security forces, and local vigilantes have caused tremendous suffering. After a careful and thorough analysis of

available facts, it is clear that the situation in northern Rakhine state constitutes ethnic cleansing against the Rohingya.”²⁸ Even as the U.S. State Department announced the decision to call the violence “ethnic cleansing,” officials were careful not to attribute the violence directly to Myanmar’s democratically elected leadership.²⁹ They also pointed out that the designation carries no specific legal consequences.³⁰

In October, Aung San Suu Kyi set up yet another commission dedicated to the Rohingya emergency.³¹ There are now at least five such panels, and Aung San Suu Kyi presides over most of them. Yet members of her government admit they have not sent any investigators to Bangladesh to listen to the Rohingya’s accounts. Human rights groups fear that, at a minimum, hundreds of Rohingya civilians have been killed. But with international investigators prevented from freely accessing northern Rakhine, evidence is scarce.³²

The Myanmar military prompted further outcry from the international community after releasing a report of its own internal investigation that exonerated Myanmar security forces of all accusations of atrocities. The report, released on November 13, 2017 on the Facebook page of the military’s commander-in-chief, Senior General Min Aung Hlaing, concluded that there were “no deaths of innocent people,” while at least 376 “terrorists” were killed during fighting. In the report, the military claimed to have interviewed thousands of villagers who agreed that the military did not shoot at “innocent villagers,” did not commit “sexual violence and rape cases against women,” did not “arrest, beat and kill the villagers,” did not steal silverware, gold, vehicles or animals from villagers, did not set fire to mosques and houses, and did not “threaten, bully and drive out the villagers.”

Observers have countered that the report is “absurd,” and lacks any credibility, both because the inquiry was solely carried out by the very institution accused of committing the abuses, and because of the overwhelming testimony of so many Rohingya detailing appalling atrocities.³³ A spokesman for Amnesty International said the military had “made clear it has no intention of ensuring accountability.”

Just days before its report was released, the Myanmar Army replaced the general in charge of operations in Rakhine State that drove more than 600,000 Rohingya Muslims to flee to Bangladesh.³⁴ No reason was given for Major General Maung Maung Soe being transferred from his post as the head of Western Command in Rakhine State.³⁵ Major General Aye Lwin, deputy director of the Psychological Warfare and Public Relations Department at the Ministry of Defense, said that Major General Maung Maung Soe “has been put in reserve.”³⁶ Brigadier General Soe Tint Naing, formerly a director of military logistics, was appointed as the new head of Western Command.³⁷

On November 23, it was announced that Myanmar and Bangladesh had signed an agreement to potentially repatriate hundreds of thousands of Rohingya refugees who have fled the country.³⁸ According to Bangladesh officials, the repatriations are to begin within two months of the agreement.³⁹ According to the memorandum of understanding between the two countries, Myanmar agreed there would be no restrictions on the number of Rohingya allowed to return, which contradicted previous public statements by the head of the country’s military.⁴⁰ It was also agreed that there would be no legal consequences for refugees who voluntarily decided

to return, although Myanmar officials reserved the right to prosecute refugees that it found to be “involved with terrorists.”

The repatriation agreement applies to Rohingya refugees living in Bangladesh who fled Myanmar in the wake of two major outbreaks of violence since October 2016, but does not apply to an estimated 200,000 Rohingya refugees who were living in Bangladesh prior to October 2016.⁴¹ Despite the repatriation agreement, Rohingya are still fleeing into Bangladesh, with the U.N. reporting that at least 3,000 refugees have crossed the border since the agreement.⁴²

The U.N.’s most senior official in Myanmar, Knut Ostby, voiced doubts as to whether conditions in Myanmar are suitable for a return of Rohingya refugees, particularly in light of ongoing violence in the country’s western Rakhine State.⁴³ Human rights groups have also expressed skepticism about details of the repatriation plan, such as how many will want to return, where they might live, and under what conditions, as some Buddhist ethnic Rakhine residents of the state have said they do not want them back.⁴⁴

B. Official Corruption

A presidential proposal seeking to reshuffle Myanmar’s existing anti-corruption commission was submitted to the Myanmar Parliament, naming Aung Kyi, a former information minister under the previous Union Solidarity and Development Party (“USDP”) government, as its chairperson.⁴⁵ According to Mahn Win Khaing Than, Speaker of the Upper House, four of the twelve members on the proposed commission would be nominated by President Htin Kyaw, while eight others would be nominated by the speakers of the legislature’s upper and lower chambers.⁴⁶ As currently constituted, Myanmar’s anti-corruption commission has 15 members, all of whom were appointed by former President Thein Sein.

The newly proposed anti-corruption body would consist largely of retired government officials, with Major General Zaw Win, the former chief of the national police force, among the proposed commissioners.⁴⁷ According to some observers, however, the proposed membership of the commission would include too many ties to prior administrations. “Those people were the officials who had the time of their lives during the years of the ‘Burmese Way to Socialism,’ SLORC and SPDC,” said lawyer Robert San Aung, referring to two iterations of Myanmar’s former military government, the State Law and Order Restoration Council and the State Peace and Development Committee.⁴⁸

Aung Kyi, the proposed new chairperson of the anti-corruption commission, was a top Tatmadaw official, holding the rank of major general and later appointed to multiple cabinet postings, including as former President Thein Sein’s Minister of Information from 2012 to 2014.⁴⁹ The website of Myanmar’s current anti-corruption body indicates that 4,350 corruption cases have been reported, with just 46 cases having been investigated.⁵⁰

II. Civil and Political Rights

A. Freedom of Speech, Assembly and Association

In mid-November, Yangon police announced that demonstrations and rallies would no longer be permitted in the city’s downtown and other dense urban areas, according to an order

from the Regional Home Affairs Ministry.⁵¹ The order instructs authorities in 11 townships to deny all applications for assemblies.⁵² It does not say how long the ban will last. The directive, which precludes protests near Yangon's City Hall, most government offices, and many foreign embassies, makes it impossible for those protesting against government policies or acts of foreign governments to demonstrate anywhere near the target of their protests.

According to the police announcement, the protest ban was being implemented to prevent rallies that interrupt commuter traffic, cause a nuisance to the public, and raise safety concerns.⁵³ Groups applying to hold rallies within the eleven affected townships will be directed to hold their demonstration in Hit Taing field in Tamwe Township.⁵⁴

Just days after the protest ban was announced, human rights observers urged Myanmar to withdraw the prohibition amid rising concerns for the freedom of speech under Aung San Suu Kyi's National League for Democracy ("NLD") administration. "There is no legitimate reason for imposing a ban on all protests in major sections of Burma's largest city," said Brad Adams, Asia director at Human Rights Watch.⁵⁵ "This directive was issued by a military officer and should be seen by the civilian government as a direct challenge to its commitment to basic rights for Burmese citizens. The government needs to reverse this ban and uphold the rule of law and refuse to capitulate to arbitrary actions by the military."⁵⁶

According to Human Rights Watch, the directive also appears to conflict with Myanmar's Peaceful Assembly and Peaceful Procession Law, enacted in October 2016.⁵⁷ That law, while flawed, was a step forward in protection of freedom of assembly in Myanmar. Unlike the assembly law it replaced, which required organizers to get government "consent" for any assembly or procession, the 2016 law requires only that organizers give notice of a planned assembly or procession 48 hours in advance.⁵⁸ It does not authorize the police to deny permission for the protest or procession, and only the Ministry of Home Affairs is authorized to issue bylaws, regulations, and orders governing the implementation of the law.⁵⁹

Meanwhile, the Kamayut township court sentenced the monk Sayadaw Parmaukkha to jail for leading an assembly in front of the U.S. embassy in Yangon in April 2016.⁶⁰ Parmaukkha and other nationalists, a few of whom have already been convicted, demonstrated to denounce the U.S. embassy's use of the word "Rohingya."⁶¹ Another case has been brought against Parmaukkha under section 505(b) of the Myanmar Penal Code, which penalizes anyone who "makes, publishes or circulates any statement, rumor or report with intent to cause, or which is likely to cause, fear or alarm to the public whereby any person may be induced to commit an offence against the State or against the public tranquility."⁶² This offense carries a sentence of up to two years.⁶³ Parmaukkha was arrested as he applied for permission for a demonstration about land use issues.⁶⁴

B. Freedom of the Press and Censorship

In October, Myanmar authorities arrested two foreign journalists, as well as their local interpreter and driver, for allegedly filming with a drone without permission after the journalists flew a drone near Myanmar's parliament building.⁶⁵ Lau Hon Meng of Singapore and Mok Choy Lin of Malaysia were working for Turkish state broadcast TRT World when they were arrested and detained on October 26.⁶⁶ The local interpreter, Aung Naing Soe, is well

known in Myanmar for his photojournalism work and his coverage of the persecution of the Rohingya minority.⁶⁷ Prior to his arrest, he had faced death threats due to his work and, after his arrest, false claims arose that he had ties to a Rohingya insurgent group.⁶⁸

On November 10, a Myanmar court sentenced the two foreign journalists to two months in prison.⁶⁹ Authorities charged the two with violating Section 8 of Myanmar's Import-Export Law, which does not refer specifically to drones and carries a maximum sentence of three years in jail, as well as violating the 1934 Burman Aircraft Act, which carries a maximum sentence of three months in prison.⁷⁰ The journalists' lawyer said the two pled guilty to the lesser charge in hopes of receiving a lighter sentence.⁷¹ Authorities also raided the home of Aung Naing Soe, confiscating computer memory cards and searching through his documents. The prosecution of these journalists and their interpreter underscores the heightened concerns in Myanmar of a crackdown on media and increased press censorship.⁷²

At the 11th Asia-Europe Foundation Journalists' Seminar in Nay Pyi Taw, Myanmar, Myint Kyaw from Myanmar Journalist Network said that journalists in Myanmar continue to face difficulties in accessing government information and so could not accurately or constructively report on important issues.⁷³ He blamed this on a lack of clarity in the law, saying that many departments in the Myanmar government are unsure of what they are allowed to disclose, which ultimately results in citizens losing "their rights to know what is happening in all sectors."⁷⁴

C. Land Seizures

The temples of Bagan, dating from between the 9th and 13th centuries, are considered to be Myanmar's biggest tourist draw and on par with Cambodia's Angkor Wat in terms of historical, archaeological and cultural value. Nevertheless, the ancient capital has yet to be granted UNESCO World Heritage Site status, reportedly due to Myanmar's inability to present management plans to deal with sub-standard, inauthentic restorations and controversial hotel developments completed under previous governments.⁷⁵ As it prepares its final application to gain UNESCO World Heritage status, the Ministry of Religious Affairs and Culture said it would negotiate with developers whose hotels were built within the ancient city's archaeological vicinity to relocate to hotel zones or otherwise outside of the area.⁷⁶

Significant hotels and landmarks that would be need to be relocated include the Nan Myint viewing tower, the Bagan Thande Hotel, the Hotel at Tharabar Gate, the Bagan Hotel, the Bagan Thiripyitsaya Sanctuary Resort, and multiple others, according to Aung Aung Kyaw, the director of the Department of Archaeology, National Museum and Library in Bagan.⁷⁷

Individual hotel owners have not yet been notified of whether they will need to relocate.⁷⁸ Although the relocation plan will ultimately need to be agreed to by the hotels in question, the government is considering offering hotels at least fifteen years to relocate from the site.⁷⁹ UNESCO has suggested that the government start the relocation of hotels only after it has provided additional infrastructure in the areas to which the hotels would be relocated.⁸⁰

In northern Myanmar, a land rights activist, Htay Aung, was attacked by a mob while visiting disputed territory at the invitation of local officials.⁸¹ Htay Aung ultimately died from his injuries.⁸² Friends of the deceased suggested that the attack may have been planned.⁸³ The land in question was seized from 31 households in 1997.⁸⁴ Although the affected households

have received letters from the military indicating that their land will be returned, they are still prohibited from working on the land and have received no additional details as to when the land will be returned.⁸⁵ The villagers represented by Htay Aung have promised to continue fighting for their land.⁸⁶

III. Economic Development

As previously discussed in the August 2017 report, the Taunggyi municipal area in Shan State has been administering a pilot program that uses a mobile application to assist the town in taking water meter readings and administering billing. In November, Taunggyi's Development Affairs Organization ("DAO")—the office tasked with providing water and sewage services, trash collection and tax collection—announced plans to continue its pioneering use of mobile applications and social media to improve the provision of services in the township.⁸⁷ In particular, the DAO has partnered with Mui, a local company, to handle a portion of the town's garbage collection function.⁸⁸ This private-sector collaboration is the first of its kind among development affairs organizations in Myanmar municipalities.⁸⁹ The collaboration has resulted in an expansion of Taunggyi's capacity to provide municipal services, without the town bearing any additional costs. Instead, under the partnership, Mui incurs the costs of garbage collection and collects service fees directly from the residents.⁹⁰ With the success of its existing private-sector partnership, the Taunggyi DAO intends to develop a mobile application to help reform its tax collection processes. Although the application is not yet fully developed, the DAO is optimistic that the application will ultimately result in improvements to the town's tax rate evaluation and collection efficiency through the improved data analysis afforded by the technology.⁹¹

IV. Peace Talks and Ethnic Violence

A. Ethnic Violence

According to reports, at least 11 Tatmadaw troops were killed and 14 wounded during a mid-November clash between the Tatmadaw and the Arakan Army ("AA") in the western township of Paletwa in Chin State.⁹² Retired Myanmar Army Lieutenant General Thaug Aye, a member of the Lower House of Parliament, confirmed the number of casualties.⁹³ The violence occurred when the AA attacked three Tatmadaw boats on November 8, according to a statement posted on the AA's Facebook page.

Fighting between the Tatmadaw and the AA had escalated since the first week of November, with additional clashes north of Paletwa in Nom Bu and Nge Chest villages.⁹⁴ The AA had issued a message to local villagers on November 5, advising people to travel only if necessary.⁹⁵ Approximately 300 civilians in Paletwa fled fighting on November 3, according to local sources, and sought shelter at a Buddhist monastery.⁹⁶ As of late November, approximately 1300 people in total had fled from Chin State, crossing the border to India to escape fighting between the Tatmadaw and the AA.⁹⁷

The AA has not signed the nationwide ceasefire agreement nor does it have a bilateral ceasefire agreement with the Tatmadaw.⁹⁸ It is part of the Northern Alliance ethnic bloc and is

based in Kachin and northern Shan states. The Tatmadaw does not officially recognize the AA and in statements refers to it as a “Northern Alliance member.”⁹⁹

B. Peace Talks

On October 31, the Union Peace Dialogue Joint Committee (“UPDJC”) held a two-day conference to plan the next 21st Century Panglong Peace Conference.¹⁰⁰ At the two-day conference, Aung San Suu Kyi urged members of the UPDJC to work towards a goal of setting the basic principles for the establishment of a federal union by 2018.¹⁰¹ In addition, Aung San Suu Kyi requested that members complete the review and confirmation of the political discussion framework by the next conference, and help persuade ethnic armed groups who have not yet signed the Nationwide Ceasefire Agreement (“NCA”) to sign it.¹⁰²

In early November, the government Peace Commission met with representatives of the United Wa State Army (“UWSA”) and the National Democratic Alliance Army (“NDAA”), two of the most powerful ethnic armed groups on the Myanmar-China border.¹⁰³ Very few details regarding the meeting have been released, although the general goal of the talks appears to have been to secure the groups’ participation in the peace process discussions.¹⁰⁴ According to a statement from the UWSA, the government delegation urged the UWSA to sign the NCA (although similar meetings held last year between the Peace Commission and the UWSA and NDAA were unsuccessful).¹⁰⁵

On November 8, the Peace Commission also met with the Delegation for Political Negotiation of the United Nationalities Federal Council (“UNFC”) for the eighth time to discuss the UNFC’s eight conditions to its signing the NCA.¹⁰⁶ Officials from both the Peace Commission and the UNFC said that almost all outstanding points have been agreed upon and that the UNFC was getting closer to signing the NCA.¹⁰⁷ The two groups were scheduled to meet again on November 16, but the meeting was ultimately postponed.¹⁰⁸

In a statement by a senior party official, the ruling NLD has indicated that it intends to prioritize two key issues prior to the expiration of the current parliament’s term in 2020: the peace process and the ongoing situation in Rakhine state.¹⁰⁹ According to the NLD spokesman, these two issues take precedence over changing the 2008 Constitution.¹¹⁰

The Federal Political Negotiation and Consultative Committee (“FPNCC”), which comprises seven northern armed ethnic groups, called an urgent meeting to discuss its strategy and approach to the currently deadlocked peace talks.¹¹¹ The FPNCC is led by the powerful United Wa State Army. Its other members are the NDAA, the AA, the Kachin Independence Organization, the Shan State Progress Party, the Ta’ang National Liberation Army, and the Myanmar National Democratic Alliance Army. To date, the Myanmar government has not met with the FPNCC, and does not recognize its existence as a legitimate political body.¹¹² China has been attempting to mediate discussions between the Myanmar government and ethnic armed groups that have not signed the NCA, but reiterated to the FPNCC on November 9 that the Myanmar government continues to refuse to meet with the FPNCC as a collective alliance.¹¹³

According to a party spokesman, the New Mon State Party (“NMSP”), an offshoot of the Mon ethnic armed group and member of the UNFC, plans to hold an emergency meeting to

discuss whether to formally join the peace process and sign the NCA.¹¹⁴ The NMSP has been motivated to make its own decision as to its approach to the peace process due to delays in discussions between the government and the UNFC.¹¹⁵ Membership of the UNFC has dwindled to four after the Shan State Progress Party/Shan State Army-North left the group in November, becoming the third armed ethnic organization to leave the bloc amid increasing pressure to sign the NCA.¹¹⁶

The 6th Joint Implementation Coordination Meeting (“JICM”) was held at the National Reconciliation and Peace Centre in Nay Pyi Taw on November 27.¹¹⁷ At the meeting, the Restoration Council of Shan State and the Shan State Army (“RCSS/SSA”) and the Tatmadaw agreed to hold a national-level dialogue in Langkho in southern Shan State in January.¹¹⁸ The RCSS/SSA wanted to hold the dialogue in Taunggyi or Panglong, while the Tatmadaw insisted in holding it in Mong Pan, but Aung San Suu Kyi mediated between the parties and they agreed on Langkho as a compromise location.¹¹⁹ Also, during the JICM, it was decided to hold the third meeting of the 21st Century Panglong Peace Conference during the last week of January 2018. It was also decided that another JIMC meeting would be held in January.

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