

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

FEBRUARY 2020 REPORT

Summary. This report reviews the February 2020 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. Rohingya Refugee Crisis

The Bangladesh government has again postponed the relocation of Rohingya refugees to Bhasan Char, an island in the Bay of Bengal, despite the extensive work done to build infrastructure on the island over the past few months.¹ The government has long worked towards relocating some of the Rohingya population to Bhasan Char, despite objections that the island is unsafe and vulnerable to potentially deadly monsoons. Human rights groups stated that some refugees have been coerced into agreeing to relocation and that the plan is strongly opposed by the Rohingya community at large.² Bangladesh's State Minister for Disaster Management and Relief reported that, while the relocation plan has been postponed, there has been "much progress" in repatriation discussions with Myanmar, with China acting as intermediary.

Desperation in the Rohingya refugee camps has led to an increasing number of Rohingya falling victim to human traffickers who are active in the camps.³ On February 11, at least 15 women and children drowned and over 50 others are missing after a boat overloaded with Rohingya refugees sank off the coast of south Bangladesh on its way to Malaysia.⁴ Approximately 130 people (mainly women and children) were packed on a trawler loaded with cargo that was meant to carry a maximum of 50 people.⁵

Human smuggling and trafficking in the Bay of Bengal is difficult to address as it requires cooperation and concerted efforts from multiple nations, and gaps in coordination are easily exploited by traffickers.⁶ Since 2019, Bangladesh authorities have picked up over 500 Rohingya refugees from fishing trawlers or from coastal villages as they waited to board boats.⁷

More than 600 Rohingya refugees have chosen to return to Myanmar from Bangladesh of their own volition and not under the repatriation agreement between Bangladesh and Myanmar.⁸ However, these refugees say that they have not been allowed to return to their original villages and are facing hardship in northern Rakhine State, an area that has been plagued by violence.⁹ Mahmud Shawri, a returned Rohingya refugee, had fled to Bangladesh during the violence in 2017 and stayed in a camp for over a year. He then returned to Myanmar on his own a year ago after contacting Myanmar authorities.¹⁰ Because the Rohingya are considered illegal immigrants from Bangladesh, Shawri faces routine discrimination in Myanmar. Such discrimination limits his movements, denies him access to jobs, health care, and education, and he is still forbidden from becoming a citizen.¹¹

B. Corruption

Yangon lawmakers drafted the Region Funds and Investment Law, designed to promote transparency regarding the use of public funds and to reduce the amount of funds wasted through mismanagement.¹² Under the bill, companies established with public funds would be required to undergo audits and would be subject to regular reporting requirements.¹³ The bill will be discussed by the Bill Committee and Attorney General's office before being opened to comment from business leaders.¹⁴ The bill is expected to be submitted in June.¹⁵

During a session discussing the Joint Public Accounts Committee’s findings of ministries’ mismanagement of public funds, military lawmakers encouraged the National League for Democracy government to establish mechanisms to reduce waste of public funds.¹⁶ The Financial Action Task Force—a global finance watchdog—is expected to place Myanmar on a watchlist.¹⁷ The addition of Myanmar to the list would signal that Myanmar faces “strategic deficiencies” in combating terrorism financing and money laundering.¹⁸ The report cited corruption as a “very significant challenge.”¹⁹

C. International Community / Sanctions

The UN Security Council failed to agree on a statement calling on Myanmar to follow the International Court of Justice’s (“ICJ”) preliminary order to prevent killings and other atrocities against Rohingya Muslims.²⁰ It is speculated that China, a close Myanmar ally, and Vietnam, a fellow member of ASEAN, objected to issuing the statement.²¹ The UN Security Council’s EU member states independently called for Myanmar to bring to justice those who have carried out human rights violations against Rohingya Muslims.²² France, Estonia, Germany and Belgium issued a joint statement urging Myanmar to comply with the ICJ measures; Poland, a former Security Council member, also signed the statement.²³

Myanmar was placed on a global money laundering “gray list” by the Financial Action Task Force (“FATF”).²⁴ Listing on the gray list subjects Myanmar financial activities to greater monitoring and could affect access to loans from foreign institutions.²⁵ The FATF found that implementation of Myanmar’s anti-money laundering action plan was far from complete.²⁶

The Maldives announced that it will formally join The Gambia in the genocide case against Myanmar at the ICJ. The Maldives hired prominent human rights lawyer Amal Clooney to represent it at the ICJ.²⁷ Clooney released the following statement: “Accountability for genocide in Myanmar is long overdue and I look forward to working on this important effort to seek judicial remedies for [Rakhine Muslim] survivors.”²⁸

A team of investigators from the International Criminal Court (“ICC”) is visiting Rakhine Muslim refugee camps to collect evidence.²⁹ Phakiso Mochochoko, director of the Jurisdiction, Complementary and Cooperation Division of the ICC Office of the Prosecutor, said that the ICC’s investigation will not hamper Bangladesh’s effort to start repatriation of the refugees.³⁰

Previously announced U.S. visa restrictions on Myanmar went into effect on February 22.³¹ The restrictions target certain visa categories and focus on people seeking to permanently move to the United States rather than visitors. The restrictions were put in place as a “result of [the] countries’ unwillingness or inability to adhere to certain baseline identity management, information sharing and national security and public safety assessment criteria that were established by the [U.S. Department of Homeland Security] in 2017.”³²

The United States and Myanmar are implementing three five-year projects aimed at eradicating child labor in Myanmar. The three projects will accelerate the implementation of the International Labor Organization’s Minimum Age Convention.³³

II. Civil and Political Rights

A. **Freedom of Speech, Assembly and Association**

Two Kachin pastors, Bima Dau Lum and Sumlut Tu Htang, have been released from prison after the Tatmadaw dropped their case for unlawful association.³⁴ The two men had been arrested several weeks prior for attending a commemoration of the 60th Kachin Revolution Day. Members of several Kachin interest groups negotiated with the Tatmadaw's Kachin State-based Northern Command for the pastors' release.³⁵ Sumlut Tu Htang told reporters, "[The Tatmadaw officer] told the court that the order came from the top to drop the charge and release us. Therefore, we were freed."³⁶

The Myanmar Lower House Committee on Justice and Legal Affairs submitted a draft bill to amend a controversial privacy law.³⁷ The Law Protecting the Privacy and Security of Citizens has faced intense criticism from free speech advocates, who claim that the government has used the law to suppress free speech and criticism of authority, including state leaders and the military. Over the past three years, the government has used the law to sue more than 100 activists, media members and politicians.³⁸ The proposed amendment would reduce the maximum prison term for a defamation conviction from three or more years to two years and would make it a bailable offense.³⁹ Some commentators have criticized the proposed amendments for not going far enough to pare back the law, because the amendments only address sentencing and not the scope of prohibited actions. Ye Wai Phyo Aung, a representative of Athan, a freedom of expression advocacy group, said "MPs are now more willing to listen to the voices of the public as the election draws nearer. It would be best if they amend the law to bring it in accordance with democratic norms. Otherwise the law will not change radically, even after the amendments are approved."⁴⁰

Kayah State issued a local order outlawing meetings and trainings without prior approval from the government.⁴¹ According to civil society organizations, various local villages have been unable to effectively hold informational meetings for fear of punishment. The government issued the order in response to a protest against the statute of General Aung San, father of State Counsellor Aung San Suu Kyi, in the capital of Kayah State.⁴² It remains unclear how long the local order will remain in effect.

The Chin State government permitted the Chin National Front ("CNF") to deliver a speech at the 72nd Chin National Day Commemoration ceremony.⁴³ The CNF, a ceasefire group, had previously been informed that they would be allowed to attend the ceremony but would not be allowed to deliver a speech due to ongoing tensions. After lobbying with government representatives, the CNF received permission from State Counsellor Aung San Suu Kyi. Chin National Day has been publicly acknowledged by the Myanmar government since 2013, a year after the CNF signed both state and Union-level ceasefire agreements with Myanmar's previous government regime headed by Thein Sein.⁴⁴

The government has reinstated an internet blackout in four Rakhine State townships and one Chin State township.⁴⁵ These five townships lost internet access last summer under a similar ban that the government lifted in September. Four additional townships in Rakhine State have been without internet access for over eight continuous months, marking one of the world's

longest government-imposed shutdowns of mobile internet communications.⁴⁶ The internet shutdown has hindered a variety of activity in the affected townships, including business activity and the distribution of food supplies and aid for internally displaced people.⁴⁷ Authorities recently charged nine students with violating the Peaceful Assembly Law after a recent protest of the government’s suspension of internet services. The students could face a sentence of up to three months for protesting without prior permission.⁴⁸

B. Freedom of the Press and Censorship

Some commentators have speculated that the government-sanctioned internet blackout in parts of Rakhine State and Chin State increases the risk of fake news propaganda.⁴⁹ Pe Than, a Meabon township representative in the lower house of Parliament, noted, “The internet shutdown failed to prevent hate [speech] even though the government claimed so. Rather it inspired anti-social elements to propagate fake news.”⁵⁰ According to the representative, various journalists and writers have demanded the government lift the shutdown to allow the dissemination of legitimate information about human rights violations occurring in the affected townships.

III. Economic Development

A. Economic Development—Legal Framework, Foreign Investment

BDS Smart City Co. Ltd (“BDS”), a subsidiary of Berjaya Land Berhad, one of the largest conglomerates in Malaysia, signed a concession agreement worth nearly US\$750 million with the Yangon regional government to develop a housing and mixed-use project in Yangon city, Myanmar’s commercial hub.⁵¹ BDS will undertake the project on 74 hectares of land in Yangon’s Dagon Seikkan Township. The project will include affordable housing, medium-range apartments, high-end condominiums, commercial units, hospitals, schools and community centers. The project is expected to roll out in three phases over a period of nine years. BDS will own exclusive rights to the land for 50 years, extendable for two additional terms of 10 years each. As of the time of reporting, the BDS project had not yet been approved by the Myanmar Investment Commission.

Hong Kong-listed VPower Group International Holdings Limited (“VPower”), one of the largest investors in Myanmar’s electricity sector, announced that it had set up a joint venture with Chinese state-owned China National Technical Import and Export Corporation (“CNTIC”) to provide power in Myanmar.⁵² VPower and CNTIC each holds 50% in the investment, development and operations of the planned projects. According to the Myanmar Investment Commission’s investment approval documents, the joint venture received approval in January this year and November last year to proceed with three foreign-owned power projects to generate and sell power to consumers locally. The gas-fired power plant at Thilawa port in Yangon’s Thanlyin Township is expected to generate 350 MW of electricity, with an investment of US\$297.39 million (433 billion kyat), whereas the gas-fired plants in Thaketa Township and Kyaukphyu Township are expected to generate approximately 400 MW and 150 MW with investments of US\$363 million (528 billion kyat) and US\$140 million (204 billion kyat), respectively.

On February 14, the Pyidaungsu Hluttaw passed an Insolvency Law to further strengthen the business environment and draw more foreign investors to the country.⁵³ The Insolvency Law will replace the Yangon Insolvency Act (1909) and the Myanmar Insolvency Act (1920) and aims to provide recourse for micro, small and medium-sized enterprises and directives related to cross border insolvency. The new legislation will become effective after a notification is issued by the President of Myanmar.

As of December 2019, the Myanmar government has permitted 115 companies from 19 countries to operate in Thilawa SEZ.⁵⁴ However, three have withdrawn their investment plans, resulting in 112 companies having invested a total of US\$1.9 billion in Thilawa so far, according to Aung Htoo, deputy commerce minister. The three companies include two Japan/Myanmar joint ventures in chemical products manufacturing and shoe production, which withdrew due to insufficient capital. The third company, a Singapore data center, withdrew due to failure to obtain permission from the authorities to operate its intended business.

Myanmar and India have signed 10 agreements, including five memorandums of understanding (“MoUs”), during President Win Myint’s four-day state visit to India.⁵⁵ The agreements include deals to enhance cooperation on bilateral energy, trade, development, defense and maritime security and combat terrorism and violent extremism. The five MoUs involve cooperation over petroleum products, cooperation to prevent human trafficking, cooperation on timber trafficking and conservation of tigers and other wildlife. To boost economic cooperation and tourism, both sides agreed to work together to launch the Indian RuPay card in Myanmar and an India-Myanmar digital payment gateway for cross-border remittances.

B. Economic Development—Infrastructure, Major Projects

According to *South China Morning Post*, on February 20, the foreign ministers of China and the Association of Southeast Asian Nations (“ASEAN”) began a special meeting in Vientiane, Laos, to discuss measures adopted by Beijing to contain the spread of the coronavirus.⁵⁶ In an opening speech, Philippine Foreign Secretary said apart from the health impacts of the Covid-19 disease, the outbreak has been “massively detrimental” to trade, travel, and the global economy.⁵⁷ ASEAN includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam, some of which have recently been inclined to restrict traffic to and from China because of the epidemic.⁵⁸

The Myanmar government is planning to upgrade basic infrastructure and enhance the urban management of three major cities in Mon and Kayin States that lie along Japan’s planned East-West Economic Corridor for the Greater Mekong Subregion.⁵⁹ Minister of Construction Han Zaw said on February 24, that his ministry will take a leading role in developing the Mon capital of Mawlamyine, the Kayin capital of Hpa-an and Myawaddy.⁶⁰ Projects are underway to upgrade water sanitation, improve waste management and build expertise among civil servants in Mawlamyine and Hpa-an.⁶¹ The Ministry of Construction also said there are planned projects to maintain historic buildings in Mawlamyine and draw up plans for an Hpa-an industrial zone and a Myawaddy-Mae Sot joint spatial development project.⁶²

According to *Irrawaddy*, the Kachin State parliament approved a proposal on February 27 to implement a Chinese-backed business park project in the border town of Kanpiketi, as part of Beijing's grand infrastructure plans for its Belt and Road Initiative.⁶³ The business park is one of three cross-border economic cooperation zones under the China-Myanmar Economic Corridor agreement, and it includes plans to construct a South Asia–Southeast Asia Culture Park, two Trade and Logistic Zones, a Border Inspection Gate and a Business Shop.⁶⁴

C. Land Seizure

The Myanmar government has agreed to compensate local residents for more than 1,800 acres forfeited by those residents for the creation of a Chinese-supported special economic zone.⁶⁵ The amount of compensation has not been announced publicly.⁶⁶

Unused land in Mon State leased by the government is to be “scrutinized.”⁶⁷ As part of this process, locals may be able to “apply for the ... vacant, fallow and virgin lands from the government,” although there is concern that unscrupulous individuals might take advantage of others with a less fulsome understanding of the law and procedures.⁶⁸

IV. Peace Talks and Ethnic Violence

A. Ethnic Violence

In early February, a landmine claimed the life of a villager and seriously injured another in Myanmar's northern Shan State as the villagers were collecting firewood at dusk.⁶⁹ According to civil society organizations in Kyaukme Township, two villagers have been killed and ten have been injured so far in 2020 in the Mong Ngor sub-township.⁷⁰ The armed groups active in the area have not taken responsibility for the landmines.⁷¹

On February 27, the Tatmadaw clashed with troops from the Restoration Council of Shan State (“RCSS”) near Loi Twan Hill in Mong Kai Township, Shan State.⁷² The Tatmadaw said they suffered an undisclosed number of casualties, and denied that Tatmadaw troops had attacked the RCSS soldiers.⁷³ According to the Tatmadaw, RCSS troops crossed out of their territory and attacked the government soldiers first.⁷⁴ The RCSS said that some 400 troops from four Tatmadaw battalions attacked their camp on Loi Twan Hill and alleged that the military used artillery in the clash.⁷⁵ The RCSS claimed that the military deployed an additional four battalions with some 500 troops to the area the next day, while a Tatmadaw battalion based in Mong Kai continued shelling their camp.⁷⁶

B. Peace Talks

The Union-level Joint Ceasefire Monitoring Committee (“JMC”) will meet in March, following a long delay.⁷⁷ The JMC's role includes monitoring the Nationwide Ceasefire Agreement (“NCA”) signatories' implementation of the ceasefire. The last meeting of the JMC took place more than a year ago. Following a three-day meeting between the government's peace delegation and representatives of the 10 NCA signatories at the National Reconciliation and Peace Centre in Yangon, government peace negotiator Hla Maung Shwe told reporters that

the two sides had agreed to meet in March.⁷⁸ The two sides also agreed to hold a Joint Implementation Coordination Meeting, the highest-level meeting within the national peace process, in March.

The Arakan Liberation Party (“ALP”), a Rakhine armed group, has asked the government to allow Rakhine people to hold a national-level political dialogue prior to the upcoming Union Peace Conference.⁷⁹ The ALP joined peace negotiations in 2012, signing a bilateral ceasefire in April that year. In October 2015 the ALP signed the NCA with the government, and is now one of 10 ethnic armed groups to have become signatories. All 10 of the NCA signatories have requested permission to hold political dialogues in their respective regions. So far the government has yet to officially reply, as the decision can only be made at meetings of the secretariat of the Union Peace Dialogue Joint Committee (“UPDJC”).⁸⁰ The next UPDJC meeting is expected to happen later in February. The ALP has been pushing unsuccessfully to convene a Rakhine national-level political dialogue since 2017. The government has rejected its requests, citing instability due to conflicts in the region.

The Shan State Progressive Party (“SSPP”) says they may sign the NCA this year if necessary to work with the Myanmar government towards political reform.⁸¹ The SSPP was a member of the now-defunct United Nationalities Federal Council, which worked to draft the NCA but resigned from the group in 2017. The SSPP then joined the Federal Political Negotiation and Consultative Committee (“FPNCC”), which includes the SSPP, the United Wa State Army (“UWSA”), Mong La’s National Democratic Alliance Army (“NDAA”), the Kachin Independence Army (“KIA”), the Ta’ang National Liberation Army (“TNLA”), Kokang’s Myanmar National Democratic Alliance Army (“MNDAA”) and the Arakan Army (“AA”). The other members of the FPNCC continue to negotiate with the Myanmar government regarding the NCA.

The 10 NCA signatories expect to obtain government approval to draft their own charters at the fourth session of Union Peace Conference - 21st Century Panglong, expected to be held in April.⁸² The right of states to draft their own charters was one of the decisions made at the 7th Joint Implementation Coordination Meeting held in February 2018, but it was not discussed at the third session of Panglong in July 2018 because it was agreed not to bring up political and security matters at the meeting.

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- ²⁴ Myanmar Times, February 22, 2020: <https://www.mmtimes.com/news/fatf-puts-myanmar-money-laundering-watchlist.html>.
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- ²⁶ The Irrawaddy, February 20, 2020: <https://www.irrawaddy.com/news/burma/myanmar-reportedly-set-placed-global-money-laundering-watchlist.html>.
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- ³³ Myanmar Times, February 25, 2020: <https://www.mmtimes.com/news/us-backs-efforts-end-child-labour-across-country.html>.
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