

# STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

## MAY 2016 REPORT

**Summary.** This report reviews the May 2016 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. Election-Related Developments and Power Transition**

Following the official assumption of power by the National League for Democracy (“NLD”) administration, the outgoing Union Solidarity and Development Party (“USDP”) has looked to regain its political footing while the NLD has begun to advance its political agenda. Former President Thein Sein urged the USDP to reform in order to win the election in 2020 in a clear statement that the USDP is trying to make a comeback after a landslide election defeat at the hands of Aung San Suu Kyi and her NLD party last year.<sup>1</sup> In his statement, Thein Sein claimed that while there were many reasons for the USDP’s loss at the polls, the main cause was “weakness in the party’s central and lower levels.”<sup>2</sup> The problem, according to Thein Sein, was not with the USDP’s platform or policies, but rather only with the ability of party members to implement those policies.<sup>3</sup> Meanwhile, 12 current and former USDP members, including five sitting and six previous central executive committee members, sent an open letter addressed to Thein Sein, all other USDP members and the public, in which they called on Thein Sein to review actions that they claim were not in accordance with internal party rules.<sup>4</sup> Among the letter’s signatories were five senior officials who were kicked out of the USDP in April, along with Shwe Mann and current Religious Affairs and Culture Minister Aung Ko.<sup>5</sup>

In a similar fashion, the Myanmar army is attempting to “rebrand” itself to the public as it looks ahead to the new political reality of working with the democratic NLD. At a press conference on May 13 in Naypyidaw, Myanmar’s Commander-in-Chief Senior General Min Aung Hlaing pledged to continue to lead the armed forces and work with Aung San Suu Kyi to achieve peace and reconciliation in the country.<sup>6</sup> In comments that surprised some reporters, Min Aung Hlaing clarified his place in the new political hierarchy, confirming that “the commander-in-chief is below the president. Contrary to what many had assumed, we are working together [with the civilian government].”<sup>7</sup> The comments were seen by some as a response to Western media reports last year that characterized the military leader as the most powerful man in Myanmar. The general refuted rumors of tension between the army and the NLD administration, emphasizing his respect for the Myanmar Constitution.<sup>8</sup> Nevertheless, he also noted that he does not need to inform the president before making decisions about military affairs and combat offensives.<sup>9</sup> Min Aung Hlaing also mentioned that the creation of the new “State Counsellor” position for Aung San Suu Kyi violated the law, but he was not specific about which law it violated (including whether he viewed it as unconstitutional).<sup>10</sup> In further surprising comments, Min Aung Hlaing expressed an openness to amending the Myanmar Constitution in the future.<sup>11</sup>

Meanwhile, the NLD government is also looking ahead to the 2020 elections. Following the recent controversy from the 2015 elections surrounding voter lists, the Lower House of the Myanmar Parliament said that they will conduct door-to-door voter registration across the country to compile accurate voter lists for the next general election.<sup>12</sup> The registration program will reportedly begin in late June and will rely on the collaboration of election officials, village-tract authorities, political parties, voters and international organizations.<sup>13</sup>

The Ministry of Labour, Immigration and Population announced in May that it will relax restrictions on all of those who were exiled by previous governments for their political beliefs.<sup>14</sup> According to Minister Thein Swe, the Ministry of Labour, Immigration and Population will streamline procedures for political exiles to apply for permanent residence or citizenship in Myanmar, and will reform entry visa procedures within the first 100 days of the NLD’s administration.<sup>15</sup>

## **B. Constitutional Reform**

During his visit to Myanmar on May 22, United States Secretary of State John Kerry urged Myanmar's government to implement further constitutional reforms.<sup>16</sup> The visit took place less than a week after the Obama administration lifted sanctions against ten Myanmar state-run companies. Sanctions remain in place for trade and investment with the Myanmar military, with Kerry stating that "the key to the lifting of the sanctions is really the progress that is made within Myanmar in continuing to move down the road of democratization."<sup>17</sup> Specifically, Kerry called for reforms toward a free market and human rights, including rights for Rohingya Muslims and other minority groups. As the Rohingya are not recognized as an ethnic group, most do not have citizenship or basic rights under the current constitution.

At a press conference, Myanmar's Commander-in-Chief of the Defense Services Senior General Min Aung Hlaing told reporters that the military is "likely to withdraw" its presence from parliament once the country becomes stable.<sup>18</sup> He also claimed that once stability is achieved, he would support a constitutional amendment to the provision that currently guarantees the military a 25% parliamentary bloc and effective veto power over future constitutional amendments.

## **C. International Community and Sanctions**

On May 17, 2016, the U.S. government announced a continuation of its easing of sanctions on Myanmar. Since the first round of relief was issued in 2013, the United States has consistently indicated that more relief was possible if Myanmar continued on its path towards democratization. However, the Obama Administration has also noted that it reserves the right to remove any relief granted—and to increase sanctions more broadly—if Myanmar regresses in its political reform movement. The May 17 adjustments have elements of both easing and enhancing the sanctions against Myanmar, with the White House announcing that the actions are intended to support "continued political reforms and broad-based economic growth in Myanmar, while also maintaining sanctions pressure where needed."<sup>19</sup>

The May 17 announcement is based on Myanmar's successful November 2015 elections in which the NLD won an overwhelming majority of seats in the national legislature. Despite this victory, there were significant concerns whether the army would allow the democratically-elected leadership true authority. Consequently, the Obama Administration took an incremental approach to sanctions relief over the past six months as various factions jockeyed for power in the country. Though the political environment in Myanmar has become clearer—and it appears that the NLD's electoral victory will give it real political leadership of the country—in adopting the most recent regulatory amendments, the Obama Administration has continued its measured approach to removing U.S. sanctions against Myanmar. Pursuant to this last round of relief, U.S. persons are now able to trade even more freely with Myanmar, move goods within Myanmar, and transact to a greater extent with Myanmar financial institutions. Also, U.S. individuals living in Myanmar can now enter into personal transactions such as paying living expenses or buying goods and services. A number of Myanmar state-owned companies and enterprises have also been removed from the list of Specially Designated Nationals (the "SDN List"), meaning that their assets will be unfrozen and that U.S. persons are now free to transact with them (in some cases, for the first time in decades). However, other aspects of the sanctions framework remain

in place, including with respect to sanctions against certain major business leaders and other entities that were added to the SDN List.<sup>20</sup> Certain key aspects of the May 17 sanctions adjustments are detailed below.

### Removal of State-Owned Companies and Enterprises

On May 17, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") removed seven Myanmar state-owned enterprises and three state-owned banks from the SDN List.<sup>21</sup> As a result, U.S. persons are free to deal with the aforementioned entities and any companies that are owned by those entities (which are not otherwise blacklisted themselves). For example, U.S. persons can now interact with the Yangon Stock Exchange (Myanmar's first ever stock exchange). The fate of the stock exchange had greatly complicated the broader U.S. policy of promoting greater commerce and investment in Myanmar. The May 17 action serves in large measure to clarify the status of the stock exchange and to open up Myanmar portfolio investment to those who had shied away from such engagement due to the sanctions.<sup>22</sup>

However, in the clearest example of the measured approach of the Obama Administration, while OFAC removed certain entities from the SDN List, it also added six companies to the SDN List. It should be noted, however, that the added entities were already subject to SDN restrictions pursuant to the operation of OFAC's "50% rule," which states that U.S. persons are prohibited from dealing with unlisted entities that are owned in the aggregate, directly or indirectly, 50% or more by an entity on the SDN List.<sup>23</sup>

### Authorizing Certain Banking Services

In February 2013, OFAC created General License 19 which authorized almost all transactions involving four of Myanmar's major financial institutions on the SDN List (MEB, MICB, Asia Green Development Bank, and Ayeyarwady Bank). Despite the General License, most global companies and financial institutions continued to refrain from engaging in transactions with the four banks, largely due to uncertainty surrounding the unprecedented exemption from sanctions for transactions with entities that otherwise appeared on the SDN List. In the May 17 action, OFAC attempted to ameliorate this uncertainty by both adding two banks to the general license (Inwa Bank and Myawaddy Bank), and, more importantly, removing MEB and MICB from both the general license and the SDN List.<sup>24</sup>

### Authorizing Trade-Related Transactions

In December 2015, OFAC created General License 20 which, for six months, allowed individuals and companies (including financial institutions) to conduct transactions that were "ordinarily incident" to exportation to or from Myanmar of goods, technology, or non-financial services, even if such transactions are otherwise prohibited by the OFAC sanctions against Myanmar.<sup>25</sup> This was a critical allowance as it accommodated the fact that many of the country's primary air and seaports remain owned and controlled by SDNs. As such, companies and financial institutions had previously been unable to undertake or finance shipments that touched these critical logistics hubs in Myanmar, which had greatly limited the effectiveness of the Obama Administration's measures intended to facilitate increased trade in Myanmar.

The initial six months window allowing trade was welcomed as progress, but many international firms questioned its logic given that trade and financing contracts are regularly designed with terms of greater than six months. The May 17 action removed this six-month limitation and expanded its authorization to allow additional transactions incident to the movement of goods within Myanmar, such as shipping goods from a warehouse to retail outlets.<sup>26</sup> Importantly, the air and seaports themselves were not removed from the SDN List.<sup>27</sup>

### Authorizing Personal Transactions Relating to U.S. Persons

In the May 17 action, OFAC also sought to improve the ability of U.S. persons to reside in Myanmar. OFAC provided a general license authorizing U.S. persons residing in Myanmar to engage in transactions “ordinarily incident” to their routine and necessary maintenance within Myanmar—even if such transactions are otherwise prohibited by the Regulations. Permitted transactions include payment of living expenses and the acquisition of goods and services for personal use.<sup>28</sup>

## **II. Civil and Political Rights**

### **A. Press and Media Laws/Restrictions**

In commemoration of World Press Freedom day on May 3, Information Minister Pe Myint stated that the Myanmar media “should look forward to enjoying more freedom” after the previous government’s restrictive laws are repealed.<sup>29</sup> He intends to work with the media industry to produce recommendations going forward and bring those recommendations to the Parliament.<sup>30</sup> To change media laws, the Information Minister, the Myanmar Press Council and the Parliament must work together to repeal the remnants of restrictions imposed by the previous regime such as the State Secrets Act and the Broadcasting Law.<sup>31</sup> While Pe Myint did not state a timeline for repealing these restrictive laws, his 100-day plan intends to improve government transparency by dedicating a communications officer in every ministry who will act as a liaison with the media.<sup>32</sup>

The private media industry continues to criticize the government for their discriminatory practices against their industry. One example of discrimination is that state-run media outlets draw in most of the advertising revenue, leaving private media in a financial vacuum.<sup>33</sup> Another example is that the government denies private media journalists access to certain important events.<sup>34</sup>

Recently, there were two incidents of assault on press freedom. On May 30, the Myanmar Cable News denounced the Myanmar Patriotic Monks Union for obstructing a reporter who was covering a meeting between the monks’ union and the management of a Rangoon hotel.<sup>35</sup> On May 31, construction site workers prevented an Irrawaddy reporter from photographing a controversial construction site that will be reviewed by the Yangon City Development Committee for being too close to government buildings.<sup>36</sup>

### **B. Freedom of Association/Religion**

The month of May saw some progress in religious freedoms, with the new government of Myanmar entering discussions about a religious protection law, but many challenges remain. On

May 5, Religious Affairs and Culture Minister Aung Ko met with members of an interfaith group in Mandalay to discuss legislation that would ensure equal rights for all religions.<sup>37</sup> He also met with an interfaith group in Yangon on May 15 on the same topic, though the ministry has not revealed details of the proposed law.<sup>38</sup> Parmaukkha, a senior monk also known as Magwe Sayadaw, welcomed the concept of the law but said that religious tension would be difficult to erase solely through legislation. He also stressed that the government must ensure that adherents of other religions follow existing laws and that “it is very important not to make any changes to the 1982 citizenship law,” which was the cause of many Rohingya losing citizenship.<sup>39</sup> Kyaw Soe Aung, secretary of the Democracy and Human Rights Party, said that adoption of a new religious protection law would contribute to preventing incitement of religious violence through social media, newspapers, radio, and television, but that it would not be enough.<sup>40</sup> “[T]o live in harmony it is not enough to educate people. Leaders of the country, like the president and state counsellor, should participate in promoting interfaith campaigns by visiting churches and mosques. Also state-owned broadcast media should often air some of the customs and activities of different religions. Now when we turn on the television every morning, we always see programs related to Buddhist teaching,” he said.<sup>41</sup> Ko Win Ko Ko Latt, chair of the Myanmar National Network, which has been leading the country-wide protests against the use of the word ‘Rohingya’, said the new law was not necessary because other laws already existed to stop insults against other faiths.

Nationalist Buddhist monks from Ma Ba Tha have been holding large-scale religious conversion ceremonies in Muslim enclaves, drawing criticism from local residents.<sup>42</sup> On May 6, over 3,000 witnesses gathered to watch 71 people convert to Buddhism in Meiktila, according to ceremony leader Aggadaja, who claimed that this was the country’s largest religious conversion ceremony ever.<sup>43</sup> The senior monk claimed that the ceremony was meant to welcome those who wish to join the religion, but many local residents accused the monks of trying to enflame local religious tensions, though most would not comment out of fear of stirring the conflict.<sup>44</sup> Most of the converts were Muslim, but the event also included eight Christians and five Hindus.<sup>45</sup> Many had Buddhist partners, and at least one—Khin Than Myint—had been born Buddhist but was sent to a refugee camp with her Muslim husband after she had converted to Islam. After experiencing extreme poverty and abuse there, the whole family, including her Muslim husband, converted back to Buddhism, resulting in estrangement from her husband’s family.<sup>46</sup> Taung Thar Lay Meiktila Sayadaw stated that the ceremony had been held according to the Religious Conversion Law, that necklaces with religious pendants had been given to all who had converted, and that religious books would be given to them soon.<sup>47</sup>

Cardinal Charles Maung Bo, Myanmar’s first cardinal, spoke at the U.K. parliament in London on May 25 about the abuses of religious freedom in Myanmar, emphasizing that the need to uphold people’s rights to freely worship is one of the major challenges in the country today and noting that at least 66 churches in Kachin state have been destroyed since the conflict reignited in 2011.<sup>48</sup> While in the U.K. earlier in the month, the cardinal also visited the Moderator of the Church of Scotland and spoke to a group of representatives from the Catholic Church, Christian Solidarity Worldwide, Aid to the Church in Need, and the Scottish Bible Society.<sup>49</sup>

### **III. Political Prisoners**

Aung San Suu Kyi is facing criticism from rights groups and student activists who say her ruling party is planning to retain restrictions on free speech once wielded against it by

Myanmar's former junta.<sup>50</sup> The criticism comes largely in reaction to proposed amendments to the controversial Peaceful Assembly Law. First enacted in 2012 under the previous military-backed government, the law—which ostensibly bestowed new rights of protest and assembly—was repeatedly used to arrest and imprison activists who flouted its harsh provisions.<sup>51</sup> This included the need to seek “permission” from local authorities five days in advance of a protest and to supply detailed information on the content and intended route of the activities.<sup>52</sup> In May, the NLD recommended in the Upper House of Parliament that significant changes be made to the Peaceful Assembly Law.<sup>53</sup> Demonstrators would only need to “notify” local authorities 48 hours in advance, a new statute of limitations of 15 days would be introduced, and protestors would not be vulnerable to prosecution from multiple township authorities.<sup>54</sup> However, the proposal to merely reduce, rather than abolish, prison sentences for violating sections of the law—and to continue to require detailed information on proposed protests be provided to local authorities—has drawn criticism from both local and international human rights groups.<sup>55</sup>

The proposed amendments to the Peaceful Assembly Law have prompted alarm as it would punish protesters for spreading “wrong” information and make straying away from pre-registered chants an offense.<sup>56</sup> It also bars non-citizens—including the Rohingya Muslims—from protesting and lists criminal penalties for “disturbing” or “annoying” people.<sup>57</sup> The NLD says the new bill is aimed at protecting peaceful protesters rather than penalizing them, but worries over the proposed Peaceful Assembly Law have been compounded by concerns over the government's recent request to refrain from using the term “Rohingya” and Aung San Suu Kyi's refusal to speak out in support of the Rohingya Muslim community.<sup>58</sup> “We are concerned that the NLD is rushing this,” said David Mathieson, a senior researcher at the Human Rights Watch based in Yangon.<sup>59</sup> “The bill should guarantee the right to protest, and there's no reason why it should include penalties against protesters,” Mathieson added.<sup>60</sup> He said there were other laws, like the penal code, that regulated potential violations by the protesters and that in its current form the bill gave the authorities latitude to crack down on peaceful demonstrators.<sup>61</sup>

In mid-May, police arrested 86 factory workers who participated in a march for better working conditions.<sup>62</sup> Although most of the protesters have since been released, the organizers of the march remain in custody under the Peaceful Assembly Law. According to Amnesty International, the continued application of this law to create new political prisoners is in violation of international human rights standards.<sup>63</sup> Additionally, the Assistance Association for Political Prisoners has called for the release of the remaining 61 political prisoners still held in Myanmar, as well as the 107 still awaiting trial.<sup>64</sup>

Finally, the government of Myanmar has agreed to allow former political prisoners living in other countries to return from exile.<sup>65</sup> Scheduled to take effect within 100 days, over 4,000 exiled Myanmar activists will be allowed to return to the country and regain their citizenship. Myanmar's previous treatment of former political prisoners had widely been condemned by the international community, especially those countries that have harbored political refugees from Myanmar.

Looking forward to the next few months, the new government of Myanmar is expected to continue releasing the remaining political prisoners still detained, as well as adopting procedures to return citizenship to exiled former political prisoners. Changes to the Peaceful Assembly Law, although still being debated in Myanmar's Parliament, are also likely to pass at some point this year.

#### **IV. Governance and Rule of Law**

Parliament is considering a proposal brought by President Htin Kyaw this month that would form a new “Ministry of the State Counsellor’s Office”.<sup>66</sup> The ministry would support Aung San Suu Kyi’s position as State Counsellor and her mission of reform by “successfully implement[ing] the missions of national reconciliation, domestic peace, national development and the rule of law”.<sup>67</sup> Chairman of the Democratic Party for a New Society Aung Moe Zaw has stated that the ministry, which would be the 22<sup>nd</sup> of the new NLD administration if approved, would likely be involved in the national peace process with armed ethnic groups, led by Aung San Suu Kyi.<sup>68</sup>

While debated in parliament, the proposal also generated feedback among critics of Aung San Suu Kyi who question whether creating a new ministry to assist Aung San Suu Kyi’s duties would be an effective use of funds.<sup>69</sup> The criticism comes in spite of the NLD’s shrinking of ministerial bloat by reducing the previous administration’s 36 ministries to 21.<sup>70</sup> Criticism was also levied at the concentration of power that would result from having matters of the ceasefire process and related reconciliation, national planning and development, and rule-of-law matters all handled by Aung San Suu Kyi.<sup>71</sup> Perhaps even more troubling to one critic in particular is what he perceived to be a rather undemocratic justification for the new ministry, which was mentioned in a remark by senior NLD official Win Htein: “Aung San Suu Kyi’s status is so high, so we decided a ministry should be created for her so that she can work effectively.”<sup>72</sup>

The move may also be construed as another attempt by the NLD to neutralize the military’s constitutionally-provided advantage in national politics, without having to tackle them head-on in a way that would eventually lead to a run-in with their veto power.<sup>73</sup> While circumventing the military’s direct strength is a tempting move, it is almost certain to earn their ire and lead to a further breakdown in trust, ultimately slowing the reform process.<sup>74</sup> In capitalizing on its victory at the polls, the NLD may already have done more harm to the important trust building process than the long term good their strategic position may have given them.<sup>75</sup> The creation of the position of State Counsellor for Aung San Suu Kyi, putting her just beneath (although most would say above) the President, not only sidestepped the constitutional bar on her holding the presidency, but also effectively dropped the military-nominated vice president down a step on the ladder of command.<sup>76</sup> This new ministry, if approved (a near certainty given the NLD’s parliamentary presence), would overlap or conflict with the Ministry of Border Affairs, a mandated military-controlled ministry, which would be expected to further antagonize the military.<sup>77</sup>

#### **V. Economic Development**

##### **A. Developments in the Legal Framework of Economic Development**

The first company to list on the Yangon Stock Exchange (“YSX”)—First Myanmar Investment Co Ltd. (“FMI”)—went public on March 25.<sup>78</sup> Since then, FMI’s stock price has fluctuated and steeply declined.<sup>79</sup> By mid-May, FMI’s stock price had declined to below the initial public offering (“IPO”) price.<sup>80</sup> On May 20, Myanmar Tailawa SEZ Holdings Ltd. (“MTSH”) became the second company listed on the YSX.<sup>81</sup> The stock price of MTSH initially increased as investor demand for MTSH shares was strong immediately following the IPO, but since then the share price has declined.<sup>82</sup> Some observers have attributed the wide price fluctuations to regulatory rules that allow the daily trading price of shares to move up to 10,000

kyat in either direction for shares trading above 41,000 kyat.<sup>83</sup> Others have noted that the large fluctuations may be due to unskilled brokers still learning the business. According to Ko Aung Thura, a financial consultant, fluctuations resulted “[w]hen customers came to sell their share to the securities companies [and] the brokers didn’t ask at what price they wanted to sell—they just sold at the lowest price.”<sup>84</sup>

Large institutional accounts like banks or insurance firms have not yet invested in YSX and therefore the investor base is still mostly made up of individual investors who do not trade in large amounts.<sup>85</sup> This has led to some concerns that the infant market is attracting only speculators and investors trading shares as a form of gambling.<sup>86</sup> Meanwhile, some have also expressed concern about companies that are selling shares informally, in breach of the Stock Exchange Law.<sup>87</sup> In an attempt to respond to these concerns, the Securities and Exchange Commission of Myanmar (“SECM”) has licensed several market education centers to educate potential retail investors about the market.<sup>88</sup> The first market education center opened in January, 2016.<sup>89</sup> The Myanmar parliament is expected to review the Myanmar Companies Act later in 2016.<sup>90</sup> If passed, the law would allow foreign investors, such as foreign institutional investors, to participate in investing in YSX-listed companies.<sup>91</sup>

The Chairman of the SECM and former deputy finance minister, Dr. Muang Thein, resigned on May 1, thirty-five days after trading started on YSX.<sup>92</sup> Reports expressed concern that investors might worry about the potential impact Dr. Maung Thein’s resignation may have on the new stock exchange and its development.<sup>93</sup> Despite Dr. Maung Thein’s insistence that his decision to resign had nothing to do with politics, some have speculated that his resignation was at least in part tied to the NLD recently taking office and his replacement as deputy finance minister.<sup>94</sup> Although the change of government meant he was replaced as deputy finance minister, there was no requirement under the Stock Exchange Law for him to stand down as SECM chair.<sup>95</sup>

## **B. Developments in Foreign Investment and Economic Development Projects**

The transition to the NLD-led government continues to impact Myanmar’s ability to attract foreign investment and development funds. On May 3, Japanese Foreign Minister Fumio Kishida met with Aung San Suu Kyi as he reportedly weighs a development assistance offering to Myanmar worth \$910 million.<sup>96</sup> According to Scot Marciel, the new U.S. ambassador to Myanmar, U.S. business delegations are expected to arrive in Myanmar in the coming weeks to assess investment opportunities.<sup>97</sup> China, Italy, Germany and Canada have also recently sent representatives to Myanmar to assess potential business prospects.<sup>98</sup> Still, a rapid influx of foreign investment is contrary to the new government’s ideal vision for the country. Aung San Suu Kyi and President Htin Kyaw have stated that they do not seek “abrupt changes” and have outlined, though vaguely, phases for Myanmar’s economic transition.<sup>99</sup> Instead, the NLD has noted that it seeks a “controlled opening” of investment to avoid asset bubbles, income inequality, corruption, and international risk exposures.<sup>100</sup> The NLD’s 2015 election manifesto notes that the party desires increased foreign direct investment, but only with the “highest international standards” that can bring “sustainable long term mutual benefits.”<sup>101</sup> The party has described five economic pillars—fiscal prudence, efficient bureaucracy, agriculture, monetary and fiscal stability, and infrastructure—as the groundwork necessary before global financial flows accelerate the nation’s growth.<sup>102</sup>

The Asian Infrastructure Investment Bank (“AIIB”), a new Chinese government-led investment bank, signed Myanmar as one of its members.<sup>103</sup> Consequently, Myanmar potentially will be part of two of China’s policy plans: “Maritime Silk Road” and “Silk Road Economic Belt,” collectively known as “Belt and Road Initiative.”<sup>104</sup> It is unclear what the bank intends to fund in Myanmar.<sup>105</sup>

The new NLD administration has not addressed whether the Myitsone dam project, which has been suspended for the past five years, will be resumed or terminated.<sup>106</sup> Chinese investors in the dam are urging the new government to resume the project.<sup>107</sup> Residents in Myitsone want President Htin Kyaw to end the project, having faced land seizures and the continued threat to the viability of the Irrawaddy watershed.<sup>108</sup> Furthermore, the benefits to Myanmar would be minimal, as approximately 90% of the power sourced from the dam would be provided to China, rather than to Myanmar.<sup>109</sup> Restarting the dam could, however, reassure the Chinese government of Myanmar’s desire to continue to advance diplomatic relations between the two countries.<sup>110</sup>

### **C. Land Seizures**

A new government committee, the Central Review Committee on Confiscated Farmlands and Other Lands, was formed in early May to address Myanmar’s complex legacy of land confiscation and the dispossession of impoverished farmers.<sup>111</sup> The committee will monitor state and regional governments’ handling of land disputes, with a goal of enabling the return of land to dispossessed farmers from government ministries, state-owned enterprises and private companies.<sup>112</sup> The committee will be chaired by Van Thio, one of Myanmar’s two vice presidents, and will include two vice chairmen—the minister of Home Affairs and the minister of Agriculture, Livestock and Irrigation. The committee’s other members include officials from the ministries of Defense, Natural Resources and Environmental Conservation, Industry, and Construction, and include the chief ministers of all states and regions and the chair of the Naypyidaw Council. In forming the new committee, the NLD noted that land rights are a priority for the new government.<sup>113</sup>

Locals living on land designated for the Thilawa Special Economic Zone are hoping that this new government committee on land confiscation will help freeze the project’s implementation until lingering disputes over compensation are resolved.<sup>114</sup> Locals in the affected area said they were not opposed to the planned zone in principle, but wanted to see it implemented lawfully.<sup>115</sup> The first phase of the project, covering some 400 hectares, was marred by complaints from locals over compensation and resettlement arrangements of displaced villagers.<sup>116</sup> Meanwhile, Aung Than, secretary of the Thilawa SEZ Management Committee, stated that the 700-hectare plans for phase two of the project were already underway, with about 100 hectares expected to be developed by the end of 2016.<sup>117</sup>

Residents of Kachin State also sent an open letter to Myanmar’s new government, signed by more than 8,000 villagers protesting the seizure of land by a Myanmar conglomerate in 2007.<sup>118</sup> Of the villagers who had land confiscated, some received an “insufficient” sum and others received no compensation whatsoever.<sup>119</sup>

The government announced plans to return 2,500 acres of confiscated land in the northwestern Sagaing region, more than 35 years after it was initially taken.<sup>120</sup> Approximately 1,200 acres of the land originally seized will not be returned to farmers but will instead be used to continue to produce seeds for farms.<sup>121</sup>

## **VI. Ethnic Violence**

### **A. Peace Talks**

On May 4, 2016, leaders of eight armed ethnic groups that signed the nationwide ceasefire agreement (“NCA”) in October 2015 met informally with Tin Myo Win, Aung San Suu Kyi’s personal physician who has been nominated as the NLD’s new lead peace envoy, in Yangon.<sup>122</sup> At the meeting, the parties discussed the peace process and proposals to reform the Union Peace Dialogue Joint Committee (“UPDJC”), a 48-member body formed in November 2015 to implement political dialogue between the government and ethnic armed groups.<sup>123</sup> The UPDJC was chaired by President’s Office Minister Aung Min in the previous military-backed government, and was tasked with conducting the political dialogue between the government and ethnic armed organizations under the terms of the NCA.<sup>124</sup> The NCA signatories also expressed their concern about the role of the Joint Monitoring Committee (“JMC”), a ceasefire watchdog that includes the eight NCA signatories and which has assumed control of political decision-making since the new NLD government came into power in April.<sup>125</sup> They proposed to Tin Myo Win that the UPDJC be given equal standing as the JMC in peace negotiations.<sup>126</sup> The groups also delivered a letter addressed to Aung San Suu Kyi, calling on her to continue the initiatives of former president Thein Sein, including preservation of the UPDJC.<sup>127</sup> It is believed that the NCA signatories wish to keep the UPDJC so as to balance the influence of the JMC, in light of the prospect of a diminishing UPDJC role under the new government.<sup>128</sup>

On May 16, 2016, Aung San Suu Kyi announced the formation of a new government peace organization called the National Reconciliation and Peace Center (“NRPC”) to fast-track preparations for the major peace conference slated for July, which Aung San Suu Kyi had first proposed in April during a meeting with the JMC (the “21<sup>st</sup> Century Panglong Conference”).<sup>129</sup> Kyaw Tint Swe, minister of the State Counsellor’s Office, will oversee the new peace organization, which replaces the Myanmar Peace Center (“MPC”) to get ready for the “21<sup>st</sup> Century Panglong Conference.”<sup>130</sup> The NRPC’s headquarters will be in Naypyidaw, and the Yangon-based MPC buildings will be used as an NRPC branch office.<sup>131</sup> Aung San Suu Kyi made the announcement during a meeting in Naypyidaw, where she also said two subcommittees would be formed—one for the armed ethnic groups that signed the NCA and another for those who did not.<sup>132</sup> The sub-committee in charge of talks with non-signatory groups is likely to hold its first meeting with the groups in June to discuss the organization of the 21<sup>st</sup> Century Panglong Conference.<sup>133</sup>

Commander-in-Chief Senior General Min Aung Hlaing, during a meeting with U.S. Secretary of State John Kerry on May 22, said that the Myanmar Army supports the government’s proposed 21<sup>st</sup> Century Panglong Conference but that continued political participation rests on the country’s stability.<sup>134</sup> The two sides discussed preparations for the 21<sup>st</sup> Century Panglong Conference, relations between the army and the new government, their respective armed forces and regional relations.<sup>135</sup> Kerry said that he would like to promote

relations between the country's respective armed forces while focusing on the peace process, national reconciliation and amending Myanmar's constitution.<sup>136</sup> Min Aung Hlaing said it was necessary for the United States to bear in mind the current situation of the nation and take into account the recent positive political trends.<sup>137</sup>

Recently, on May 27, Aung San Suu Kyi announced during a meeting with members of the UPDJC that only political parties that have parliamentary representation would be included in the UPDJC and the 21<sup>st</sup> Century Panglong Conference, thus excluding political parties without elected members of parliament from the body and from the peace conference.<sup>138</sup> 90 parties contested for seats in the National Assembly in last November's elections, but only 20 won seats.<sup>139</sup> Some political analysts believe the government's urgent push for the peace process is motivated by its wish for constitutional reform to grant rights to ethnic minority peoples and to remove the clause banning Aung San Suu Kyi from the presidency.<sup>140</sup>

## **B. Discrimination Against Religious Minorities**

Myanmar's foreign ministry has advised embassies to stop using the term "Rohingya" to describe the country's stateless Muslim minority, acceding to a demand by Buddhist nationalists.<sup>141</sup> The ministry's advisory follows protests at the U.S. Embassy over a statement of condolence issued for an accidental boat sinking on April 19 in which at least 22 people died.<sup>142</sup> The embassy referred to the victims as Rohingyas, to which Buddhist nationalist groups responded angrily.<sup>143</sup> Commander-in-Chief Senior General Min Aung Hlaing echoed the stance, saying via press conference on May 13 that Myanmar has no Rohingyas and will not accept the term.<sup>144</sup> The commander-in-chief said there were no Rohingyas, only "Bengalis," meaning people from Bangladesh.<sup>145</sup> "They were called Rohingyas under former prime minister U Nu to win their votes. It was illegal. The term Rohingya does not exist and we will not accept it," he said.<sup>146</sup>

During a meeting with visiting U.S. Secretary of State John Kerry on May 22, Aung San Suu Kyi asked to be given "enough space" to address the plight of her country's Rohingya Muslim population, as Kerry pressed Aung San Suu Kyi to promote respect for human rights.<sup>147</sup> "Emotive terms make it very difficult for us to find a peaceful and sensible resolution to our problems," Aung San Suu Kyi told reporters at a joint news conference with Kerry in Naypyitaw.<sup>148</sup> "All that we are asking is that people should be aware of the difficulties we are facing and to give us enough space to solve all our problems."<sup>149</sup> In a clear reference to the United States, she said her "well-wishers" should be helpful as she tries to work through the issue of the Rohingya.<sup>150</sup> "While we are trying to find that solution, we would like our friends to be helpful in this. That is very difficult, I'm not denying that, and if our well-wishers are not ready to cooperate with us, it will make our task that much more difficult," she said.<sup>151</sup>

During the press briefing, Aung San Suu Kyi told reporters that she did not support the use of either of the terms "Rohingya" or "Bengali."<sup>152</sup> According to Aung San Suu Kyi, the usage of the terms "Bengali" and "Rohingya" is trivial compared to actual conflicts and tensions in Rakhine.<sup>153</sup> "I don't just mean that particular usage of words. I am talking about usage of any words in every region that will divide the citizens. The reason why a solid stance against using sensitive words was required is because it makes it more difficult to come to a solution that can be accepted peacefully. The Rakhine Buddhists cannot accept the term 'Rohingya,' while the

Muslim community will also not accept ‘Bengali.’ There are so many personal and political implications for both sides,” she said.<sup>154</sup> Because there is widespread hostility towards Rohingya Muslims, including among some within the NLD and its supporters, taking up the cause of the beleaguered minority would carry a political cost for Aung San Suu Kyi.<sup>155</sup>

Kerry said he had discussed the Rohingya issue with Aung San Suu Kyi during their meeting, describing the issue as “very sensitive” and “divisive,” in Myanmar.<sup>156</sup> “I know it arouses strong passions here. At the same time, we all understand, as a matter of fact, that there is a group here in Myanmar that calls itself Rohingya,” said Kerry, adding that the United States used that term. “What’s critical to focus on is solving the problem; what’s critical to focus on is improving the situation on the ground to promote development, promote respect for human rights and to benefit all of those who live in Rakhine and throughout Myanmar,” he added.<sup>157</sup>

Some Myanmar citizens have rejected Aung San Suu Kyi’s suggestion to avoid the use of terms like “Rohingya” or “Bengali” to describe the beleaguered community.<sup>158</sup> The Rohingya community fears that they will not be considered citizens and will not enjoy the privileges of being Myanmar citizens if the term Rohingya is avoided.<sup>159</sup> “If we stop using the term, the term which belongs to our identity and our culture, our traditions, what do you call these people?” said Wai Wai Nu, a Rohingya and human rights activist for the Rohingya community.<sup>160</sup> “So it’s important to call their name and respect their fundamental rights.”<sup>161</sup> Myanmar nationalists, on the other hand, said they will defy Aung San Suu Kyi’s suggestion and continue to call the community Bengalis.<sup>162</sup> “I don’t accept using the term ‘Rohingya,’” said Zaw Win, an anti-Rohingya campaigner.<sup>163</sup> “I will continue to call those people ‘Bengali.’ If both of the terms ‘Rohingya’ and ‘Bengali’ are not to be used, the new government and Aung San Suu Kyi should inform the public which term we should use to address them. We will continue protesting around the country as long as the government doesn’t make an official statement saying the Rohingyas do not belong here.”<sup>164</sup>

### **C. Violence Against Ethnic Rebel Groups**

Despite the progress with peace talks for many armed ethnic groups, violence continued in Kachin and Shan states throughout the month of May. Myanmar Army airstrikes were reported in Kachin and Shan states in mid-May, forcing villagers to flee their homes as the government forces’ fighting with the Kachin Independence Army (“KIA”) and the Shan State Army-North (“SSA-N”) intensified.<sup>165</sup> No casualties were reported in the immediate aftermath of the strikes in Kachin State, but the residents of Maji Gung Kaba, Bum Ja and Jay Seng villages (located between the Mai Hkawn and Man Wing Gyi camps for internally displaced persons who fled fighting between the KIA and the Myanmar Army in 2015) fled their homes.<sup>166</sup> Fighting between the Myanmar Army and the KIA reignited on May 14 in the KIA-controlled area, with a Chinese logger reportedly killed in a Myanmar Army airstrike.<sup>167</sup> KIA officials claimed that the Myanmar Army had focused their attacks on civilians rather than on KIA outposts.<sup>168</sup> In Shan State, two Myanmar Army battalions and two militia groups joined forces to attack an SSA-N outpost outside Pein Hsai village, near Hsipaw Township, according to an SSA-N spokesperson.<sup>169</sup>

In addition to military-on-military fighting, however, observers have reported other atrocities in Shan State. According to Kachin and Shan community leaders, the Myanmar Army

is responsible for killing and burning the bodies of several villagers in northern Shan State.<sup>170</sup> Sai Tun Win, a state lawmaker with the Shan Nationalities League for Democracy (SNLD), said that on a recent visit to the Kyaukme area, he found at least eight burned corpses and that local Shan people had accused the Myanmar Army of the killings.<sup>171</sup> All of the bodies found belonged to ethnic Shan villagers, Sai Tun Win said.<sup>172</sup> In addition, according to a report by the Shan Human Rights Foundation (“SHRF”), Myanmar Army soldiers have been torturing and killing civilians and using them as human shields in a recent offensive against the Shan State Progress Party (“SSPP”) and SSA-N in Kyaukme Township, while displacing over 1,000 villagers.<sup>173</sup> The report claimed that that at least 56 residents from some nine villages experienced human rights violations between May 11 and May 21.<sup>174</sup> Sai Kheun Mai, the spokesperson for SHRF, said that eight of these nine villages had also endured bombing campaigns and that some villagers remain unable to return to their homes.<sup>175</sup>



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