

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

AUGUST 2020 REPORT

Summary. This report reviews the August 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

August 25 marked the three-year anniversary of the commencement of the Myanmar military's brutal campaign of ethnic cleansing against the Rohingya, involving mass killing, rape and arson, that forced over 740,000 Rohingya to flee Myanmar.¹ In November 2019, the International Criminal Court began an investigation into Myanmar's forced deportation of Rohingya and related crimes against humanity. In January 2020, the International Court of Justice imposed provisional measures on Myanmar to prevent genocide. The Myanmar government has yet to comply with these international justice measures and it has not permitted the United Nations to investigate inside the country. It also has not conducted credible criminal investigations into its own military atrocities.² Refugees have continuously expressed a desire to return to their homes in Myanmar when it is safe to do so, when they have citizenship and freedom of movement and where there is genuine accountability for atrocities. However, Myanmar has failed to make progress on any of these fronts, as the 600,000 Rohingya remaining in Myanmar's Rakhine State are subject to severe repression and violence, are confined to camps and villages with no freedom of movement and are cut off from other basic rights such as access to food, medical care, education and livelihoods.³

Nearly a year ago, the Bangladesh government blocked internet access in refugee camps, confiscated SIM cards from the refugees and instructed mobile phone carrier companies to stop selling SIM cards to the Rohingya.⁴ The internet shutdown has remained in place, despite the United Nations calling for governments to refrain from blocking internet access during the COVID-19 pandemic. Moreover, the Bangladesh government has severely restricted humanitarian services in the refugee camps during the pandemic, and without internet service, aid workers have been unable to provide services remotely. The availability of food in camps, outside of United Nations World Food Programme assistance, has been shrinking and prices rising.⁵ Nearly all of the refugees remain entirely dependent on food assistance to survive and disrupted supply chains due to COVID-19 lockdown measures are affecting availability of fresh food.⁶ As of August 17, a total of 79 COVID-19 cases had been confirmed among the refugees, with six deaths.⁷

The internet shutdown has also caused 300,000 Rohingya children to miss out on an education.⁸ Due to the COVID-19 pandemic and the resulting closure of 6,000 learning institutions in the refugee camps, the internet ban has excluded Rohingya children from remote learning.

B. Corruption

Myanmar's Bar Council—a body elected by the country's licensed lawyers—elected new members for the first time in thirty years.⁹ Since 1989, members of the Bar Council were not elected and were instead chosen by the military regime.¹⁰ Lawyers laud the new election as a step towards protecting lawyers and strengthening the country's judiciary system.¹¹

The United States blacklisted subsidiaries of the China Communications and Construction Company (“CCCC”).¹² The CCCC has submitted a bid to build the initial

infrastructure of the major “New City” project in Yangon.¹³ Mike Pompeo, United States Secretary of State, issued a statement accusing CCCC of corruption, amongst other allegations.¹⁴

C. International Community / Sanctions

On August 24, Japanese Foreign Minister Toshimitsu Motegi called for the investigation and prosecution of Tatmadaw soldiers suspected of committing war crimes against Muslims in Rakhine State to proceed “in a transparent manner based on the recommendations of the Independent Commission of Enquiry.”¹⁵ Minister Motegi also urged the government to implement the provisional measures ordered by the International Court of Justice as well as to pursue the prompt repatriation of the Rakhine Muslims living in Bangladeshi refugee camps.¹⁶ The Minister also announced that Japan will provide an additional 45 billion yen in aid in response to the coronavirus (“COVID-19”) pandemic.¹⁷

Due to the continued spread of COVID-19 in Rakhine State, the government has restricted certain activities of international organizations and non-governmental organizations.¹⁸ The restrictions ban direct contact with persons dwelling in internally displaced persons (“IDP”) camps and the residents of Rakhine State.¹⁹ As a result, distributions of food and supplies must be left with camp authorities and municipal administration staff.²⁰ Numerous organizations have suspended activities in Rakhine State after staff members contracted COVID-19.²¹ The government restrictions and suspension of organizations’ activities have prompted fears for the survival of Rohingya and Rakhine State citizens who reside in IDP camps.²²

II. Civil and Political Rights

A. Freedom of Speech, Assembly and Association

Two pastors and one of their followers who organized religious gatherings linked to Myanmar’s largest cluster of COVID-19 transmissions, including two deaths, have been sentenced to three months in prison with hard labor for violating the country’s COVID-19 restrictions.²³ Christian pastors Saw Kwaeh Wah and Saw David Lah, a Canadian citizen, and two of their followers, Wai Tun and Saw Raygandi, were sued by the Yangon regional government under the Natural Disaster Management Law on April 14 for violating regulations aimed at curbing the spread of the coronavirus.²⁴ Myanmar has banned mass gatherings since March, but the two pastors organized religious gatherings in Yangon’s Insein and Mayangone townships in late March and early April. The gatherings are linked to at least 80 confirmed cases of COVID-19, making them the largest cluster found so far in Myanmar.

Three people were detained and charged under the Peaceful Assembly and Peaceful Procession Law for holding an event to mark the 70th Karen Martyrs’ Day without permission from local authorities.²⁵ Authorities in Yangon Region’s Kyauktada Township denied a request by Karen organizers for permission to hold an event, citing COVID-19 restrictions.²⁶ Organizers went ahead with the commemoration near Yangon’s Maha Bandula Park, including putting in place COVID-19 preventative measures.²⁷ Groups were limited to 15 people and all were required to wear COVID-19 preventative gear including facemasks, gloves and surgical caps. Several dozen people attended the commemoration. Kyauktada police arrested event organizer Sa Thein Zaw Min and two supporters of the event, Saw Hser Kwar Lar and Sein Htwe. Under

Article 20, organizers of a gathering can face a maximum sentence of one month in prison and a fine of 10,000 kyats (US\$7.31) for failing to properly inform township authorities about a gathering, including details on the kind of activities involved, slogans, speeches, places and times.²⁸ Saw Kyaw Lin, one of organizers of the 70th Karen Martyrs' Day event, told *The Irrawaddy* that, "This is unfair to our ethnic group. This is a kind of discrimination."

A Buddhist monk facing a lawsuit filed by a military officer in Mandalay was granted bail.²⁹ Lieutenant Colonel Thant Zaw Oo filed an additional lawsuit against Sayadaw Sein Ti Ta under Article 500 of the Penal Code for allegedly defaming the military in Facebook posts on March 18, 2019. Sein Ti Ta posted on Facebook that military leaders were using force for their benefit and failing to provide security for the country, undermining the dignity of the military. The court's spokeswoman, Kyipyar Sint, told journalists that bail of 3 million kyats (US\$2,200) for the new lawsuit was granted. The monk is also facing a lawsuit under Article 66(d) of the Telecommunications Act.

A Union Solidarity and Development Party lawmaker has called on the government's Social Media Monitoring Team ("SMMT") to explain its actions at the national legislature.³⁰ The SMMT was formed by the President's Office in February 2018 to monitor online efforts to destabilize the country. Parliament in March 2018 approved a budget of more than 6.4 billion kyats (US\$4.7 million) from the special presidential fund. A former lieutenant general, Thaug Aye, asked for the SMMT to explain which regulations it applies and what action it has taken against perpetrators. The opposition politician also urged the government to monitor the body to ensure it is working within legal boundaries. Far from working on its stated objective of curbing hate speech and fabricated reports on social media, the body only targeted the opposition, Thaug Aye claimed. "As critical posts about the shortcomings of the government and ruling party have been removed with the excuse that they do not meet community standards, [observers] have raised questions about if Facebook is being politically manipulated in favor of the government," said Thaug Aye.

Amendments to the controversial Privacy Law approved by the Union Parliament on August 26 will end abuse of the legislation by individuals targeting each other with lawsuits and by authorities looking to muzzle their critics, according to Parliament's Joint Bill Committee.³¹ The legislation was enacted in March 2017 to provide legal protection for ordinary citizens, allowing them to file lawsuits against authorities, including members of the state security apparatus, if they are being stalked or otherwise experiencing intrusions on their privacy. The law prohibits unwarranted intrusions into households to make arrests or inspections, as well as surveillance of individuals and their private communications in a manner that harms their privacy or dignity, absent the approval of the President or Union ministers. However, the most controversial statute, Article 8(f), which criminalizes defamation, was widely used to stifle criticism of the state, state leaders and individuals by authorities over the past three years. According to the Joint Bill Committee, more than 900 lawsuits have been filed under the law, both by citizens against each other and by authorities against their critics. "That was not the law's original aim. We enacted it to protect citizens from power abuses by authorities, including lawmakers, and from being stalked or subject to other intrusive behavior by military intelligence or special branch officers," said committee secretary and National League for Democracy

lawmaker Dr. Myat Nyana Soe. Free speech advocates had long called for a review of the law and a repeal of Article 8(f).

Soe Thein, permanent secretary of Transport and Communications, said the government will not take action against people who post hate speech and fake news online and will only ask social media companies such as Facebook to take down sites that violate specific laws, such as pornography and gambling.³² “Regarding hate speech, Facebook will act according to its policies,” he said. “It removes posts that are not in line with its community standards. We cannot tell it to ban a page.”

Internet service reportedly resumed in seven townships in northern Rakhine State and southern Chin State’s Paletwa Township in early August after an internet blackout lasting more than a year, but local residents say internet connections are still unavailable.³³ In June 2019, the Myanmar government cut off internet access in Ponnagyun, Rathedaung, Mrauk-U, Kyauktaw, Minbya, Myebon, Maungdaw and Buthidaung townships in Rakhine and Paletwa in Chin State, citing security concerns over the fighting between the Myanmar military and the Arakan Army (“AA”) in the area.³⁴ According to the Ministry of Transport and Communications, all telecom operators including MPT, Telenor, Ooredoo and Mytel have resumed mobile internet services for the area. However, restrictions on 3G and 4G services will continue until the end of October.³⁵

Myanmar’s Union Election Commission (“UEC”) has said that any attempt to call for a boycott of the country’s November election violates election law, according to commission member Myint Naing.³⁶ Some Myanmar voters have recently called on their fellow citizens not to vote in the general election, which is scheduled for Nov. 8, complaining that the National League for Democracy government has been unable to fulfill the expectations of voters who supported the party in the 2015 general election. In recent weeks, the calls have gradually grown into a “No Vote” campaign, prompting a debate on social media over the legality of urging people not to cast votes in the election. According to the UEC, encouraging others not to vote in the election violates Articles 57, 58 (b) and (d), 60 and 61 (b) and (c) of the Election Law. “To vote or not to vote is the right of an individual, but encouraging others not to vote violates those articles,” said Myint Naing. All the articles carry a possible sentence of one year in prison and a fine of 100,000 kyats (US\$72.90).

B. Freedom of the Press and Censorship

There have been no material updates since the previous report.

III. Economic Development

A. Economic Development—Legal Framework, Foreign Investment

Myanmar Investment Commission recently approved seven investment enterprises, according to the Directorate of Investment and Company Administration (“DICA”).³⁷ The enterprises are expected to create over 3,662 jobs. The permitted enterprises are engaged in Myanmar’s manufacturing, property, hotel and tourism and other services sectors.

Mitsubishi Motors is considering building vehicles in Myanmar, as the Japanese automaker deepens its commitment to Southeast Asia, according to the company's CEO.³⁸ The Japanese automaker already has production bases in Vietnam, Thailand, Indonesia and the Philippines.

Singapore-based Sembcorp Development is planning its first integrated urban development in Myanmar.³⁹ Sembcorp Development's joint venture company, Myanmar Singapore (Hlegu) Industrial Park JV, will enter into an agreement with the Yangon Region Government to lease 436 hectares of land in the Hlegu Township for industrial, residential, and commercial purposes. This comes after the Myanmar Investment Commission issued a permit approving the development of the Myanmar Singapore Industrial Park.

The DICA says Myanmar's livestock and fisheries sectors have attracted four foreign investment projects and one domestic business so far in the current financial year 2019-2020, according to a report by the Global New Light of Myanmar.⁴⁰ According to the report, the businesses brought in around US\$30 million of new investment, including the expansion of investments by existing joint ventures.

Construction of the Korea-Myanmar Industrial Complex, the first government-level project between Korea and Myanmar, will commence in December despite the COVID-19 pandemic, said the general manager of Korea Land and Housing Corporation's representative office in Myanmar.⁴¹ The project is estimated to generate US\$4.7 billion in investment and more than half a million jobs. The tender to develop the project will be called in October and the industrial zone is expected to be completed in 2022.

B. Economic Development—Infrastructure, Major Projects

South Korea's largest trading company, POSCO International Corporation, submitted a proposal to construct a natural gas-fired power plant in Shwedaung, Bago Region.⁴² Electricity and Energy Deputy Minister Khin Maung Win and POSCO representatives met in Naypyitaw but the details of the project are yet to be announced. The company is the main operator of the Shwe project, the largest natural gas production project in Myanmar.⁴³

Magwe Region is developing five Octane 92 mini-refineries which will be able to refine up to 30,000 gallons of oil per day once they begin operation. The project is being carried out across 200 acres of land five miles from Pakokku.⁴⁴ Sunny Global Manufacturing Co. Ltd, Power 95, Petro China, Asia Energy and Myanma Mandaing Company are among the companies that won the tender to build the five refineries.⁴⁵

The Pathein Bridge, which directly connects Pathein's Mahabanduola Road with the west bank of Pathein River in Ayeyarwady Region, will officially open for traffic in September.⁴⁶ The 725-meter long bridge, which was constructed to accommodate rising traffic as a result of housing expansion by the river, was completed in July and stress tests were conducted the week of August 17.⁴⁷ Passenger vehicles will be able to use the bridge between 5 a.m. and 7 a.m. before the official opening in September.⁴⁸

Myanmar Chemical & Machinery Co., Ltd is planning to invest in an oil refinery in the Dawei Special Economic Zone, Tanintharyi and has sought government permission to start a feasibility study and other preliminary research at the area.⁴⁹ The project will have the capacity to process 8 million metric tons per annum. “[The Myanmar company] will probably cooperate with foreign companies because it is impossible to implement the whole project by a Myanmar company alone,” said the secretary of the Dawei SEZ Management Committee.⁵⁰

C. Land Seizure

The High Court of Myanmar’s Kayah State rejected an appeal by the military seeking harsher punishments against 21 ethnic Karennis who were sentenced to imprisonment or fined for trespassing and damaging military-owned farmland.⁵¹ The group of 21—comprising 18 farmers and three activists from the Karenni State Farmers Union (“KSFU”)—were released from prison along with 20 other Karenni farmers in early March upon completing their prison terms and paying fines. The Myanmar military had appealed to the Kayah State High Court in June asking to increase the punishment. In May 2019, artillery and infantry battalions started building fences on land in Loikaw and Demoso, despite never having made use of the land, ownership of which was seized from farmers in 1990, according to the KSFU. Local farmers have worked the land for about 50 years.

IV. Peace Talks and Ethnic Violence

A. Ethnic Violence

The Myanmar military extended its truce in the country until the end of September—once again excluding Rakhine State, this time on the basis that the truce does not cover areas where state-declared terrorist groups are operating.⁵² The Tatmadaw said it would continue working to contain COVID-19 and to achieve peace by implementing Union Accord Part III, which was signed at the fourth session of the 21st Century Panglong Union Peace Conference. The government declared the AA, which is involved in heavy ongoing military engagements with the Tatmadaw in northern Rakhine State, to be a terrorist group in March. This followed the designation of the Arakan Rohingya Salvation Army as a terrorist group in August 2017 following its attacks on police outposts. The attacks triggered military operations that led to a mass exodus of Rohingya into neighboring Bangladesh.

The Myanmar military has said it will investigate the deaths of three ethnic Ta’ang civilians who died while being detained by soldiers in Myanmar’s northern Shan State and hold those responsible to account.⁵³ The move came two days after Radio Free Asia published video and written accounts that the bodies had been discovered in makeshift graves.⁵⁴ The three men disappeared at the end of May after being detained by Myanmar soldiers following a clash with the Ta’ang National Liberation Army (“TNLA”).⁵⁵ The TNLA and family members of the deceased have demanded that the alleged perpetrators of the killings be brought to justice.⁵⁶

B. Peace Talks

The fourth session of Myanmar’s peace conference came to an end on August 21 with representatives of the government, military, ethnic armed organizations and political parties

agreeing on principles and a plan to move the country's stalled peace process forward under a new government beyond 2020.⁵⁷ The Union Accord part III focuses on solving misunderstandings surrounding the Nationwide Ceasefire Agreement ("NCA") and its implementation, and laying out guiding principles for what kind of union Myanmar will be. Some of the principles guarantee that the building of a democratic federal union will be based on political dialogue. They also ensure equal rights without discrimination based on race, religion, culture or gender. One of the principles is that all citizens shall collectively build a union reflecting "union identity," which respects and recognizes the histories, traditions, literatures, cultures and identities of the various nationalities residing in Myanmar. In a note, "union identity" is defined as having a single union possessing unity and solidarity. Also agreed was a plan that lays out a step-by-step process for implementing a democratic federal union-building process after 2020.⁵⁸ Aung San Suu Kyi dubbed it "a new plan for building a democratic federal union beyond 2020" in her closing remarks. However, the negotiators failed to reach a deal on allowing ethnic armed groups to draft their own constitutions.⁵⁹ Aung San Suu Kyi also outlined three major tasks for Myanmar to achieve success in the national peace process after the 2020 elections, including signing ceasefire deals with the seven ethnic armed groups that have not signed the NCA, amending the Constitution to align with the accords reached in the peace talks and carrying out the accords, particularly those related to the country's democratic transition and the building of a federal union.⁶⁰

Although a senior Tatmadaw spokesperson said the Tatmadaw sees better prospects for the peace process after the signing of the Union Accord part III,⁶¹ Myanmar's army chief blamed the government and ethnic armed organizations ("EAOs") for the failure of the peace process, accusing them of being dishonest and failing to strictly adhere to basic principles, while defending the armed forces' role as protector of the country.⁶² Myanmar "needs to assess why we cannot attain peace today," said the commander-in-chief of defense services, Senior General Min Aung Hlaing, during his address to the fourth session of the 21st Century Panglong Union Peace Conference. He said peace had yet to be attained due to the dishonest attitude of stakeholders, attempts to link the peace process with other processes and stakeholders' failure to strictly adhere to the underlying principles of the peace process. The army chief also criticized the National League for Democracy-led government for taking the role of mediator between the Tatmadaw and the EAOs, saying the government was acting as if it were a neutral peacemaker. "The EAOs have opposed the Union and successive governments. If one studies history objectively, it can be seen that the Tatmadaw has protected the Union and successive governments," Senior General Min Aung Hlaing said. He added that "based on its experience, the Tatmadaw is taking measures to prevent what should not happen from happening, and to pave the way for what should happen to happen."

The Myanmar government did not invite the AA, which it has designated as a terrorist organization, to the 21st Century Panglong Union Peace Conference, though it invited the seven other ethnic armed organizations that have opted out of signing the NCA with the government.⁶³ The Myanmar government invited two leaders each from the seven NCA non-signatory groups. "We will invite seven non-signatories. But there are legal restrictions against inviting certain organizations, and we will not be able to invite them," said Zaw Htay, who is also the director-general of the State Counselor's Office.⁶⁴ The Tatmadaw and government, however, discussed

how to pursue peace talks with the AA.⁶⁵ The seven non-signatory groups invited to the conference did not attend because the AA was excluded.⁶⁶

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