

Country Updates on Human Rights and Democracy 2019

Myanmar/Burma

1. Overview of the human rights and democracy situation: As Myanmar enters the electoral cycle with a view to the second elections of the political transition in November 2020, its democratic space continued to shrink, notwithstanding the emergence of new political parties. 631 people were serving sentences or awaiting trial in politically motivated cases at the end of 2019³⁸. Myanmar slipped to 138 on the World Press Freedom Index, down one spot from 2018. While the number of imprisoned journalists went down to one in 2019³⁹, the use of intimidation and threats of violence against journalists, human rights defenders and political activists was extensive⁴⁰. In particular, the military and the government made systematic use of defamation laws (section 66(d) of the Telecommunications Law and section 505 of the penal code) to stifle criticism.

A positive development was the release in May 2019 of the two Reuters journalists who exposed the killings of 10 Rohingya men during military operations in northern Rakhine State in September 2017, after more than 500 days in prison. However, it was subsequently revealed that the soldiers jailed for the killings had also been released already at the end of the 2018 after serving less than a year in prison.

In January 2019, the ruling NLD Party established a Joint Constitutional Amendment Committee. On 15 July, the committee presented 3,765 recommendations to the parliament, and has since worked towards a consolidated Constitutional Amendment Bill. Military MPs refused to submit any proposals in the committee.

The Tatmadaw's unilateral ceasefire in its five regional commands, announced in December 2018, was extended three times during 2019. However, clashes between the Tatmadaw and various ethnic armed organisations escalated in 2019. This resulted in new population displacements, particularly in northern Shan and Rakhine States. A number of organisations alleged human rights abuses by both the Tatmadaw and ethnic armed groups in northern Shan State^{41 42}. UNICEF recorded 16 children killed and 36 seriously injured across the country in 2019 by landmines and explosive remnants of war⁴³.

The deteriorating situation in Rakhine State, due to escalating clashes between the Arakan Army and the Tatmadaw, is of particular concern. In 2019 fighting spread to nine townships in Rakhine and to Paletwa township in Chin State, displacing 40,000 people. On 21 June, the government suspended internet services and introduced a curfew in the townships affected by the conflict. The Internet shutdown was partially lifted in four townships in Rakhine State and in Chin State in September 2019.

³⁸ <https://aappb.org/>

³⁹ <https://cpj.org/asia/myanmar/>

⁴⁰ Freedom House and Free Expression Myanmar;

<https://www.freedomonthenet.org/country/myanmar/freedom-on-the-net/2019>

⁴¹ 'Caught in the Middle: Abuses Against Civilians Amid Conflict in Myanmar's Northern Shan State'. Amnesty International, October 2019, <https://www.amnesty.org/en/documents/asa16/1142/2019/en/>

⁴² <https://kachinwomen.com/no-justice-for-ongoing-burma-army-crimes-in-northern-shan-state-briefing-paper-by-the-kachin-womens-association-thailand/?fbclid=IwAR1zSE1-4ipxIQXISsq9fS-Pz2e2QAzmihfYq7D265k4FMzYI7W0CesTJJ4>

⁴³ <https://www.unicef.org/myanmar/press-releases/unicef-statement-death-four-children-due-explosion-rakhine-state-myanmar>

Further human rights abuses were reported in Rakhine State⁴⁴, including killing of civilians, arbitrary arrests, torture and forced labour. Schools and cultural heritage sites (notably the ancient temples in Mrauk-U) were appropriated by the Tatmadaw for military purposes. Abuses committed by the Arakan Army were also recorded, including kidnapping. Citing increasing security concerns, in January 2019 the Rakhine State Government further restricted aid providers to urban centers only. The procedure for obtaining travel authorisation has become lengthier and more unpredictable.

In July and December 2019, Myanmar sent two delegations to Cox's Bazaar, Bangladesh, accompanied by officials from the ASEAN Secretariat and the AHA Center, to facilitate the return of Rohingya refugees. However, repatriation attempts in July and August failed, as Myanmar is yet to create conditions conducive for voluntary, dignified and sustainable returns. At the same time, around 500 refugees reportedly returned to Rakhine State on their own volition during the year. There are reports of Rohingya being detained for attempting to illegally leave Myanmar, and of Rohingya (including children) being arrested, charged and imprisoned for travelling without correct documentation⁴⁵.

In November 2019, the government of Myanmar released the National Camp Closure Strategy that aims to find durable solutions for internally displaced persons (IDPs) in Kachin, Kayin, Rakhine and Shan States. The Strategy represents a positive – if belated – step towards sustainable return of IDPs. However, it presents several elements of concern, and remains to be detailed and implemented.

As regards accountability, the mandate of Myanmar's Independent Commission of Enquiry (ICoE) to investigate the events in August-September 2017 in Rakhine, was extended. Until the end of 2019, the ICoE did not interview any refugee in Bangladesh and was yet to release its final report.

In March, the Tatmadaw established its own investigation court to scrutinise incidents reported by the UN Human Rights Council's Fact Finding Mission (UNFFM) and by international human rights organisations. On 26 November, the Tatmadaw began court martial proceedings for troops accused of violating military regulations in Gu Dar Pyin.

On 11 November, The Gambia instituted proceedings against Myanmar and asked provisional measures for violations of the Genocide Convention, in relation to the treatment of the Rohingya and the 2017 events. On 10 December, the initial public hearing was held.

In February 2019, Myanmar's Parliament adopted a new Child rights' law. The law is largely in line with the UN Convention on the Rights of the Child, and provides all children born Myanmar the right to birth registration. However, it falls short of recognising citizenship rights.

In October 2019, following an internal capacity assessment, the Myanmar National Human Rights Commission released a new Strategic Plan and its 2020 Operational Plan. Although an improvement, a number of weaknesses remain, especially in relation to the appointment of Commissioners.

⁴⁴ 'No One Can Protect Us: War Crimes and Abuses in Myanmar's Rakhine State'

⁴⁵ Minors are sent to vocational training schools and/ or rehabilitation centres.

2. EU action – key focus areas: The four general priority areas for EU action on human rights in Myanmar remain: i) non-discrimination; ii) fundamental freedoms; iii) economic and social rights and iv) strengthening democracy and the rule of law. The EU's main concerns include: accountability for crimes under international law; continued institutionalised discrimination against the Rohingya; respect of civil and political rights, notably freedom of expression, media, association and assembly, including in the upcoming 2020 elections. Access to basic services (education and health care) and livelihoods, freedom of movement and elimination of statelessness and access to citizenship remain concerns. The EU also repeated calls for unfettered humanitarian access to conflict affected populations.

3. EU bilateral political engagement: Human rights remained a priority in EU's political dialogue with Myanmar. The EU continued to remind Myanmar of its obligations under the 'Everything But Arms' (EBA) trade-preference scheme. A monitoring mission to assess the country's compliance with fundamental human rights and labour laws and standards took place in February 2019. The first EU-Myanmar Senior Officials Meeting (SOM) was held in Brussels on 16 May 2019⁴⁶. The EU Special Representative for Human Rights led the fifth EU-Myanmar human rights dialogue in Naypyidaw on 14 June 2019. During its education policy dialogue, the EU advocated for non-discriminatory access to education, especially in Rakhine State, and for the rolling out of the Myanmar curricula for the refugees in Cox's Bazaar.

In April 2019, the EU Foreign Affairs Council extended for another year its restrictive measures on Myanmar and expanded the list of individuals subjected to travel ban and asset freeze⁴⁷. The EU keeps the restrictive measures under constant review.

The former Chief Observer of the EU Election Observation Mission (EOM) in 2015 returned to Myanmar in April 2019 to review progress on electoral reform. In October 2019, the Chairman of the Union Election Commission invited the EU to deploy another EOM for the general elections in 2020. The EU has been supporting technical assistance to the Union Election Commission and, more widely, to the democratic processes.

In coordination with the EU Member States, the EU delegation attended court hearings of human rights defenders and journalists, and monitored around 30 cases. Specific cases were raised with the Myanmar Government.

4. EU financial engagement: In 2019, a number of human rights, good governance, women's empowerment, labour rights, access to justice, police reform, and democracy-related projects were financed. This included support to human rights defenders, civil society organisations, women, ethnic minority communities, along with reform of the police and justice sector. A project to strengthen the child protection system started. Its operation was affected by the new Child Rights law, whereby children under 18 cannot be sentenced to prison; this resulted in large numbers of minors released from prison, thus overstressing of the capacities of training schools. Engagement on the shrinking space for civil society in the country, and on land issues in Kachin state was increased.

Two projects supporting freedom of speech also began in 2019. The first supports mitigation

⁴⁶ https://eeas.europa.eu/headquarters/headquarters-homepage/62548/eu-and-myanmar-hold-their-first-senior-officials'-meeting_en

⁴⁷ <https://www.consilium.europa.eu/en/press/press-releases/2019/06/05/declaration-by-the-high-representative-on-behalf-of-the-eu-on-the-alignment-of-certain-countries-concerning-restrictive-measures-against-myanmar-burma/>

of online hate speech and social media-induced violence. The second focuses on the protection of journalists and content producers by training and building capacity of the police and military, law and policy makers.

The Rights4All project, aimed at empowering human rights defenders and civil society organisations to promote and protect the human rights of the most vulnerable groups, was completed at the end of 2019. The first phase of the MyJustice programme was completed and a second phase (EUR 20 million) is to begin in January 2020. MyJustice supports awareness of legal rights, access to justice, and policy reforms. The MyPol project, which aims to modernise the Myanmar Police Force by applying international best practices and respect for human rights, continued in 2019. In December 2019, a memorandum of understanding was signed with the parliament, paving the way for closer activities.

EU support for electoral reform continued with the first full year of the implementation of the phase II of the STEP Democracy project (2018-2021). A focus area is on working with the Union Election Commission, CSOs and political parties, and on the implementation of the recommendations of the EU Election Observation Mission in 2015.

The EU provided support to UNFPA's 'Women and Girls' First' programme, which focuses on gender-based violence in conflict areas, and to UN Women-ILO 'Safe and Fair' regional migration project.

5. Multilateral context: The adoption of the Child Rights' law allowed Myanmar to ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2019. In November 2019, Myanmar's Parliament also ratified ILO Convention 138. Myanmar continued to cooperate with the UN Secretary General's Special Envoy, but regrettably continued to refuse cooperation with the UN Special Rapporteur on Human Rights in Myanmar. The country remained on the agenda of the UN Security Council and of the Governing Body of the ILO⁴⁸.

The mandate of the UN Independent International Fact-Finding Mission (IIFFM) ended in September 2019 and its collected evidence was handed over to the UN Independent Investigative Mechanism for Myanmar (IIMM). During 2019, the FFM published three reports (on the Tatmadaw's economic interests, on the Tatmadaw's use of sexual and gender-based violence and its final report). The final report, released on 16 September, concluded that due to lack of accountability for the perpetrators, as well as consistent impunity in Myanmar, there is a 'serious risk that genocidal actions may occur or recur'.

During 2019, Myanmar was subject to three international judicial processes for its treatment of its Rohingya population. The Gambia instituted proceedings against Myanmar before the International Court of Justice (ICJ), alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide. In Argentina, a group of NGOs, submitted a lawsuit under the principle of 'universal jurisdiction', alleging 'existential threat' to the Rohingya by the Myanmar Government. The International Criminal Court's (ICC) Pre-Trial Chamber authorised the ICC prosecutor to investigate alleged crimes within the ICC's jurisdiction in Bangladesh.

In March 2019, the EU tabled a resolution on Myanmar in the UN Human Rights Council,

⁴⁸ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_722185.pdf

extending the mandate of the UN Special Rapporteur and in September 2019, it jointly sponsored another resolution with the Organisation of Islamic Cooperation (OIC) in the Human Rights Council, as well as in the UN General Assembly Third Committee.