



# Burma's Political Prisoners and U.S. Sanctions

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## Summary

The release of Burma's political prisoners has a central role in U.S. policy and Burma's political future. Many of the sanctions that the U.S. began imposing on Burma in the late 1980s were implemented after Burma's ruling military junta suppressed protests and detained many political prisoners. In addition, the removal of many of the existing U.S. sanctions requires the release of all political prisoners in Burma.

Burma's President Thein Sein pledged during his July 2013 trip to the United Kingdom to release all the political prisoners in his country by the end of the year. Since his announcement, he has granted amnesty on three occasions to a total of 198 people. Different sources provide varying estimates on the number of political prisoners that remain in detention. In addition, according to some observers, the Thein Sein government is using old and new laws to arrest and convict protesters, dissidents, and human rights advocates, creating dozens of new political prisoners, raising doubts about the President's ability to fulfil his pledge.

Hopes for a democratic government in Burma—as well as national reconciliation—would depend on the release of prisoners associated with the country's ethnic groups. Several ethnic-based political parties have stated they will not participate in parliamentary elections until their members are released from custody. Also, prospects for stable ceasefires and lasting peace with various ethnic-based militias may require the release of their members currently in detention.

Estimates of how many political prisoners are being detained in Burma vary. According to the Assistance Association for Political Prisoners (Burma), or AAPP(B), a non-profit organization dedicated to identifying and locating political prisoners in Burma, the Burmese government may be holding over 200 political prisoners in its prisons and labor camps scattered across the country. President Thein Sein has created the Political Prisoners Scrutiny Committee to identify possible political prisoners to be considered for amnesty or pardon.

Differences in the estimates of the number of political prisoners in Burma can be attributed to two main factors. First, Burma's prison and judicial system is not transparent, making it difficult to obtain accurate information. Second, there is no consensus on the definition of a "political prisoner." Some limit the definition of "political prisoner" to "prisoners of conscience" (people who are detained for peaceful political opposition). One of the more critical issues in defining political prisoners is whether or not to include individuals who have been detained for their alleged association with Burma's ethnic-based militias or their associated political parties.

The State Department is actively discussing the political prisoner issue—including the definition of political prisoners—with the Burmese government, opposition political parties, and representatives of some ethnic groups. In these discussions, U.S. officials emphasize the importance of the release of all political prisoners for the further easing or removal of U.S. sanctions on Burma.

The status of Burma's political prisoners is likely to figure prominently in any congressional consideration of U.S. policy in Burma. Congress may choose to examine the political prisoner issue in Burma either separately or as part of a broader review of U.S. policy towards Burma. Congress may also consider taking up legislation—on its own or in response to a request from the Obama Administration—to amend, modify, or remove some of the existing sanctions on Burma.

This report will be updated as circumstances require.

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## Introduction

On March 30, 2011, Burma's ruling military junta, the State Peace and Development Council (SPDC), formally transferred power to a quasi-civilian parliament, ending 50 years of military rule.<sup>1</sup> The new Burmese government, headed by President Thein Sein, soon embarked on a series of political reforms ostensibly designed to continue the nation's transformation to an elected democracy under the rule of law.<sup>2</sup> These changes have led the Obama Administration to waive many of the sanctions on Burma, and initiated discussion in Congress regarding if and when to consider the possible removal of other sanctions currently being imposed on Burma.<sup>3</sup>

No single issue may play a more pivotal role in Burma's possible transition to a free and democratic country than the release of its political prisoners. Several opposition parties have stated that they will not participate in parliamentary elections or hold discussions on national reconciliation until their members are unconditionally freed from detention. The status of Burma's political prisoners is also a critical issue for possible changes in U.S. policy. The full removal of many of the U.S. sanctions on Burma is contingent on certain conditions, including the release of all political prisoners.

Achieving a common understanding of Burma's political prisoner problem is critical for that country's future political and economic development. U.S. economic sanctions that may limit Burma's economic performance will likely remain in place until all political prisoners have been freed. Fully free and fair elections cannot be held in Burma without the participation of political parties who await the release from custody of their members. Similarly, important ethnic groups are unlikely to discuss terms for national reconciliation until their members are freed from jail.

At present, there is no consensus on how many political prisoners there are in Burma. Most estimates put the figure between 100 and 300. In addition, reports of new political prisoners being arrested and detained periodically appear in the press. One major reason for the discrepancy is the lack of transparency of the records of Burma's 42 prisons and 109 labor camps. Another major cause for the variation in the estimates is the use of different definitions of whom to include as political prisoners.

The importance of political prisoners for U.S. policy has been underlined by the U.S. response to past prisoner releases. During his brief visit to Burma on November 19, 2012—hours after meeting with President Thein Sein and the release of 51 political prisoners—President Obama mentioned the continued detention of “prisoners of conscience” in his speech at the University of Yangon.<sup>4</sup> Following the January 2, 2012, prisoner release, the State Department issued a press statement in honor of Burma's 64<sup>th</sup> independence day (January 4) repeating its “call for the release of all political prisoners, a halt to hostilities in ethnic areas and an inclusive dialogue with

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<sup>1</sup> The formal announcement—Notification No. 5/2011—was published in the government-run newspaper, the *New Light of Myanmar*, on March 31, 2011.

<sup>2</sup> For more about Burma's transition from military rule and its recent political reforms, see CRS Report R41971, *U.S. Policy Towards Burma: Issues for the 112<sup>th</sup> Congress*, by Michael F. Martin and Derek E. Mix, and CRS Report R43035, *U.S. Policy Towards Burma: Issues for the 113<sup>th</sup> Congress*, by Michael F. Martin.

<sup>3</sup> For a summary of the existing sanctions on Burma and their history, see CRS Report R42939, *U.S. Sanctions on Burma: Issues for the 113<sup>th</sup> Congress*, by Michael F. Martin.

<sup>4</sup> Office of the Press Secretary, The White House, “Remarks by President Obama at the University of Yangon,” press release, November 19, 2012.

ethnic minorities toward national reconciliation, space for all political parties to freely compete in April 1 by-elections, and the full implementation of legislation to protect universal freedoms of expression, assembly, and association.”<sup>5</sup>

State Department officials have held talks with senior officials of the Burmese government, representatives of Burma’s leading opposition parties, and major ethnic groups in an effort to move towards a shared understanding of the scope of the political prisoner situation in Burma. Despite past public denials by the Burmese government that it is detaining political prisoners, senior Burmese officials have reportedly acknowledged the existence of political prisoners in meetings with U.S. officials.

On February 6, 2013, President Thein Sein announced plans to form a committee “to scrutinize the remaining political prisoners serving their terms in prisons throughout the country so as to grant them liberty.”<sup>6</sup> The original 16-member Political Prisoners Scrutiny Committee was chaired by Union Minister Soe Thein, and included representatives from opposition groups with a history of supporting the release of political prisoners, such as the 1988 Generation Students Group, AAPP(B), and the National League for Democracy (NLD). The committee has met several times, but significant differences emerged regarding the definition to be used and, by extension, the estimates of the number of political prisoners in Burma. On May 8, 2013, President Thein Sein reconstituted the committee with 19 members and Soe Thein remaining as chair. The committee reportedly continues to disagree about the proper definition and number of political prisoners in detention in Burma.

In July 2013, President Thein Sein traveled to the United Kingdom and France. While in the United Kingdom, he gave a speech at Chatham House in London on July 15, in which he raised the issue of political prisoners, stating:

Thousands of prisoners have been freed. A special committee, comprised in part of former prisoners, is working diligently to ensure that no one remains in prison due to his or her political beliefs or actions. We are reviewing all cases. I guarantee to you that by the end of this year there will be no prisoners of conscience in Myanmar.<sup>7</sup>

Since making this pledge, President Thein Sein has granted amnesty to a total of 169 political prisoners on three separate occasions. However, the Thein Sein government has also been detaining and convicting a variety of protesters, dissidents, and human rights advocates for alleged violations of Section 505 of Burma’s Penal Code and/or Section 18 of the Peaceful Assembly and Peaceful Procession Law of 2011, adding dozens of new political prisoners to Burma’s prisons. As a consequence, some observers question President Thein Sein’s commitment and ability to fulfill his promise to release all “prisoners of conscience” by the end of the year.

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<sup>5</sup> Department of State, “Burma’s Independence Day,” press release, January 3, 2012.

<sup>6</sup> President Office, Republic of the Union of Myanmar, “Committee to be Formed to Grant Liberty to Remaining Political Prisoners,” press release, February 6, 2013.

<sup>7</sup> Thein Sein, “Myanmar’s Complex Transformation: Prospects and Challenges,” speech given at Chatham House, London, United Kingdom, July 15, 2013.

## Defining Political Prisoners

As noted above, one major factor complicating the determination of the number of political prisoners in Burma is a lack of agreement on the definition of a political prisoner. While the concept of political prisoner—a person who is detained by authorities principally for her or his political opinions rather than the commission of a crime—has a long history, there is no international standard for defining political prisoners. Prisoners detained for political reasons are afforded some protection by international agreements such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The State Department has a general definition of political prisoner that it uses, but the Thein Sein government and other interested parties have their own, differing definitions.

For Burma, one of the more critical issues in defining political prisoners is whether or not to include individuals who have been detained for their alleged association with Burma's ethnic-based militias or their associated political parties. Because these militias have been periodically involved in armed conflict with the Burmese military, some analysts exclude detainees allegedly associated with the militias from their estimates of Burma's political prisoners. In addition, certain groups being detained or subjected to serious oppression by the Thein Sein government or officials may also be considered "political prisoners."

President Thein Sein has consistently confined his definition to only include "prisoners of conscience," and has generally used that phrase when discussing the issue. He has repeatedly stated that individuals who have committed criminal acts are not considered "prisoners of conscience," and are expected to serve out their prison sentences. However, in his recent amnesty, he stated that individuals were released on "humanitarian grounds and encouraging them to be able to serve the national interest."<sup>8</sup> This may indicate a willingness to accept a broader definition in practice, especially if it serves to facilitate negotiations with ethnic minority organizations seeking a nation-wide peace agreement and progress toward national reconciliation.

The Assistance Association for Political Prisoners (Burma), or AAPP(B), an independent organization founded in 2000 by ex-political prisoners, and Human Rights Watch (HRW) use a relatively broad definition of political prisoners. The AAPP(B) defines a political prisoner as "anyone who is arrested because of his or her perceived or real involvement in or supporting role in opposition movements with peaceful or resistance means."<sup>9</sup> Other groups, such as Amnesty International (AI) and the International Crisis Group (ICG), seemingly prefer a narrower definition that only includes so-called "prisoners of conscience"—people who are detained for peaceful political opposition. According to one source, the Thein Sein government is restricting the definition of political prisoners to "prisoners of conscience."<sup>10</sup>

The State Department's Bureau of Democracy, Human Rights, and Labor considers someone a political prisoner if:

1. the person is incarcerated in accordance with a law that is, on its face, illegitimate; the law may be illegitimate if the defined offense either

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<sup>8</sup> "Amnesty Granted to 73 Prisoners," *New Light of Myanmar*, July 24, 2013.

<sup>9</sup> AAPP(B), "The Recognition of Political Prisoners: Essential to Democratic and National Reconciliation Process," press release, November 9, 2011.

<sup>10</sup> "Burma Prisoner Amnesty—13 Feb [sic] Releases," *Democratic Voice of Burma*, January 13, 2012.

- impermissibly restricts the exercise of a human right; or is based on race, religion, nationality, political opinion, or membership in a particular group;
2. the person is incarcerated pursuant to a law that is on its face legitimate, where the incarceration is based on false charges where the underlying motivation is based on race, religion, nationality, political opinion, or membership in a particular group; or
  3. the person is incarcerated for politically motivated acts, pursuant to a law that is on its face legitimate, but who receives unduly harsh and disproportionate treatment or punishment because of race, religion, nationality, political opinion, or membership in a particular group; this definition generally does not include those who, regardless of their motivation, have gone beyond advocacy and dissent to commit acts of violence.<sup>11</sup>

In applying this definition, the State Department recognizes that being accused of violent acts and committing violent acts are two different matters, and considers the circumstances pertaining to a particular person when determining if she or he is to be considered a political prisoner.

The AAPP(B) rejects the limitation of political prisoners to “prisoners of conscience” for several reasons. First, the AAPP(B) maintains that the Burmese government frequently detains political dissidents with false allegations that they committed violent or non-political crimes. Restricting the definition to “prisoners of conscience” would exclude many political prisoners. Second, the AAPP(B) maintains that the decision to participate in armed resistance against the Burmese government should be “viewed with the backdrop of violent crimes committed by the state, particularly against ethnic minorities.”<sup>12</sup> In short, the AAPP(B) views armed struggle as a reasonable form of political opposition given the severity of the violence perpetrated by the Burmese military and police.

The importance of the distinction between “prisoners of conscience” and a broader definition of political prisoners was highlighted by the sentence suspension of January 13, 2012. Only a few of the prisoners released on that date were associated with the ethnic militias or their affiliated political parties. Following his release, Min Ko Naing, a pro-democracy activist, stated many political activists associated with ethnic armed groups remained in custody.<sup>13</sup> However, Home Affairs Minister Lieutenant General Ko Ko told reporters that some dissidents remained in detention because they had committed criminal acts or have links with the Taliban.<sup>14</sup>

The Political Prisoners Scrutiny Committee is reportedly attempting to develop a consensus definition of political prisoners. Bo Kyi, the Committee’s AAPP(B) representative, told the press in May 2013 that the 19 members have agreed to a definition, but that the Thein Sein government had not formally adopted the definition.<sup>15</sup> On June 16, 2013, the Committee reportedly forwarded the names of 155 political prisoners to President Thein Sein.<sup>16</sup>

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<sup>11</sup> Definition provided to CRS by the State Department.

<sup>12</sup> AAPP(B), “The Recognition of Political Prisoners: Essential to Democratic and National Reconciliation Process,” press release, November 9, 2011.

<sup>13</sup> “Burma’s Remaining Jailed Dissidents,” *Irrawaddy*, January 17, 2012.

<sup>14</sup> Aye Aye Win, “Praise for Myanmar Release of Political Prisoners,” *Associated Press*, January 15, 2012.

<sup>15</sup> “Burma Releases Political Prisoners Ahead of US State Visit,” *Irrawaddy*, May 17, 2013.

<sup>16</sup> “Scrutiny Committee Forwards List of Political Prisoners to President’s Office,” *Democratic Voice of Burma*, June (continued...)

The plight of two segments of Burmese society has also been raised in association with the issue of political prisoners. First, local Burmese officials are notorious for corruption, and reportedly frequently use their official power to detain people on falsified charges in order to confiscate property or otherwise exact revenge on their opponents. In addition, officials have reportedly used provisions in old and new laws to arrest and detain people protesting alleged violations of their legal rights. These abuses of power by officials have been portrayed as creating a special group of “political prisoners.” Second, the Burmese government continues to single out the Rohingyas, a predominately Muslim ethnic minority residing in northern Rakhine State along the border with Bangladesh, and subject them to more extensive and invasive political repression. According to the Burmese government, the Rohingyas are not Burmese citizens, but illegal immigrants from Bangladesh and India. The Rohingyas are subjected to severe oppression, including restrictions on movement, employment, education, and marriage. To some observers, the Rohingyas are effectively political prisoners in their own country.<sup>17</sup>

## Current Estimates

Different groups provide varying estimates of the number of political prisoners being detained in Burma. The AAPP(B) posts on its webpage (<http://www.aappb.org/>) a list of 183 political detainees whose location has been verified as of May 11, 2013.<sup>18</sup> In a press statement released on October 9, 2013, the AAPP(B) said that 133 political prisoners remain in detention and they are aware of “over 200 political activists awaiting trial.”<sup>19</sup> The AAPP(B) previously published a list of political prisoners whose locations have not been verified,<sup>20</sup> but that list is no longer included on the association’s webpage. The AAPP(B) is dedicated to identifying and locating political prisoners in Burma, and providing support for the prisoners and their families.<sup>21</sup>

Following the July 23, 2013, prisoner release, a confidential source in Burma provided CRS with several alternative lists of political prisoners remaining in detention, with numbers varying from 53 to 162 people. These lists did not include people recently arrested for organizing unregistered political protests or supporting the rights of such protesters (see “Continuing Arrest of Political Prisoners”).

Until President Thein Sein’s July 2013 speech in London, his government had denied that there were any political prisoners in Burma. He told reporters in Bali, Indonesia, on November 20, 2011, that there were no political prisoners in Burma and that “all prisoners have broken the law.”<sup>22</sup> Subsequent statements by government officials implicitly conceded the existence of political prisoners. For example, Lower House Speaker Shwe Mann reportedly said in February

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(...continued)

18, 2013.

<sup>17</sup> For example, U.N. Special Rapporteur to Myanmar Tomás Ojea Quintana has stated that the relocation camps in Rakhine State for Rohingyas displaced by the rioting in June and October 2012 “felt more like a prison than a camp.” (“Rohingya Camps ‘More Like Prisons,’ Says UN Envoy,” *Mizzima*, February 18, 2013.)

<sup>18</sup> The complete list of names is available online at [http://www.aappb.org/Updated\\_PP\\_list.html](http://www.aappb.org/Updated_PP_list.html).

<sup>19</sup> Assistance Association for Political Prisoners (Burma), “56 Political Prisoners Freed in 12<sup>th</sup> Presidential Release,” press release, October 9, 2013, [http://www.aappb.org/Press\\_statement\\_9th\\_release\\_2013.pdf](http://www.aappb.org/Press_statement_9th_release_2013.pdf).

<sup>20</sup> The most recent list of this sort was published on September 15, 2012.

<sup>21</sup> For more about the AAPP(B), see <http://www.aappb.org/index.html>.

<sup>22</sup> “Myanmar President Insists No Political Prisoners in Jails,” *Asia-Pacific News*, November 20, 2011.



2012, “The remaining political prisoners are those who have committed criminal activities in this country. Those who are on that list, if they have been involved in terrorist activities or harmed the public, they will not be included.”<sup>23</sup> The Thein Sein government has never provided an official estimate of the number of political prisoners.

The Political Prisoners Scrutiny Committee reportedly will be submitting a list of 82 political prisoners and 265 or more persons charged under Section 18 of the Peaceful Assembly and Peaceful Procession Law of 2011 to the Thein Sein government on an undisclosed date.<sup>24</sup> However, committee and AAPP(B) member Ko Bo Kyi was quoted in the article to have said, “There may be others we don’t know yet.”<sup>25</sup>

Other interested organizations in Burma also have released estimates of the number of political prisoners in Burma, but these estimates generally reflect their focus on the detention of their own members and are not necessarily comprehensive tallies. Just prior to the January 13, 2012, release, the NLD reportedly provided the Burmese government with a list of 604 political prisoners.<sup>26</sup> However, the NLD estimates are reportedly based on information obtained by NLD members, and are not generally viewed as an exhaustive list of political detainees in Burma.

A group of released political prisoners formed the Former Political Prisoners Society (FPPS)—also known as the Organization of Former Political Prisoners (OFPP)—and have surveyed Burma’s prisons and labor camps to compile a list of political prisoners still in detention. In April 2012, the FPPS released a list (in Burmese) of 345 political prisoners.<sup>27</sup> It is not known what definition the FPPS used in determining who qualifies as a political prisoner.

Obtaining an accurate and current tally of the number of political prisoners in Burma is complicated by the lack of transparency of Burma’s judicial and prison system. Burma has 42 prisons and 109 labor camps scattered across the country, with no publicly accessible records of who is being detained and where they are being detained. To estimate the number of political prisoners, groups rely on a network of sources to provide information concerning each of the prisons and labor camps. The AAPP(B), for example, reports that it uses inside networks, confidential sources, court trial files, recently released prisoners, and families of prisoners to compile its list of political prisoners.<sup>28</sup>

Maintaining an accurate tally of the number of political prisoners is also difficult because the Burmese government and military continue to arrest and detain new political prisoners, or otherwise infringe on their civil liberties. For example, according to the AAPP(B), the Burmese government arrested at least 120 people for political reasons between January 2012 and March 2013, generally without the submission of formal charges or access to court proceedings.<sup>29</sup> Those people being detained without charges have generally either been engaging in public protests

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<sup>23</sup> Martin Petty, “Myanmar By-elections Vital for EU Sanctions Move—Official,” *Reuters*, February 13, 2012.

<sup>24</sup> “Committee for Scrutinizing Remaining Political Prisoners Meets,” *New Light of Myanmar*, November 24, 2013.

<sup>25</sup> *Ibid.*

<sup>26</sup> “How Many Political Prisoners Remain in Jail?,” *Mizzima*, January 16, 2012.

<sup>27</sup> Individual in country.

<sup>28</sup> AAPP(B), “Political Prisoner List is Now 1,572—Location of 918 Confirmed and Documented,” press release, December 23, 2011.

<sup>29</sup> Assistance Association for Political Prisoners (Burma), *Annual Report: FY 2012*, March 4, 2013.

(supposedly legalized by Burma's new Peaceful Demonstration and Gathering Law) or were suspected of having ties to ethnic resistance groups.

## Prisoner Releases

Since his appointment in April 2011, President Thein Sein has granted amnesty to selected prisoners on 13 separate occasions, the latest occurring on November 15, 2013 (see **Table 1**). In total, the Union Government has released 29,670 prisoners, of whom 1,071 were political prisoners, according to the AAPP(B).

**Table 1. Burma's Announced Prisoner Releases**

(In reverse chronological order)

Government	Date	Prisoners Released	Political Prisoners Released	Percentage of Political Prisoners
Union Government	November 15, 2013	69	69	100.0%
	October 8, 2013	56	56	100.0%
	July 23, 2013	73	68	93.2%
	May 17, 2013	23	19	82.6%
	April 23, 2013	93	59	64.3%
	November 19, 2012	66	51	77.3%
	November 15-16, 2012	452	0	0.0%
	September 17, 2012	514	88	17.1%
	July 3, 2012	80	25	31.3%
	January 13, 2012	651	302	46.4%
	January 4, 2012	6,656	36	0.5%
	October 11, 2011	6,359	240	3.8%
	May 16, 2011	14,578	58	0.4%
State Peace and Development Council	September 17, 2009	7,114	128	1.8%
	February 20, 2009	6,313	24	0.4%
	September 23, 2008	9,002	10	0.1%
	January 3, 2007	2,831	50	1.7%
	July 6, 2005	334	253	75.7%
	January 3, 2005	5,588	26	0.5%
	December 13, 2004	5,070	21	0.4%
	November 29, 2004	5,311	12	0.2%
November 18, 2004	3,937	28	0.7%	

**Sources:** AAPP(B); Alternative ASEAN Network on Burma (Altsean), *Burma Bulletin*, Issue 79, July 2013.

The recent prisoner releases have generally occurred near the time of a major political development between Burma and the United States. In some cases, the prisoners may have been released in an effort to obtain a desired response from the U.S. government. In other cases, the prisoners may have been released in response to an action by the U.S. government. This pattern is causing some concern at the State Department and by other observers as it may imply that the prisoners are being used as political pawns.

## **Reverse Chronology of Releases**

The latest prisoner release was announced November 15, 2013.<sup>30</sup> Using authority granted by Section 204(a) of Burma's 2008 constitution and Section 401(i) of Burma's Criminal Procedure, President Thein Sein granted amnesty to 69 people. Among the released were nine activists who had organized demonstrations in support of the Rohingyas in Rakhine State and an activist who had organized protests against the expansion of the Letpadaung copper mine in Sagaing Division.

On October 8, 2013, President Thein Sein granted amnesty to 56 prisoners using authority granted by Section 204(a) of Burma's 2008 constitution and Section 401(i) of Burma's Criminal Procedure.<sup>31</sup> Nearly half of those released—27 people—were reportedly alleged members of the Kachin Independence Army (KIA), the militia associated with the Kachin Independence Organization (KIO). Another 24 people were either alleged members of the Restorative Council of the Shan State (RCSS) or its affiliated militia, the Shan State Army (SSA). Most of the people granted amnesty had been convicted of violating Section 17(1) of Burma's Unlawful Associations Act, among other charges. Some observers think the release was designed to promote progress in ongoing ceasefire talks with the KIO and the RCSS.

The previous release occurred on July 23, 2013, when President Thein Sein granted amnesty to 73 prisoners using authority granted by Section 204(a) of Burma's 2008 constitution and Section 401(a) of Burma's Criminal Procedure.<sup>32</sup> Some sources considered all 73 of the released prisoners as political prisoners. According to AAPP(B) and the FPPS, however, only 68 of those released were political prisoners, including at least 30 people associated with Kachin Independence Army and the Shan State Army–South. According to KIO lawyers, more than 20 people remain in detention for their alleged ties to the KIO.<sup>33</sup> A week after the release, Deputy Minister of Home Affairs Brigadier General Kyaw Zan Myint reportedly told the Union Parliament that the prisoners had been granted a conditional release, and that they may have to serve out the remainder of the sentence if they break the law in the future.<sup>34</sup>

The July release came eight days after President Thein Sein's speech at Chatham House in London (see above) where he pledged to release all prisoners of conscience by the end of the calendar year. It also came two days before a general ban on the import of goods of Burmese origin would expire unless Congress passed a resolution to renew the ban for another year.<sup>35</sup>

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<sup>30</sup> "Amnesty Granted," *New Light of Myanmar*, November 16, 2013.

<sup>31</sup> "Amnesty Granted," *New Light of Myanmar*, October 9, 2013.

<sup>32</sup> "Amnesty Granted to 93 Prisoners," *New Light of Myanmar*, April 24, 2013.

<sup>33</sup> "20 Kachin Political Prisoners Still in Myitkyina Jail," *Kachin News Group*, August 1, 2013.

<sup>34</sup> Kay Zin Oo, "Release Political Prisoners Still on Parole," *Mizzima*, July 30, 2013.

<sup>35</sup> Section 3(a) and Section 3A of the Burmese Freedom and Democracy Act of 2003 (P.L. 108-61, as amended) are subject to an annual renewal provision stipulated in Section 9(b). Section 3(a) bans the import of all goods of Burmese origin (continued...)

President Thein Sein's inclusion of members of the Shan State Army—South among those released may have been part of an effort to advance his goal of holding a national peace conference with all the ethnic organizations later this year. Hopes to hold national peace conference have been stymied by two issues. First, the Union Government and the KIO have been unable to conclude a preliminary ceasefire agreement due to fundamental differences over how to proceed with the peace process. Second, President Thein Sein insists that any peace agreement accept the validity of the 2008 constitution and that any changes to that constitution must be made according to its provisions. However, the KIO and several other ethnic organizations have called for the drafting of a new constitution that grants the ethnic states greater autonomy.

Four days before his historic trip to the United States in May 2013, President Thein Sein granted amnesty to 23 prisoners, of whom 19 were considered political prisoners by the AAPP(B). The 88 Generation Student Group, however, considered 21 of the 23 those released as political prisoners.<sup>36</sup> Among those released was Nay Myo Zin, who had been previously released, but subsequently returned to prison to serve out the remaining six years of his sentence after his arrest for insulting a police officer. Nay Myo Zin was the first ex-political prisoner re-imprisoned after being granted amnesty.

The May prisoner release was criticized by several organizations as an attempt to curry favor with the Obama Administration and obtain the further relaxation of economic sanctions imposed by the United States. Soe Aung, an activist living in exile in Thailand, referred to the May prisoner release as a “PR [public relations] stunt” designed to have the “United States remove the remaining sanctions once and for all.”<sup>37</sup>

On April 23, 2013, President Thein Sein granted amnesty to 93 prisoners. According to AAPP(B), 59 of those released were political prisoners. Also included among the 59 political prisoners were 40 “Shan rebel soldiers,” according to the opposition publication, *Irrawaddy*.<sup>38</sup>

The April prisoner release became the source of some controversy for several reasons. First, the prisoner release was announced the day after the European Union voted to terminate all its sanctions on Burma, except for the arms embargo. The timing bolstered claims that President Thein Sein was using the political prisoners as pawns to obtain concessions from foreign governments.<sup>39</sup> Second, the Political Prisoners Scrutiny Committee reportedly recommended a number of people to be released, but President Thein Sein apparently chose to release other individuals, raising questions about the influence of the committee.<sup>40</sup> Third, the 40 “Shan rebel soldiers” were reportedly all from the Shan State National Army (SSNA), also known as the Shan State Army—South. None of the detained members of the Shan State Army—North were released. This has led to some debate among the ethnic militias who have members detained in

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origin; Section 3A bans the import of jadeite and rubies extracted from Burma, and all goods containing Burmese jadeite and rubies.

<sup>36</sup> “Burma Releases Political Prisoners Ahead of US State Visit,” *Irrawaddy*, May 17, 2013.

<sup>37</sup> “Burma Releases Political Prisoners,” *Voice of America*, May 17, 2013.

<sup>38</sup> Kyaw Phyo Tha and Lawi Weng, “Burma Govt Releases 59 Political Prisoners, Former MMT Shareholder,” *Irrawaddy*, April 23, 2013.

<sup>39</sup> *Ibid.*

<sup>40</sup> “Prisoner Release Draws Criticism from Activists,” *Myanmar Times*, April 24, 2013.

Burmese prisons about President Thein Sein's intentions and possible efforts to sow discord among the various Shan ethnic organizations and militias.<sup>41</sup>

Using the same powers granted by the 2008 Constitution, President Thein Sein granted amnesty to 66 prisoners on November 19, 2012, during President Obama's visit to Burma. The AAPP(B) identified 51 of those released as being political prisoners. This prisoner release came just a few days after President Thein Sein granted amnesty to 452 prisoners using the same constitutional authority. None of the prisoners released on November 15 and 16 were identified as political prisoners by AAPP(B).

On September 17, 2012, shortly before President Thein Sein was scheduled to visit the United States to speak before the United Nations General Assembly, 514 prisoners were granted amnesty. The AAPP(B) identified 88 political prisoners among those released. According to some observers, the prisoner release was intended to bolster the chances that the Obama Administration would announce a further easing of sanctions during President Thein Sein's visit to the United States.

On July 3, 2012, President Thein Sein, using authority granted by Section 204(a) of Burma's 2008 Constitution, granted amnesty to 46 domestic prisoners and 34 foreign nationals.<sup>42</sup> The amnesty was reportedly granted "with a view of ensuring the stability of the State and making eternal peace, national reconciliation, enabling all to participate in the political process; on humanitarian grounds; and turning them into citizens who could participate in nation-building endeavours in whatever way they can after realizing the magnanimity of the State."<sup>43</sup>

On January 13, 2012, President Thein Sein suspended the sentences of 651 prisoners "who were serving their appropriate prison terms" using authority granted by Section 401 of Burma's Code of Criminal Procedure.<sup>44</sup> The prisoner release was done, according to the official announcement, "with the aim of ensuring stability and eternal peace of the State, fostering national reconciliation, enabling them [the released prisoners] to participate in the political process, and on humanitarian grounds."<sup>45</sup> The release came at the tail end of the fourth visit by U.S. Special Representative and Policy Coordinator for Burma Derek Mitchell and a week after British Foreign Minister William Hague's first trip to Burma.

On January 2, 2012, President Thein Sein issued Presidential Order No. 1/2012, granting a partial amnesty to all existing Burmese prisoners "[a]s a gesture of hailing the 64<sup>th</sup> Anniversary Independence Day and for the sake of State peace and stability."<sup>46</sup> Under the terms of the presidential order, death sentences would be commuted to life imprisonment, sentences of over 30 years (but less than life) would be reduced to 30 years, sentences between 20 and 30 years would be reduced to 20 years, and sentences under 20 years would be reduced by 25%. By implication, prisoners with less than 25% of their term left to serve would be released from jail.

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<sup>41</sup> Phanida, "Amnesty Favored Some Shan Groups, but Not Others," *Mizzima*, April 25, 2013.

<sup>42</sup> "Amnesty Granted," *New Light of Myanmar*, July 3, 2012.

<sup>43</sup> *Ibid.*

<sup>44</sup> "Amnesty Granted to 651 Male and Female Prisoners in Accordance with Section 401, Sub-section (1) of Code of Criminal Procedure Aimed at Enabling Them to Participate in National Reconciliation and Political Processes," *New Light of Myanmar*, January 13, 2012.

<sup>45</sup> *Ibid.*

<sup>46</sup> "President Grants Amnesty," *New Light of Myanmar*, January 3, 2012.

Given the nature of the amnesty, it was initially unclear how many prisoners would be released from detention. In the days following the issuance of the presidential order, sporadic reports of prisoner releases came in from across Burma, including information on previously identified political prisoners. Within a couple of days, AAPP(B) had compiled a list of 34 released political prisoners, including 10 who are reportedly members of the Kayan New Land Party and 3 NLD members.<sup>47</sup> On January 6, 2012, the government-run newspaper, the *New Light of Myanmar*, reported that 6,656 prisoners had been released as a consequence of the presidential amnesty.<sup>48</sup>

Presidential Order No. 1/2012 was the third such prisoner amnesty since President Thein Sein assumed power in April 2011. It came after months of speculation that the Burmese government would announce a broader amnesty that would include a significant number of political prisoners. As such, the United States, other governments, and various international groups have expressed disappointment about the scope of the January amnesty.

President Thein Sein had issued two prisoner amnesties prior to January 2012. Presidential Order No. 49/2011, issued on October 11, 2011, terminated the prisoner sentence for 6,359 individually named persons, including several of Burma's more prominent political prisoners. Presidential Order No. 28/2011, issued on May 16, 2011, commuted all death sentences to life in prison, and reduced all other sentences by one year in duration (exclusive of remission days).

## Conditional or Not?

The use of Section 401 authority for some of the more recent prisoner releases raises the issue of possible conditions on the prisoners' sentence suspension. Burma's Code of Criminal Procedure grants the president authority to suspend or remit sentences, with or without conditions, as well as cancel the suspension or remission if the person in question fails to fulfill the conditions for her or his release. As a result, a person released from detention under Section 401 may be required to serve out the rest of his or her suspended sentence if she or he is convicted of another crime or fails to fulfill the conditions of her or his release. At least one pardoned political prisoner, Nay Myo Zin, had been sentenced to serve the rest of his previous sentence (six years) after being convicted of a crime after his release, until he was granted a second pardon in May 2013.<sup>49</sup>

Following their release on January 13, 2013, several former political prisoners indicated that they had been provided unconditional pardons, but a few said that they were instructed to limit their political activities. None of the prisoners released were placed under house arrest. However, Sithu Zeya said to reporters that he was told that if he committed any crime, he would have to serve the remainder of his 18-year sentence. "It is like we are being freed with leashes still attached to our necks," he reportedly said.<sup>50</sup>

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<sup>47</sup> "AAPP-Burma's List of Freed Political Prisoners," *Mizzima*, January 4, 2012; and "33 Burmese Political Prisoners Released," *Mizzima*, January 4, 2012.

<sup>48</sup> "6656 Prisoners Granted Amnesty, 38964 Get Clemency," *New Light of Myanmar*, January 6, 2012.

<sup>49</sup> Nay Moe Zin was released in January 2012, with six more years to serve on his sentence. He was originally sentenced to 10 years in prison in August 2011 for breaking the Electronic Transactions Act, a law that is highly criticized by free speech advocates. In May 2013, he chose to serve a three-month sentence for allegedly defaming a police officer. The Ministry of Home Affairs subsequently decided to reinstate his previous sentence. ("Burma Cancels Amnesty for Former Political Prisoner," *Irrawaddy*, May 8, 2013)

<sup>50</sup> "Burma Frees High-Profile Dissidents in Amnesty," *BBC*, January 13, 2012.

The use of Section 401 may also indicate some opposition to the release of political prisoners within the Union Government and/or within the Burmese military. Because President Thein Sein based the recent sentence suspensions on Section 401, he did not need to obtain the approval of Burma's National Defence and Security Council (NDSC), a constitutional body with significant power, consisting of Burma's president; its two vice presidents; the speakers for each chamber of its parliament; the commander-in-chief and deputy commander-in-chief of defense services; and the ministers of border affairs, defence, foreign affairs, and home affairs.<sup>51</sup> President Thein Sein may have decided to use Section 401 authority to avoid NDSC review, given the reported fate of a previous proposed prisoner release.

## **Continuing Arrest of Political Prisoners**

While President Thein Sein has been granting pardons and amnesties for some political prisoners in Burma, the Union Government reportedly continues to arrest and detain new political prisoners for alleged illegal activities. As previously mentioned, the AAPP(B) reports that over 200 people have been detained and are awaiting trial for what it considers to be political actions. The Asian Human Rights Commission (AHRC), a non-profit non-governmental organization located in Hong Kong, is also tracking the detention of political prisoners in Burma. According to the AAPP(B) and AHRC, many have been detained for violations of Section 505 of Burma's Penal Code and/or Section 18 of the Peaceful Assembly and Peaceful Procession Law of 2011. To many observers, the Union Government's response to popular protests has raised questions about the sincerity of its support of democracy and human rights, and its rejection of Burma's history of a culture of political repression.

One possibly troublesome trend has been a pattern of local officials using provisions in the Peaceful Assembly and Peaceful Procession Law to arrest and detain citizens protesting alleged violations of their rights. Under the law, persons wishing to hold a peaceful assembly must request a permit from local authorities. On several occasions, local authorities have denied permits to groups protesting land confiscations and other development projects, and then have arrested and detained the protesters after they hold their "illegal" assembly. The political prisoner issue also surfaced in the Burmese press in November and December 2012, following the detention of several people in the wake of incidences of civil unrest in different parts of Burma, including the re-arrest of prominent political dissident Ashin Gambira (a.k.a. Nyi Nyi Lwin).

On November 29, 2102, Burmese police reportedly used tear gas, water cannons, and some form of incendiary devices to suppress protests against a Chinese-financed and Burmese Army-operated copper mine near Letpadaung in Sagaing Division in northern Burma. At least 80 people were injured as a result of the police crackdown, including several monks who were seriously burned.<sup>52</sup> The protest was one of many that have occurred over the last year to oppose the expansion of the mine. On December 3, 2012, six protesters were charged with inciting unrest during a November 26 anti-Letpadaung copper mine protest in Rangoon. The six were detained without bail and sent to Insein Prison to await trial.<sup>53</sup> While Religious Affairs Minister Myint Maung has apologized for the reported police assaults on Buddhist monks during the November 29 crackdown, he did not apologize for breaking up the protest. On December 12, 2012,

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<sup>51</sup> Hla Hla Htay, "Myanmar Prisoner Release Delayed," *Agence France Press*, November 14, 2011.

<sup>52</sup> "80 Injured in Monywa Crackdown," *Mizzima*, November 29, 2012.

<sup>53</sup> Snay Lin, "Six Mine Protesters Charged with Incitement," *Irrawaddy*, December 4, 2012.

thousands of monks organized rallies across Burma and were accompanied by an unknown number of lay people, demanding that the Union Government apologize for the violent crackdown on the copper mine protest.<sup>54</sup> In August 2013, one of the copper mine demonstrators, Aung Soe, was sentenced to 11 years in jail for his participation in the protests.<sup>55</sup>

A similar pattern of police violence and the subsequent arrest of protest organizers occurred surrounding a workers' strike at the Moehti Moemi gold mine in Yamethin Township in the Mandalay Division.<sup>56</sup> The workers' strike began over the alleged failure of the Myanmar Prosperity Public Company to comply with a negotiated compensation agreement. On November 23, 2012, the police reportedly attacked and beat protest marchers, and arrested four of the workers. The four workers were subsequently charged with violating the Peaceful Gathering and Demonstration Law.

Among the arrested protesters was Ashin Gambira, who had his 63-year sentence suspended by President Thein Sein on January 13, 2012 (see "Reverse Chronology of Releases"). Ashin Gambira was reportedly arrested on December 1, 2012, following his participation in a Letpadaung copper mine solidarity rally in Rangoon. He was reportedly charged with trespassing, mischief, and "lurking house-trespass or house-breaking."<sup>57</sup> Ashin Gambira was released on bail (4 million kyat, or about \$4,600) on December 11, and is awaiting trial. Eight other protesters were also reportedly released on the same day.<sup>58</sup> If convicted, Ashin Gambira may have to serve out the remainder of his 63-year suspended sentence on top of any new sentence imposed.

Other protesters involved in land disputes have been arrested and sentenced elsewhere in Burma, often for violating the Peaceful Assembly and Peaceful Procession Law. In June 2013, six people were given prison sentences in Mandalay for demonstrating to obtain selling rights in a local market.<sup>59</sup> Three activists in Pegu Region were arrested in May and June 2013 for organizing demonstrations against land confiscations by the Burmese Army.<sup>60</sup> In addition, land rights activist Than Htun was allegedly tortured and beaten to death by police in Pandaung Township.<sup>61</sup>

Burmese authorities are also allegedly going after people who attempt to defend the protesters. In Rakhine State, the police detained 74-year-old Rohingya human rights activist and lawyer Kyaw Hla Aung on the same day President Thein Sein promised to release all political prisoners by the end of the calendar year.<sup>62</sup> A few days earlier, police arrested Bawk Ja (also known as Bauk Gyar and Bauk Ja), a Kachin land rights activist and candidate in the 2010 parliamentary elections for the National Democratic Force (NDF), accusing her of negligent homicide in the death of a

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<sup>54</sup> Kyaw Phyo Tha, "Thousands Join Peaceful Nationwide Monks Protest," *Irrawaddy*, December 12, 2012.

<sup>55</sup> Asian Human Rights Commission, *Activist Sentenced to Eleven Years' Jail for Opposing Army Copper Mine*, AHRC-UAC-105-2013, Hong Kong, August 12, 2013.

<sup>56</sup> Alternative ASEAN Network on Burma, *Burma Bulletin*, Issue 71, Bangkok, Thailand, November 2012.

<sup>57</sup> AAPP(B), "Ashin Gambira (aka Nyi Nyi Lwin Re-arrested)," press release, December 3, 2012.

<sup>58</sup> Nyein Nyein, "Gambira Freed on Bail but Awaits Trial," *Irrawaddy*, December 11, 2012.

<sup>59</sup> "More Political Prisoners in Myanmar These Days: Political Analysts," *Eleven Myanmar*, June 17, 2013.

<sup>60</sup> Asian Human Rights Commission, *Three People Detained and Charged for Fighting for Farmers' Land Rights*, AHRC-UAC-101-2013, July 26, 2013.

<sup>61</sup> Asian Human Rights Commission, *Police Torture Man to Death, Claim He Beat Up Himself*, AHRC-UAC-098-2013, July 10, 2013.

<sup>62</sup> "Thein Sein's Pledge to Release All Political Prisoners Looks Hollow as 74-Year-Old Activist Is Jailed," *Narinjara News*, July 23, 2013.



villager who allegedly received medicine from Bawk Ja.<sup>63</sup> NDF officials and others claim the charges are politically motivated, and the plaintiff had previously dropped the case.

Burmese officials continue to pursue cases against persons accused of being members or supporters of illegal organizations, including ethnic organizations with whom the Thein Sein government is holding ceasefire talks. For example, four Kachin men were sentenced to two years in prison on November 15, 2013, for their alleged membership in the Kachin Independence Army (KIA).<sup>64</sup> The KIA is officially an illegal organization under Burma's Unlawful Associations Act.

## Political Prisoners Scrutiny Committee

President Thein Sein's decision in February 2013 to form a committee to advise his government on resolving the issue of the country's alleged political prisoners was widely welcomed, but has become a source of some controversy during its existence. The State Department and other commentators praised the creation of the committee and the selection of individuals representing a broad spectrum of organizations interested in the status of political prisoners in Burma. However, reports indicate that its members have struggled to reach agreement of critical aspects of their committee's mandate. In addition, it is unclear what influence, if any, the committee's recommendations will have with President Thein Sein or Burma's National Defence and Security Council (NDSC), which has the constitutional authority to recommend prisoner amnesties to the President.<sup>65</sup>

As previously mentioned, President Thein Sein announced his decision to form the committee on February 6, 2013. In his announcement, he indicated that Union Minister Soe Thane would be the committee chair, and that the other members of the committee would be "representatives from government ministries, civil society organizations and some political parties." The other 15 members are notable for the inclusion of representatives of three organizations known for their work to free Burma's political prisoners.

The State Department welcomed the formation of the committee and pointed to its creation as evidence that the Union Government is taking serious steps to address the political prisoner problem.<sup>66</sup> Domestic and international human rights organizations also supported the creation of the committee, although in some cases with some skepticism.

The committee first met on February 13, 2013, at the Myanmar Peace Center in Rangoon. It has met several times since then, working on developing a common definition of political prisoners, compiling a list of possible political prisoners in detention, and drafting recommendations for President Thein Sein on how to expedite the release of identified political prisoners.

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<sup>63</sup> Nyein Nyein and Kyaw Kha, "Activist Bawk Ja Arrested for Negligent Homicide," *Irrawaddy*, July 19, 2013.

<sup>64</sup> Lawi Weng, "Myitkyina Court Sends Four to Prison for Being KIA Members," *Irrawaddy*, November 15, 2013.

<sup>65</sup> Section 204 of the constitution grants the NDSC the authority to recommend prisoner amnesties to the President.

<sup>66</sup> On February 11, 2013, the State Department issued a statement welcoming the formation of the committee, stating that the Union Government "has taken an important step towards national reconciliation," and that the State Department looked forward "to supporting the implementation of this process." (State Department, "Progress on Political Prisoners in Burma," press release, February 11, 2013.)

On May 8, 2013, President Thein Sein reconstituted the Political Prisoner Scrutiny Committee, expanding its membership to 19 people (see text box, “Members of Political Prisoners Scrutiny Committee”).<sup>67</sup> The decision to augment the membership of the committee was reportedly not discussed with the original 16 members before the President’s announcement.<sup>68</sup> Local activists have offered alternative explanations for the expansion of the committee, including an effort to deflect attention away from the re-arrest and detention of Ashin Gambira and an attempt to improve Burma’s international image.

Among the difficulties the group has faced is developing a common definition of political prisoners. Sources indicate that some committee members prefer a narrow definition that would only include prisoners of conscience, while other members support a broader definition (see “Defining Political Prisoners”). On March 14, 2013, the FPPS gathered a group of Burmese political activists and lawyers to discuss the definition of political prisoner. It is assumed that Ye Aung, the FPPS representative on the Political Prisoners Scrutiny Committee, shared the results of the meeting with the other committee members. An agreement on the definition is critical for compiling a list of political prisoners in detention.

Another issue for the committee is its ability to work as a group. According to an FPPS spokesperson, his organization had submitted a longer list of people to be released prior to the April 23 amnesty, but the committee chose to ignore some of those on the list, and to include a number of people not considered political prisoners by the FPPS.<sup>69</sup> Prior to announcing the amnesty, the committee members were reportedly asked to endorse the committee’s recommendations, but several refused to do so because many of the people recommended by the committee were not considered political prisoners and many people who were considered political prisoners were not on the committee’s list. The FPPS spokesperson stated that the committee’s leadership was not

### Members of Political Prisoners Scrutiny Committee

(members added on May 8, 2013, in italics)

- Soe Thane ( aka - Soe Thein) (Chair), Pyidaungzu Minister, President Office
- Brigadier General Kyaw Kyaw Tun, Police Chief, Deputy Minister, Ministry of Home Affairs
- Tun Tun Oo, Deputy Chief Justice, Supreme Court of Burma
- Aung Saw Win, Director General, Bureau of Special Investigation
- Than Htay, Director General, Correctional Department
- Sit Myaing, Myanmar National Human Rights Commission
- U Kyi, Myanmar Red Cross
- Bo Kyi, Assistance Association for Political Prisoners (Burma) (AAPP)
- Nyo Tun, League of Former Political Prisoners (LFPP)
- Ye Aung, Former Political Prisoners Society (FPPS)
- Thura (Zarganar), House of Media Entertainment
- Khun Tun Oo, Shan Nationalities Democratic Party (SNLD)
- Ko Ko Gyi, 88 Generation Students Group
- Nyan Win, National League for Democracy Party (NLD)
- Hla Maung Shwe, Myanmar Egress
- *Win Naing, National Democratic Forces*
- *Thein Nyunt, New National Democracy Party*
- *Kaung Myint Htut, Myanmar National Congress Party*

<sup>67</sup> President Office, “Committee for Scrutinizing the Remaining Prisoners of Conscience Reconstituted,” Notification No. 43/2013, May 8, 2013.

<sup>68</sup> Naw Say Phaw Waa, “Activists Slam Reshuffle of Prisoner Body,” *Myanmar Times*, May 13, 2013.

<sup>69</sup> “Prisoner Release Draws Criticism from Activists,” *Myanmar Times*, April 24, 2013.

interested in the views of the civil society organizations, and was using the committee for political purposes, such as fostering better relations with the European Union.<sup>70</sup>

## Political Prisoners, Parliamentary Elections, and National Reconciliation

The release of political prisoners has potentially important implications for future parliamentary elections and prospects for national reconciliation. The NLD's decision to participate in the April 2012 parliamentary by-elections was apparently based in part on the October 11, 2011, amnesty, which included 39 NLD members, according to the AAPP(B).<sup>71</sup> At the same time, several political parties (including the Chin National Party, the Mon National Democratic Front, the Rakhine National Democratic Party, the Shan Nationalities League for Democracy (SNLD), and the Zomi National Congress) said they would not participate in the by-elections because some of their members remained in detention.<sup>72</sup> While the January 2012 and July 2013 prisoner releases included a significant number of NLD members and people associated with ethnic organizations, neither amnesty included members of political parties boycotting or barred from the April by-election. Regardless of how the elections are conducted, it can be argued that any future parliamentary elections will not be free and fair so long as some political parties are unwilling to participate because of what they perceive to be the detention of their members for political reasons.

The NLD decision to participate in the by-election gave rise to some tension with some ethnic groups, who saw the move as an abandonment of solidarity among opposition groups. One of the reasons the NLD and several ethnic political parties did not participate in the November 2010 elections that brought the Union Government into power was the continued detention of some of their party leaders and members. Some ethnic groups who still had members in detention at the time were unhappy with the NLD's decision to participate in the by-elections. As such, Aung San Suu Kyi and the NLD may be less able to play the role of intermediary in discussions between the Burmese government and various ethnic groups to forge a path towards national reconciliation.

It is unclear if the Burmese government and Burma's military, the Tatmadaw, are actually interested in trying to pursue national reconciliation at this time. To some observers, their current strategy appears to be designed to improve relations with primarily Burman organizations, such as the NLD, while maintaining a more hard-line stance toward Burma's ethnic minorities, particularly those with active militias. Proposals to hold a third Panglong Conference have been rebuffed by the Burmese government.<sup>73</sup> Ceasefire talks with the ethnic militias frequently falter

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<sup>70</sup> Ibid.

<sup>71</sup> Another, and probably more important, factor in the NLD decision was the amendment of election laws to allow Aung San Suu Kyi and other NLD members to run for office.

<sup>72</sup> Tun Tun, "Newly Formed Parties to Contest in Burmese By-Election," *Mizzima*, November 17, 2011; and Wai Moe, "NLD Decides to Re-Register, Compete in Coming Elections," *Irrawaddy*, November 18, 2011.

<sup>73</sup> The first Panglong Conference was held in March 1946, at which Prime Minister U Saw, on behalf of the British government, met with representatives of the Chin, Kachin, Karen, and Shan to discuss the status of the border areas in the future independent Burma. The second Panglong Conference was held in February 1947, at which Aung San (father of Aung San Suu Kyi) met with representatives of the Chin, Kachin, and Shan and signed the Panglong Agreement, which gave autonomy to the frontier states as part of a larger Union of Burma. The Panglong Agreement is seen as critical to the establishment of an independent and unified Burma in 1948.

after initial success over such issues as release of detained members, disarmament of the militias, and preservation of the de facto autonomy of militia-controlled territory.

## U.S. Sanctions and Political Prisoners

Burma's detention of political prisoners was a major reason for the United States to impose sanctions on Burma.<sup>74</sup> The Customs and Trade Act of 1990 (P.L. 101-382), which required the President to impose "such economic sanctions upon Burma as the President determines appropriate," was passed after Burma's ruling military junta, the State Peace and Development Council (SPDC), refused to honor the results of May 1990 parliamentary elections and detained Aung San Suu Kyi and many other opposition leaders. Similarly, the Burmese Freedom and Democracy Act of 2003 (BFDA) (P.L. 108-61) was passed after the SPDC cracked down on opposition parties, and once again detained Aung San Suu Kyi and other opposition leaders. The Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (JADE Act) (P.L. 110-286) was passed after the violent suppression of the autumn 2007 popular protests and the subsequent arrest and imprisonment of many of the protest leaders, including a number of Buddhist monks.

The release of *all* political prisoners is also one of the preconditions for the removal of many of the U.S. sanctions on Burma (see **Table 2**).<sup>75</sup> The economic sanctions required by Section 138 of the Customs and Trade Act of 1990 are to remain in place until the President certifies to Congress that certain conditions have been met, including "[p]risoners held for political reasons in Burma have been released." Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1997 (Section 570, P.L. 104-208) authorizes the President to ban new investments in Burma if "the Government of Burma has physically harmed, *rearrested for political acts* [emphasis added] or exiled Daw Aung Suu Kyi or has committed large-scale repression of or violence against the Democratic opposition." The BFDA requires a ban on all imports from Burma, a ban on the products of certain Burmese companies, a freeze of the assets of certain Burmese officials and U.S. opposition to "any loan or financial or technical assistance to Burma" until certain conditions are met, including the release of "all political prisoners." Finally, the JADE Act bans the issuance of visas to certain Burmese officials and their supporters, freezes the assets of certain Burmese officials and their supporters, and prohibits the provision of financial services to certain Burmese officials and their supporters until specific conditions have been met, including the unconditional release of all political prisoners. In addition, the JADE Act's ban on the import of jadeite and rubies from Burma and articles of jewelry containing jadeite and rubies from Burma is to remain in place until certain conditions have been met, including the release of all political prisoners.

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<sup>74</sup> For more about the history of U.S. sanctions on Burma, see CRS Report R41336, *U.S. Sanctions on Burma*, by Michael F. Martin.

<sup>75</sup> For a description of the waiver provisions of U.S. sanctions on Burma, see CRS Report R41336, *U.S. Sanctions on Burma*, by Michael F. Martin.

**Table 2. Specified Conditions for the Removal of U.S. Sanctions on Burma**

(Text extracted from relevant legislation unless otherwise noted; emphasis added)

Law	Conditions
Section 138 of the Customs and Trade Act of 1990	<p>(1) Burma meets the certification requirements listed in Section 802(b) of the Narcotics Control Act of 1986</p> <p>(2) The national government legal authority has been transferred to a civilian government</p> <p>(3) Martial law has been lifted in Burma</p> <p><b>(4) Prisoners held for political reasons in Burma have been released.</b></p>
Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1997	President determines and certifies to Congress that the Government of Burma has not physically harmed, <b>rearrested for political acts</b> , or exiled Daw Aung San Suu Kyi, and has not committed large-scale repression of or violence against the Democratic Opposition. <sup>a</sup>
Burmese Freedom and Democracy Act of 2003	<p>(A) The SPDC has made substantial and measurable progress to end violations of internationally recognized human rights including rape, and the Secretary of State, after consultation with the ILO Secretary General and relevant nongovernmental organizations, reports to the appropriate congressional committees<sup>b</sup> that the SPDC no longer systematically violates workers' rights, including the use of forced and child labor, and conscription of child-soldiers.</p> <p>(B) The SPDC has made measurable and substantial progress toward implementing a democratic government, including—</p> <p><b>(i) releasing all political prisoners;</b></p> <p>(ii) allowing freedom of speech and the press;</p> <p>(iii) allowing freedom of association;</p> <p>(iv) permitting the peaceful exercise of religion; and</p> <p>(v) bringing to a conclusion an agreement between the SPEC and the democratic forces led by the NLD and Burma's ethnic nationalities on the transfer of power to a civilian government accountable to the Burmese people through democratic elections under the rule of law.</p> <p>(C) Pursuant to Section 706(20) of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228), Burma has not been designated as a country that has failed demonstrably to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take other effective counternarcotics measures...</p>
The Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008	<p>(T)he President determines and certifies to the appropriate congressional committees<sup>c</sup> that the SPDC has—</p> <p><b>(1) Unconditionally released all political prisoners, including Aung San Suu Kyi and other members of the National League for Democracy;</b></p> <p>(2) Entered into a substantive dialogue with democratic forces led by the National League for Democracy and the ethnic minorities of Burma on transitioning to democratic government under the rule of law; and</p> <p>(3) Allowed humanitarian access to populations affected by armed conflict in all regions of Burma.</p>

**Notes:**

- a. The law required the imposition of sanctions if the President determines and certifies to Congress that the Government of Burma has committed these acts. It is assumed that removal requires a presidential determination that the Government of Burma no longer commits these acts.

- b. "Appropriate congressional committees" are Senate Appropriations Committee, Senate Foreign Relations Committee, House Appropriations Committee, and House Foreign Affairs Committee.
- c. "Appropriate congressional committees" are Senate Finance Committee, Senate Foreign Relations Committee, House Ways and Means Committee, and House Foreign Affairs Committee.

## U.S. Efforts Regarding Political Prisoners

U.S. officials have consistently called for the release of all political prisoners in Burma. As previously mentioned, President Obama spoke of the continued detention of prisoners of conscience during his speech at the University of Yangon. National Security Advisor Tom Donilon stated in a presentation in Washington prior to the President's trip to Burma that:

The President's meetings—as well as his speech to the people of Burma—will also be an opportunity to reaffirm the progress that still must be made. This includes **the unconditional release of remaining political prisoners** [emphasis added], an end to ethnic conflicts, steps to establish the rule of law, ending the use of child soldiers, and expanded access for humanitarian assistance providers and human rights observers in conflict areas.<sup>76</sup>

During her December 2011 trip to Burma, Secretary Clinton emphasized the importance of the release of all political prisoners for the possibility of normalizing relations between the two nations.<sup>77</sup> The State Department press statement cited above reiterated the call for the release of all political prisoners. In addition, during the State Department's daily press briefing on January 3, 2012, Spokesperson Victoria Nuland said:

[O]ur view is that even one political prisoner is one political prisoner too many. The Secretary was very clear about that when she was in Nay Pyi Taw and in Rangoon.... [W]e remain concerned about the more than a thousand political prisoners that remain in custody. So we will continue to make the case to the government in Nay Pyi Taw that it is a full political prisoner release that the international community wants to see.<sup>78</sup>

The State Department is also reportedly raising the issue of political prisoners with other governments. U.S. Ambassador to Burma Derek Mitchell traveled to China, Japan, and South Korea following Secretary Clinton's trip to Burma to discuss the status of U.S. policy towards Burma during his time as U.S. Special Representative and Policy Coordinator for Burma. The issue of political prisoners was reportedly raised during his meetings on that trip. Similar discussions have been held with other governments and the European Union. Following his visit to Burma, British Foreign Secretary William Hague told reporters that EU sanctions on Burma should not be lifted while political prisoners remain in detention.<sup>79</sup>

In addition to leading an international campaign for the release of all political prisoners in Burma, senior U.S. officials indicate that the State Department has also had talks with senior Burmese

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<sup>76</sup> Office of the Press Secretary, The White House, "President Obama's Asia Policy and Upcoming Trip to Asia," press release, November 15, 2012.

<sup>77</sup> For examples of Secretary Clinton's statements on political prisoners, see Department of State, "Press Availability in Nay Pyi Taw, Burma," press release, December 1, 2011; Department of State, "Press Availability in Rangoon, Burma," press release, December 2, 2011; and Department of State, "Remarks with Aung San Suu Kyi," press release, December 2, 2011.

<sup>78</sup> Department of State, "Daily Press Briefing," press release, January 3, 2012.

<sup>79</sup> Ba Kaung, "EU Sanctions Remain Until Burmese Prisoner Release: Hague," *Irrawaddy*, January 6, 2012.

officials, Aung San Suu Kyi and other NLD leaders, several opposition parties, and representatives of some ethnic groups about compiling a complete and accurate list of political prisoners currently in custody.<sup>80</sup> One of the key factors in these discussions is finding a common understanding of who is to be considered a political prisoner. Such discussions are reportedly ongoing.

The discussions with the Burmese government were being led by Ambassador Mitchell and ex-Assistant Secretary of State for Democracy, Human Rights, and Labor Michael Posner. The Bureau of Democracy, Human Rights, and Labor has compiled and continues to update a list of all known political prisoners in Burma based on non-government organization (NGO) and government sources, which forms the basis of the State Department's ongoing engagement with the government of Burma on political prisoners.

## Issues for Congress

The continued detention of political prisoners in Burma—as well as the state of human rights in general—are likely to figure prominently in congressional consideration of U.S. policy towards Burma. In the coming months, Congress may decide to examine the status of the implementation of existing U.S. sanctions on Burma. It may also assess the political prisoner issue, either in isolation or as part of a broader consideration of human rights in Burma and sanctions policy. Congress may take up legislation to amend or alter U.S. sanctions on Burma, depending on the evolving conditions in the country. In addition, the Obama Administration may ask Congress for additional funding for humanitarian programs in Burma to address the serious humanitarian needs of Burma's internally displaced people (IDPs), refugees, and other vulnerable populations.

Existing U.S. sanctions on Burma are based on several laws specifically focused on the country, as well as other laws that sanction nations that fail to comply with U.S. standards of conduct related to specific issues. The changing political situation in Burma may warrant congressional consideration of whether alteration or removal of sanctions should be considered under current law. Similarly, the President has the authority—which he has used several times—to waive or suspend some of the existing sanctions on Burma if he determines that the necessary conditions have been met. If the President were to once again exercise this executive authority, Congress may choose to review the President's determination.<sup>81</sup>

Congress may also choose to monitor and evaluate the Obama Administration's efforts to address the political prisoner and human rights situation in Burma. In June 2012, the Senate confirmed the first ambassador to Burma in 20 years after a confirmation hearing in which the nominee, Derek Mitchell, was asked a number of questions about U.S. policy in Burma. The JADE Act explicitly requires that the Special Representative and Policy Coordinator for Burma “consult with Congress on policies relevant to Burma and the future and welfare of all the Burmese people, including refugees.”<sup>82</sup> However, the post of Special Representative has been vacant since

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<sup>80</sup> Interview with CRS, January 2012.

<sup>81</sup> The current U.S. sanction laws specifically focused on Burma provide for a presidential waiver of some sanctions, generally if the President determines that it is “in the national interest of the United States.” In most cases, the President also has to “determine and certify” to Congress or the specified “appropriate congressional committees” that the waiver is in the national interest of the United States.

<sup>82</sup> JADE Act, Section 7(c)(4).

June 2013. The nomination of a new Special Representative could provide Congress with an opportunity to weigh in on the conduct of U.S. policy in Burma and the issue of political prisoners. In addition, Congress may decide to consult with non-Administration sources and/or hold hearings to ascertain the human rights situation in Burma, including the issue of political prisoners.

Beyond its oversight function, Congress may decide that circumstances warrant consideration of new legislation related to U.S. policy towards Burma. Such legislation could reflect a determination that Congress wishes to play a more active role in the formation of U.S. policy towards Burma. Alternatively, legislation may be considered in response to a request from the Obama Administration to amend existing laws to facilitate an adjustment in U.S. policy.

Congress may also be called upon to consider additional funding for humanitarian assistance to Burma. During her December 2011 trip to Burma, Secretary Clinton signaled that the United States would provide additional humanitarian assistance in the future, and announced several specific initiatives. Some of those initiatives are being funded out of existing appropriations; others are being financed by contributions by other countries. On April 5, 2012, USAID formally notified Congress of its intention to reopen its mission in Rangoon, operating out of the U.S. embassy.<sup>83</sup> The projected operating expense for FY2012 was \$598,000, and the requested operating expenses for FY2013 was \$1.7 million. It is possible that the Obama Administration may request additional funds in FY2014 for humanitarian projects inside Burma.

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<sup>83</sup> U.S. Agency for International Development, *Congressional Notification*, CN #38, April 5, 2012.