



Burma's Political Prisoners and U.S. Sanctions

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Summary

The installation of the Union Government in 2011 and the undertaking of initial reforms have raised the prospects for the resumption of a democratically elected civilian government in Burma after five decades of military rule. The release of Burma's political prisoners has a central role in U.S. policy and Burma's political future. Many of the U.S. sanctions on Burma 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.

Similarly, 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 will probably require the release of their members currently in detention.

Estimates of how many political prisoners are being detained in Burma vary greatly. In November 2011, President Thein Sein stated that there are no political prisoners in Burma because everyone in detention had committed a crime. Home Affairs Minister Lieutenant General Ko Ko told the press in January 2012 that 128 dissidents remain in detention. 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 have as many as 938 political prisoners in its 42 prisons and 109 labor camps scattered across the country.

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 very 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). The AAPP(B) includes "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."

Since his appointment in April 2011, President Thein Sein has granted amnesty to selected prisoners on four separate occasions. In total, the Union Government has released 28,244 prisoners, of which 632 were political prisoners, according to the AAPP(B).

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 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.¹ 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.² These changes have initiated serious discussion within the Obama Administration and Congress regarding if and when to consider the relaxation or removal of sanctions currently being imposed on Burma.³

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 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 have limited Burma's economic performance will 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 leaders are freed from jail.

At present, there is no consensus on how many political prisoners there are in Burma. Estimates vary from a few hundred to over 900 political detainees. 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 large variation in the estimates is the use of different definitions of whom to include as political prisoners.

President Thein Sein's suspension of the sentences of 651 prisoners—including 302 political prisoners—on January 13, 2012, raised the issue of Burma's political prisoners in the international media for the second time in two weeks.⁴ Two weeks before, on January 2, 2012, President Thein Sein issued Order No. 1/2012, which resulted in the release of 6,656 prisoners, but only 34 political prisoners, after months of speculation about a possible large scale release of political prisoners prior to parliamentary by-elections to be held on April 1, 2012.⁵

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

² 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 112th Congress*, by Michael F. Martin and Derek E. Mix.

³ For a summary of the existing sanctions on Burma and their history, see CRS Report R41336, *U.S. Sanctions on Burma*, by Michael F. Martin.

⁴ "Amnesty Granted to 651 Male and Female Prisoners in Accordance with Section 401, Subsection (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.

⁵ "President Grants Amnesty," *New Light of Myanmar*, January 3, 2012. For more about the parliamentary by-election, (continued...)

The importance of political prisoners for U.S. policy was underlined by the U.S. response to the two recent releases. On the same day as the January 13 prisoner release, Secretary Clinton announced plans to resume the exchange of ambassadors with Burma for the first time in 20 years, citing the recent releases of political prisoners as one reason for the decision.⁶ By contrast, following the January 2 prisoner release, the State Department issued a press statement in honor of Burma's 64th 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 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."⁷

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 recent 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. However, significant differences remain in the definitions being used and, by extension, the estimates of the number of political prisoners in Burma.

Defining Political Prisoners

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 Burmese government and other interested parties have their own, and 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 Burmese government or officials may also be considered "political prisoners."

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

(...continued)

see CRS Report R42438, *Burma's April Parliamentary By-Elections*, by Michael F. Martin.

⁶ Department of State, "Remarks on Burma," press release, January 13, 2012.

⁷ Department of State, "Burma's Independence Day," press release, January 3, 2012.

in opposition movements with peaceful or resistance means.”⁸ 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 Burmese government is restricting the definition of political prisoners to “prisoners of conscience.”⁹

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 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.¹⁰

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.”¹¹ 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 January 13 sentence suspension. Only a few of the prisoners released on January 13 are associated with the ethnic militias or their affiliated political parties. Following his release, Min Ko Naing stated many political activists associated with ethnic

⁸ AAPP(B), “The Recognition of Political Prisoners: Essential to Democratic and National Reconciliation Process,” press release, November 9, 2011.

⁹ “Burma Prisoner Amnesty—13 Feb [sic] Releases,” *Democratic Voice of Burma*, January 13, 2012.

¹⁰ Definition provided to CRS by the State Department.

¹¹ AAPP(B), “The Recognition of Political Prisoners: Essential to Democratic and National Reconciliation Process,” press release, November 9, 2011.

armed groups remained in custody.¹² 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.¹³

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 the property or otherwise exact revenge on their opponents. The abuse of power by local officials has also 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.

Current Estimates

Different groups provide widely varying estimates of the number of political prisoners being detained in Burma. The AAPP(B) published a list of 473 political detainees whose location has been verified as of April 21, 2012.¹⁴ It also published a list of an additional 465 political prisoners whose locations have not been verified,¹⁵ bringing its total of possible political prisoners in Burma to 938. The AAPP(B) is dedicated to identifying and locating political prisoners in Burma, and providing support for the prisoners and their families.¹⁶

The Burmese government has given significantly different estimates of the number of political prisoners in custody. President Thein Sein 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.”¹⁷ His assertion was repeated on February 12, 2012, when Lower House Speaker Shwe Mann reportedly said, “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.”¹⁸ However, Ko Ko Hlaing, a close political advisor to President Thein Sein, estimated the number of political prisoners in detention in Burma at about 600 prior to an October 2011 prisoner amnesty.¹⁹ Following the January 13 release, Home Affairs Minister Lieutenant General Ko Ko told the press that 302 of the 651 people released were “prisoners of conscience,” and that 128 dissidents remain in detention.²⁰

¹² “Burma’s Remaining Jailed Dissidents,” *Irrawaddy*, January 17, 2012.

¹³ Aye Aye Win, “Praise for Myanmar Release of Political Prisoners,” *Associated Press*, January 15, 2012.

¹⁴ The complete list of names is available online at http://www.aappb.org/Updated_Confirmed_PP_list_1.html.

¹⁵ The complete list of names is available online at http://www.aappb.org/Updated_To_Confirm_PP_list_1.html.

¹⁶ For more about the AAPP(B), see <http://www.aappb.org/index.html>.

¹⁷ “Myanmar President Insists No Political Prisoners in Jails,” *Asia-Pacific News*, November 20, 2011.

¹⁸ Martin Petty, “Myanmar By-elections Vital for EU Sanctions Move—Official,” *Reuters*, February 13, 2012.

¹⁹ “Only 600 Political Prisoners in Burma; President’s Advisor,” *Irrawaddy*, October 18, 2011.

²⁰ “Burma’s Remaining Jailed Dissidents,” *Irrawaddy*, January 17, 2012.

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 release, the NLD reportedly provided the Burmese government with a list of 604 political prisoners.²¹ Its more recent estimate is 270 political prisoners in detention.²² 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 recently released political prisoners have formed the Organization of Former Political Prisoners (OFPP) – also known as the Former Political Prisoners Society (FPPS) – and have surveyed Burma's prisons and labor camps to compile a list of political prisoners still in detention. The OFPP has released a list (in Burmese) of 345 political prisoners.²³ It is not known what definition the OFPP 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.²⁴

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. According to the AAPP(B), since the January prisoner releases:

- Some of the recently released political detainees have been re-arrested, including dissent monk Ashin Gambira (who has since been disrobed), Karen leader Mahn Nyein Maung, and charity worker Nay Myo Zin;
- Several formerly detained monks have been prohibited from returning to their monasteries, some have been reassigned to remote villages; and
- At least 16 people in Bassein Township were arrested for organizing peaceful protests against rising beef prices.²⁵

²¹ "How Many Political Prisoners Remain in Jail?," *Mizzima*, January 16, 2012.

²² Confidential source.

²³ Confidential source.

²⁴ AAPP(B), "Political Prisoner List is Now 1,572—Location of 918 Confirmed and Documented," press release, December 23, 2011.

²⁵ AAPP(B), "Burma: Free and Fair Elections Do Not Mean Civil and Political Rights Exist, Evidenced by Continued Detention of Political Prisoners," press release, March 27, 2012.

Prisoner Releases

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.²⁶ 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.”²⁷ 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.

Early reports provided only preliminary assessments of the number of political prisoners included in the January 13 release. According to one source, the 615 released prisoners consist of 591 “prisoners of conscience” and 60 former military intelligence and customs officials.²⁸ Minister Ko Ko told reporters the day after the January 13 amnesty that 302 “prisoners of conscience” had been released.²⁹ As details of the release became known, the number of political prisoners released began to converge towards a common number. As of February 22, the AAPP(B) has identified 302 political prisoners among the released—the same figure as Minister Ko Ko.³⁰

The January 13 sentence suspension was notable for the inclusion of a number of prominent political prisoners, as well as ex-military officials. Among the noted dissidents released were:

- Min Ko Naing—a leader of the 1988 Uprising;
- Ashin Gambira—a Buddhist monk who helped organize the 2007 “Saffron Revolution”;
- Khun Tun Oo—a senior leader of the Shan Nationalities League for Democracy (SNLD) party; and
- Sithu Zeya—a reporter for the *Democratic Voice of Burma*.

Also among the released prisoners was ex-Prime Minister and SPDC member Khin Nyunt, who was arrested in October 2004 and convicted in July 2005 for alleged corruption.

The use of Section 401 authority raised 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. Following their release on January 13, several former political prisoners indicated that they had been provided unconditional pardons, but a few had said that they were instructed to limit their political activities. None of the

²⁶ “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.

²⁷ Ibid.

²⁸ “Burma Prisoner Amnesty—13 January Releases,” *Democratic Voice of Burma*, January 13, 2012.

²⁹ “Presidential Order Sees 651 Freed,” *Myanmar Times*, January 16, 2012.

³⁰ The complete list of names is available online at http://www.aappb.org/Update_List_of_Political_Prisoners_Released_on_13_Jan_%202012.pdf.

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 said.³¹

Because President Thein Sein based the January 13 sentence suspension 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.³² 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 (see below).

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 64th Anniversary Independence Day and for the sake of State peace and stability."³³ 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.

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.³⁴ 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.³⁵

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 (see **Table 1**). 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).

³¹ "Burma Frees High-Profile Dissidents in Amnesty," *BBC*, January 13, 2012.

³² Hla Hla Htay, "Myanmar Prisoner Release Delayed," *Agence France Press*, November 14, 2011.

³³ "President Grants Amnesty," *New Light of Myanmar*, January 3, 2012.

³⁴ "AAPP-Burma's List of Freed Political Prisoners," *Mizzima*, January 4, 2012; and "33 Burmese Political Prisoners Released," *Mizzima*, January 4, 2012.

³⁵ "6656 Prisoners Granted Amnesty, 38964 Get Clemency," *New Light of Myanmar*, January 6, 2012.

The January 2, 2012, amnesty ended several months of reports that the Burmese government would soon announce another prisoner release. In October 2011, sources within the Burmese government indicated that a prisoner amnesty may be announced prior to the Asia-Pacific Economic Cooperation (APEC) Leaders Meeting (held on November 12-13, 2011, in Honolulu, HI) or the East Asia Summit (held on November 19, 2011, in Bali, Indonesia). The pending amnesty was thought to be scheduled to coincide with a decision by the Association of Southeast Asian Nations (ASEAN) to allow Burma to chair the ASEAN meetings in 2014. The speculation was further fueled by the movement in early November of some prisoners to locations closer to their families.

Table 1. Burma's Prisoner Releases

(In reverse chronological order)

Date	Prisoners Released	Political Prisoners Released	Percentage of Political Prisoners
January 13, 2012	651	302	46.4%
January 2, 2012	6,656	34	0.5%
October 11, 2011	6,359	241	3.8%
May 16, 2011	14,578	55	0.4%
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 58, October 2011.

However, the supposed pending prisoner amnesty was reportedly blocked by the NDSC. Minister of Railways Aung Min, who also serves as President Thein Sein's special representative at ceasefire talks with ethnic militias, reportedly told a delegation from the New Mon State Party (NMSP) on December 22, 2011, that political prisoners would likely be released on Burma's Independence Day (January 4), Union Day (February 14), and Myanmar New Year's Day (April 12).³⁶

³⁶ Kun Chan, "Minister Hints Political Prisoners Released on Jan. 4 and Feb. 12," *Mizzima*, December 22, 2011; and Wai Yan Phyoo Oo, "Prisoners Likely to Freed on Auspicious Occasions," *Weekly Eleven News*, January 5, 2012.

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 upcoming parliamentary by-elections was apparently based in part on the October 11 amnesty, which included 39 NLD members, according to the AAPP(B).³⁷ 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) have said they will not participate in the by-elections because some of their members remain in detention.³⁸ While the January prisoner releases included a significant number of NLD members and a few people associated with the SNLD, 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 the parliamentary by-elections are not 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 has given rise to some tension with some ethnic groups, who see 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 was the continued detention of some of their party leaders and members. Some ethnic groups who still have members in detention are unhappy with the NLD's decision to participate in the by-elections. As such, Aung San Suu Kyi and the NLD may be unable 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 with Burma's ethnic minorities, particularly those with active militias. Proposals to hold a third Panglong Conference have been rebuffed by the Burmese government.³⁹ Ceasefire talks with the ethnic militias frequently falter 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.

³⁷ 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.

³⁸ 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.

³⁹ 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.

U.S. Sanctions and Political Prisoners

Burma's detention of political prisoners has been a major reason for the United States to impose sanctions on Burma.⁴⁰ 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**).⁴¹ 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.

⁴⁰ For more about the history of U.S. sanctions on Burma, see CRS Report R41336, *U.S. Sanctions on Burma*, by Michael F. Martin.

⁴¹ 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>(4) Prisoners held for political reasons in Burma have been released.</p>
Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1997	<p>President determines and certifies to Congress that the Government of Burma has not physically harmed, rearrested for political acts, or exiled Daw Aung San Suu Kyi, and has not committed large-scale repression of or violence against the Democratic Opposition.^a</p>
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^b 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> <ul style="list-style-type: none"> (i) releasing all political prisoners; (ii) allowing freedom of speech and the press; (iii) allowing freedom of association; (iv) permitting the peaceful exercise of religion; and (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>(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^c that the SPDC has—</p> <p>(1) Unconditionally released all political prisoners, including Aung San Suu Kyi and other members of the National League for Democracy;</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. During her December 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.⁴² The State Department press statement cited above restated 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.⁴³

The State Department is also reportedly raising the issue of political prisoners with other governments. U.S. Special Representative and Policy Coordinator for 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. 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.⁴⁴

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 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.⁴⁵ 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 are being led by 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

⁴² 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.

⁴³ Department of State, "Daily Press Briefing," press release, January 3, 2012.

⁴⁴ Ba Kaung, "EU Sanctions Remain Until Burmese Prisoner Release: Hague," *Irrawaddy*, January 6, 2012.

⁴⁵ Interview with CRS, January 2012.

Burma based on non-government organization (NGO) and government sources, which forms the basis of the State Department's ongoing engagement with the GOB on political prisoners.

Issues for Congress

The political prisoner situation in Burma—as well as 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 separately or as part of a broader consideration of human rights in Burma. 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, and to foster desired political changes.

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 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 exercise this executive authority, Congress may choose to review the President's determination.⁴⁶ Secretary Clinton has already announced plans to nominate an ambassador to Burma. If and when a nominee is selected, the person will be subject to the usual confirmation process in the Senate.

Congress may also choose to monitor and evaluate the Obama Administration's efforts to address the political prisoner and human rights situation 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.”⁴⁷ 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 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 trip to Burma, Secretary Clinton signaled that the United States would provide additional humanitarian assistance in the future, and announced several specific initiatives. After the official results of the April 1 parliamentary by-elections were released, Secretary Clinton said

⁴⁶ 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.

⁴⁷ JADE Act, Section 7(c)(4).

that the United States would relax some of the existing sanctions, as well as establish an in-country USAID mission in Burma.⁴⁸ Some of those initiatives are to be funded out of existing appropriations; others are financed by contributions by other countries. It is possible that the Obama Administration may request additional funds for humanitarian projects inside Burma.

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⁴⁸ Secretary of State, "Recognizing and Supporting Burma's Democratic Reforms," press release, April 4, 2012.