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# Burma's Political Prisoners and U.S. Policy: In Brief

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## Summary

With Aung San Suu Kyi and the National League for Democracy (NLD) in control of Burma's Union Parliament and the government's executive branch, prospects may have improved for ending the arrest, detention, prosecution, and imprisonment of political prisoners in Burma, a reality which has overshadowed U.S. policy toward Burma for more than 25 years. Burma's military, or Tatmadaw, however, may not support the unconditional release of all political prisoners in Burma, and potentially has the power to block such an effort.

The 115<sup>th</sup> Congress may have an opportunity to influence Burma's future efforts to address political prisoner issues. Whether by providing technical or other forms of assistance to address the underlying causes of political imprisonment, or by restricting relations with Burma until political prisoners have been released, Congress potentially could influence the behavior of the NLD-led government and the Tatmadaw with respect to political prisoners.

According to the Assistance Association of Political Prisoners (Burma), or AAPP(B), a Thailand-based, nonprofit human rights organization formed in 2000 by former Burmese political prisoners, there were 305 political prisoners in Burma as of the end of April 2017. On the eve of Burma's second "21<sup>st</sup> Century Peace Conference," which brought together representatives of Aung San Suu Kyi's government, the Burmese military and some of the nation's ethnic armed groups in Naypiytaw, on May 24-29, 2017, President Htin Kyaw granted pardons to 259 prisoners, including 80 political prisoners. Following the pardons, 40 political prisoners remained in prison, and over 150 were awaiting trial for their political activities. Under various laws, some dating back to British colonial rule, new political prisoners continue to be arrested by Burma's security forces.

Several factors complicate the issue, starting with unsuccessful efforts to establish a formal definition of political prisoner during the previous Thein Sein administration (2011-2015). Also, the Union Parliament has repealed or amended only a few of the laws that authorities use to arrest and prosecute people for political reasons, and further has passed new laws that some observers see as limiting political expression and human rights. In addition, the Tatmadaw directly or indirectly control the nation's security forces, including the Myanmar Police Force and, the Tatmadaw's leadership has not demonstrated an interest in ending Burma's history of political imprisonment.

The 115<sup>th</sup> Congress may consider these issues when it examines U.S. policy toward Burma, and if and how to integrate concerns regarding political imprisonment into overall policy. Congress may also choose to assess how other important issues in Burma should influence U.S. policy, including efforts to end the nation's ongoing low-grade civil war; ethnic tensions between the Rakhine and the Rohingya in Rakhine State; and prospects for constitutional and legal reform designed to establish a democratically-elected civilian government that respects the human rights and civil liberties of all Burmese people.

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## Overview

The existence and treatment of political prisoners in Burma (Myanmar)<sup>1</sup> has been a central issue in the formulation of U.S. policy toward Burma for more than 25 years. The arrest, detention, prosecution, and imprisonment of Burmese political prisoners—including Aung San Suu Kyi—frequently were cited as reasons for imposing political and economic sanctions on Burma and the leaders of its ruling military junta. The release of political prisoners was often listed as a necessary condition for the repeal of those sanctions.<sup>2</sup> When announcing waivers of existing sanctions, the Obama Administration often cited progress on the release of political prisoners as evidence for why the waiver was warranted.<sup>3</sup>

During a discussion of the human rights situation in Burma during the 34<sup>th</sup> session of the U.N. Human Rights Council, William J. Mozdierz, Director of State Department's Office of Human Rights and Humanitarian Affairs, stated that the U.S. government was “concerned by new political arrests under the current [Burmese] government,” and urged “the [Burmese] government to immediately and unconditionally release all political prisoners, and to drop charges against individuals for taking part in protected political activities.”<sup>4</sup> What actions, if any, the 115<sup>th</sup> Congress or the Administration may take with respect to U.S. policy toward Burma may hinge, in part, on the issue of political prisoners in Burma.

Six years have passed since Burma's ruling military junta, the State Peace and Development Council (SPDC) transferred power over the government in Naypyitaw to a newly reconstituted Union Parliament and President Thein Sein, a retired general and the SPDC's last Prime Minister. While the number of political prisoners in Burma has been significantly reduced over the last six years, Burmese authorities continue to arrest, detain, prosecute, and imprison political prisoners.

During his term in office (2011-2016), President Thein Sein promised to release all “prisoners of conscience” and at one point pledged that there would be no more “prisoners of conscience” in

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<sup>1</sup> According to the country's 2008 constitution, its official name is “the Republic of the Union of Burma,” or “Myanmar.” The U.S. government continues to officially refer to the nation as “the Union of Burma,” or “Burma,” but uses “Myanmar” inside the country and at multilateral fora where the host refers to the nation as “Myanmar.”

<sup>2</sup> Section 138 of the Customs and Trade Act of 1990 (P.L. 101-382) requires the President to “impose such economic sanctions upon Burma as the President determines to be appropriate until certain conditions are met, including “Prisoners held for political reasons in Burma have been released.” The Burmese Freedom and Democracy Act of 2003 (P.L. 108-61) stipulates as one condition for the termination of the Act's sanctions, “The SPDC has made measurable and substantial progress toward implementing a democratic government, including—(i) releasing all political prisoners; ...” The Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (JADE Act; P.L. 110-286) sets as one of the conditions for the termination of its sanctions that “the President determines and certifies to the appropriate congressional committees that the SPDC has—(1) Unconditionally released all political prisoners, including Aung San Suu Kyi and other members of the National League for Democracy; ...”

<sup>3</sup> For example, in Executive Order 13742 issued on October 7, 2016, which waived the economic sanctions imposed by Section 5(b) of the JADE Act and terminated and revoked Executive Orders 13047, 13310, 13448, 13464, 13619, and 13651, President Obama mentioned “the release of many political prisoners” among the evidence of “Burma's substantial advances to promote democracy.” Similarly, Presidential Determination No. 2017-04, which terminated restrictions on bilateral assistance to Burma contained in Section 570(1) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (P.L. 104-208), President Obama cited “the new civilian [sic] government released 63 political prisoners and dropped charges against almost 200 individuals facing trial on political grounds” as evidence of “measurable and substantial progress in improving human rights practices and implementing democratic government,” as required by that act.

<sup>4</sup> U.S. Mission in Geneva, “Statement by the Delegation of the United States of America as Delivered by William J. Mozdierz,” press release, March 13, 2017, <https://geneva.usmission.gov/2017/03/13/interactive-dialogue-with-the-special-rapporteur-on-the-situation-of-human-rights-in-myanmar/>.

Burmese prisons by the end of 2014. According to most observers, he failed to fulfil his pledge. During the 2016 parliamentary election campaign, Aung San Suu Kyi and her political party, the National League for Democracy (NLD), promised that, once they were in power, they “would not arrest anyone as political prisoners.”<sup>5</sup> Soon after taking office in April 2016, President Htin Kyaw and State Counselor Aung San Suu Kyi granted pardons or secured the release of some political prisoners. President Htin Kyaw granted pardons to 259 prisoners, including 80 political prisoners according to the AAPP(B), just before the second “21<sup>st</sup> Century Panglong Peace Conference” was to convene in Naypyitaw.<sup>6</sup> The NLD-led government, however, has been unable to prevent the continued arrest, detention, prosecution, and imprisonment of new political prisoners.

One reason that controversy over political imprisonment persists in Burma is the lack of agreement on the definition of “political prisoner.” Some in Burma would restrict the definition to “prisoners of conscience”; others prefer a broader definition that would include persons who took up arms against the SPDC and the Burmese military. Efforts to forge an official definition for political prisoners during the Thein Sein government were unsuccessful. So far, the NLD-led government has made little progress on the definition issue.

A second reason the issue of political imprisonment persists in Burma is the existence of many laws—some dating back to the time of British colonial rule—that restrict freedom of speech, freedom of assembly, and freedom of the press. Various human rights organizations have identified several Burmese laws that violate international standards on these freedoms. Because these laws remain in force, Burmese security personnel can arrest, detain, prosecute, and sentence people for their political views. During the Thein Sein government, the Union Parliament made some progress on legal reform, but also passed new laws that some observers maintain restrict political expression. Since the NLD took control of the Union Parliament, little progress has been made on repealing or revising Burma’s questionable laws.

A third reason the issue of political imprisonment persists in Burma has to do with who holds administrative authority over Burma’s criminal cases. All security forces in Burma—including the military (or Tatmadaw), the Border Guard Forces, local militias, and the Myanmar Police Force (MPF)—directly or indirectly report to the Tatmadaw’s Commander-in-Chief Senior General Min Aung Hlaing, and not to President Htin Kyaw or the Union Parliament. As a result, people will continue to be arrested for political expression, in accordance with existing Burmese laws, so long as Min Aung Hlaing supports such a policy. President Htin Kyaw maintains authority over the prosecution of criminal offenses, as well as the power to grant amnesty to convicted criminals.

If addressing political imprisonment remains a priority in U.S. policy toward Burma, then the 115<sup>th</sup> Congress and the Administration could consider several options, such as reimposing sanctions and restrictions previously waived, or providing assistance in repealing or revising problematic laws or the provisions in the 2008 constitution. However, it may be useful for such options to be evaluated in the context of and with consideration of the possible impact on other priorities in U.S. relations with Burma, including:

- the creation of a democratically-elected civilian government in Burma;
- the protection of the human rights of the people of Burma;

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<sup>5</sup> Ye Mon, “NLD Pledges No More Political Prisoners,” *Myanmar Times*, January 6, 2016.

<sup>6</sup> San Yamin Aung, “More than 250 Prisoners Released Under Amnesty,” *Irrawaddy*, May 24, 2017. Initial news accounts differed on the number of political prisoners among those granted amnesty. CRS correspondence with AAPP(B) clarified that the organization identified 80 political prisoners among those released.

- progress toward greater economic prosperity for the people of Burma; and
- the establishment of direct civilian control over the Tatmadaw and the rest of Burma's security forces.

## Current Status of Political Prisoners in Burma

The number of political prisoners in Burma fluctuates over time, depending on the termination of prison sentences, the status of pending trials, and the arrest and detention of new alleged political prisoners by Burma's security forces. The number also varies depending on which definition of "political prisoner" is used when categorizing cases.

The figures released by the Assistance Association of Political Prisoners (Burma), or AAPP(B), in its monthly report on political prisoners are widely used by the Burmese media, the international press, and the State Department, as a comparatively reliable estimate of the number of political prisoners in Burma. The AAPP(B) is a nonprofit human rights organization formed in 2000 by former Burmese political prisoners.

For over a decade, the AAPP(B) has released a monthly report on the number of political prisoners in Burma, based on its definition of political prisoner (see "Definition of Political Prisoners" below) and its network of researchers who monitor Burma's security system for information on alleged political prisoners arrests, detentions, trials, and incarceration. The monthly reports include a description of related events of the past month and detailed list containing the names, alleged violation, prison (where applicable), sentence (where applicable), and political affiliation (if any) of each political prisoner included in the monthly report.

According to the AAPP(B), there were 305 political prisoners in Burma as of the end of April 2017.<sup>7</sup> Of those, 99 were serving prison sentences, 91 were being held in detention awaiting trial, and 115 were awaiting trial outside of prison.

## Political Prisoner Releases by the NLD-led Government

The success of Aung San Suu Kyi and the National League for Democracy (NLD) in Burma's 2015 parliamentary elections raised the hopes of many in Burma that the arrest and detention of political prisoners would soon come to an end.<sup>8</sup> In January 2016, an NLD spokesperson told the press that the new government once in power would adopt an official definition of "political prisoner", and "would not arrest anyone as political prisoners."<sup>9</sup> The spokesperson also stated that the NLD-led government "can control the arresting of political prisoners in accordance with existing laws," but did not elaborate on how that would be accomplished.<sup>10</sup>

Soon after assuming office in April 2016, President Htin Kyaw and State Counsellor Aung San Suu Kyi took steps to secure the release of nearly 200 political prisoners.<sup>11</sup> On April 7, 2016, the

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<sup>7</sup> Assistance Association of Political Prisoners (Burma), *April Chronology 2017*, May 15, 2017.

<sup>8</sup> For about Burma's 2015 parliamentary elections and the NLD's landslide victory, see CRS Report R44436, *Burma's 2015 Parliamentary Elections: Issues for Congress*, by Michael F. Martin.

<sup>9</sup> Ye Mon, "NLD Pledges No More Political Prisoners," *Myanmar Times*, January 6, 2016.

<sup>10</sup> *Ibid.*

<sup>11</sup> The newly-elected members of the Union Parliament took office in January 2016; President Htin Kyaw and State (continued...)

Office of the State Counsellor announced that “releasing prisoners of conscience who are behind bars for their involvement in peaceful political activities is one of the priorities of the new government.”<sup>12</sup> The following day, Aung San Suu Kyi ordered that charges be dropped for 114 people facing charges for their participation in a peaceful protest against a proposed National Education Bill. On April 16, 2016—Burma’s traditional New Year—President Htin Kyaw issued Order 33/2016 granting amnesty to 83 political prisoners. The amnesty was reportedly granted to “make people feel happy and peaceful, and (promote) national reconciliation during the New Year.”<sup>13</sup> According to the Ministry of Home Affairs, between April and mid-August 2016, the NLD-led government released 457 people facing trial for political activity, and 274 political cases were closed.<sup>14</sup>

On May 23, 2017, President Htin Kyaw granted amnesty to 259 prisoners in recognition of the second 21<sup>st</sup> Century Panglong Peace Conference, held on May 24–29, 2017.<sup>15</sup> According to the AAPP(B), 80 political prisoners were among those granted amnesty. The AAPP(B), however, also noted that about 100 political prisoners remained in prison after the amnesty, and another 200 people are awaiting trial for their political activities.<sup>16</sup> The AAPP(B) also called upon the NLD-led government to: immediately and unconditionally release all political prisoners; adopt the AAPP(B)’s definition of political prisoners; reestablish the Political Prisoner Review Committee; and amend or repeal “repressive legislation which allows for the arrest and incarceration of political activists.”<sup>17</sup>

## Definition of Political Prisoners

One 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 has a long history, there is no single 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’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;

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Counsellor Aung San Suu Kyi were appointed to their offices by the Union Parliament in March 2016, and were sworn into office in April 2016.

<sup>12</sup> President Office, Republic of the Union of Myanmar, “State Counsellor Daw Aung San Suu Kyi to Strive for the Granting of Presidential Pardon to Political Prisoners, Activists, Students,” press release, April 11, 2016.

<sup>13</sup> “Myanmar President Pardons 83 Political Prisoners; Official,” *AFP*, April 18, 2016.

<sup>14</sup> “NLD Government Has Released 457 Political Prisoners,” *Democratic Voice of Burma*, August 18, 2016.

<sup>15</sup> For more about the peace conference, see CRS Insight IN10711, *Burma’s Second 21st Century Panglong Peace Conference*, by Michael F. Martin.

<sup>16</sup> “Peace Activists Among 250 Myanmar Prisoners Granted Pardon,” *AFP*, May 25, 2017.

<sup>17</sup> Email correspondence with AAPP(B) representative, May 30, 2017.



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>18</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 whether she or he is to be considered a political prisoner. Following a human rights dialogue with the Thein Sein government in January 2015, the State Department issued a press release that included the statement, “The United States [government] expressed the need to adopt consensus definitions of ‘prisoner of conscience’ and ‘political prisoner’ as a basis to review cases.”<sup>19</sup>

In 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 periodically have been 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.

Ex-President Thein Sein consistently confined his definition to include only “prisoners of conscience,” and generally used that phrase when discussing the issue. He repeatedly stated that individuals who have committed criminal acts are not considered “prisoners of conscience,” and are expected to serve out their prison sentences. Similarly, Burma’s military prefers to restrict the definition of political prisoner to only include “prisoners of conscience.” Some international groups, such as Amnesty International (AI), also uses a narrower definition that emphasizes so-called “prisoners of conscience.”<sup>20</sup>

The AAPP(B) and Human Rights Watch (HRW) use a broader definition of political prisoner. 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>21</sup> The AAPP(B) rejects the limitation of political prisoners to “prisoners of conscience” for several reasons. First, the AAPP(B) maintains that Burmese security forces frequently detain political dissidents with false allegations that they committed violent or nonpolitical 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

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<sup>18</sup> Definition provided to CRS by the State Department, July 2016.

<sup>19</sup> State Department, “Myanmar and United States Conclude Successful Second Human Rights Dialogue,” press release, January 16, 2015.

<sup>20</sup> Amnesty International’s definition is “people who have been jailed because of their political, religious or other conscientiously-held beliefs, ethnic origin, sex, color, language, national or social origin, economic status, birth, sexual orientation or other status, provided that they have neither used nor advocated violence.” (<http://www.amnestyusa.org/our-work/issues/prisoners-and-people-at-risk/prisoners-of-conscience>)

<sup>21</sup> AAPP(B), “The Recognition of Political Prisoners: Essential to Democratic and National Reconciliation Process,” press release, November 9, 2011.



government in Naypyidaw should be “viewed with the backdrop of violent crimes committed by the state, particularly against ethnic minorities.”<sup>22</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 Political Prisoners Review Committee (PPRC, also known as the Political Prisoner Scrutiny Committee), set up former Burmese President Thein Sein, reportedly attempted 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 had agreed to a definition, but that the Thein Sein government did not formally adopt the definition.<sup>23</sup>

On August 17 and 18, 2014, AAPP(B) and the FPPS held a workshop in Rangoon to discuss a common definition of political prisoners and to open a discussion with the Thein Sein government and Burma's Union Parliament on the topic.<sup>24</sup> Representatives of various Burmese organizations and political parties, as well as the International Committee of the Red Cross, attended the workshop. The attendees at the conference agreed to the following definition of political prisoner:

Anyone who is arrested, detained, or imprisoned for political reasons under political charges or wrongfully under criminal and civil charges because of his or her perceived or known active role, perceived or known supporting role, or in association with activities promoting freedom, justice, equality, human rights, and civil and political rights, including ethnic rights, is defined as a political prisoner.<sup>25</sup>

The adopted statement of the conferees further explained:

The above definition relates to anyone who is arrested, detained, or imprisoned because of his or her perceived or known active role, perceived or known supporting role, or in association with political activities (including armed resistance but excluding terrorist activities), in forming organizations, both individually and collectively, making public speeches, expressing beliefs, organizing or initiating movements through writing, publishing, or distributing documents, or participating in peaceful demonstrations to express dissent and denunciation against the stature and activities of both the Union and state level executive, legislative, judicial, or other administrative bodies established under the constitution or under any previously existing law.

Following the workshop, a Member of Parliament from Aung San Suu Kyi's National League for Democracy (NLD) reportedly said that the NLD would submit a proposed definition of political prisoner to the Union Parliament.<sup>26</sup>

Since the NLD has assumed power, different voices have called for establishing a legal definition of political prisoners. In its May 2016 report cited above, the AAPP(B) and FPPS recommended that the NLD-led government adopt an internationally recognized definition of political prisoners.<sup>27</sup> On June 2, 2016, Pe Than, an Arakan National Party (ANP) member of the Union

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<sup>22</sup> AAPP(B), “The Recognition of Political Prisoners: Essential to Democratic and National Reconciliation Process,” press release, November 9, 2011.

<sup>23</sup> “Burma Releases Political Prisoners Ahead of US State Visit,” *Irrawaddy*, May 17, 2013.

<sup>24</sup> “Myanmar Still Seeks Definition of Political Prisoner,” *Eleven Myanmar*, August 18, 2014.

<sup>25</sup> Assistance Association for Political Prisoners (Burma), *AAPP & FPPS Press Release About the Definition of a Political Prisoner*, September 2, 2014, <http://aappb.org/2014/09/aapp-fpps-press-release-about-the-definition-of-a-political-prisoner/>.

<sup>26</sup> “NLD Moving to Recognise Myanmar's ‘Political Prisoners,’” *Eleven Myanmar*, August 20, 2014.

<sup>27</sup> AAPP(B) and FPPS, *After Release I Had to Restart My Life from the Beginning*, May 25, 2016, <http://aappb.org/> (continued...)

Parliament's lower house, spoke on the chamber's floor in support of adopting legal definitions of "political prisoners" and "political offenses" to protect political activists.<sup>28</sup> Deputy Minister of Home Affairs General Aung Soe voiced his ministry's opposition to Pe Than's proposal, stating that providing special treatment to political prisoners would discriminate against other people arrested for alleged violations of the law.<sup>29</sup>

In addition, human rights abuses by the government against two segments of Burmese society also have been raised in association with the issue of political prisoners. First, allegations of corruption among local Burmese officials are fairly common, with officials reportedly frequently using 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 by those very same officials. These reported abuses of power by officials have been portrayed as creating a special group of "political prisoners." Second, past governments in Burma singled out the Rohingya, a predominately Muslim ethnic minority residing in northern Rakhine State along the border with Bangladesh, and allegedly subjected them to more extensive and invasive political repression, including restrictions on movement, employment, education, and marriage. The NLD-led government has done little to reverse the previous practice of discrimination against the Rohingya.

## Problematic Laws

Burma's 2008 Constitution provides for the continued authority of any laws promulgated prior to the adoption of the Constitution, unless they contravene provisions in the Constitution or are superseded by laws passed by the Union Parliament. As a result, many comparatively repressive laws, including some dating back to British colonial rule, remain in force in Burma. Over the last six years, the Union Parliament has repealed or amended some of the more problematic laws, but has also passed new laws that some observers view as being similarly repressive of human rights. Burma's security forces, and in particular, the Myanmar Police Force, has used these laws to suppress the voices of political opposition in Burma.

In its monthly report on political prisoners, the AAPP(B) includes information on which laws were allegedly violated. The following laws are those most frequently cited in the AAPP(B) monthly reports:

- **The Unlawful Associations Act of 1908**—Section 17(1) states that association with any organization that the President declares illegal is punishable by two to three years imprisonment, along with a possible fine. Under Section 17(2), managing an unlawful association or promoting its meetings is subject to three to five years of imprisonment, and a possible fine. This law has been frequently used to declare ethnic armed organizations and their militias "unlawful associations." As of December 2016, at least 72 people were serving sentences for alleged violations of this act.

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2016/05/after-release-i-had-to-restart-my-life-from-the-beginning-the-experiences-of-ex-political-prisoners-in-burma-and-challenges-to-reintegration/.

<sup>28</sup> "Union Government Urged to Adopt Political Prisoner Definition," *Global New Light of Myanmar*, June 3, 2016.

<sup>29</sup> Tin Htet Paing, "Calls to Legally Define Political Prisoners Rebutted in Parliament," *Irrawaddy*, June 2, 2016;

- **The Telecommunications Law of 2013**—Section 66(d) subjects anyone found “[e]xtorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network” to up to three years in prison and/or a fine. This law is being used to arrest and try political commentators and journalists who criticize government policy, government officials, or the Tatmadaw on social media. The AAPP(B) has compiled a list of 37 Section 66(d) cases since October 2015, including 10 convictions.
- **The Right to Peaceful Assembly and Peaceful Procession Act of 2011**—The law allegedly places restrictions on the freedom of assembly and expression inconsistent international human rights laws and standards. Violators of the law are subject to up to two years in prison and/or a fine. This law has reportedly been used to arrest and try people protesting against alleged illegal land confiscations by local officials and the Tatmadaw, as well as individuals rallying in opposition to other actions by the Burmese government and the military. On July 15, 2015, the U.S. embassy in Rangoon issued a statement indicating, “The United States is concerned over continued reports of arrests and excessive prison terms handed down to peaceful protesters under Article 18 of the Peace Assembly and Processions Act.”<sup>30</sup>

In April 2016, Burma’s Legal Affairs and Special Cases Assessment Commission, a governmental body established by Burma’s Union Parliament, recommended that 142 laws be repealed or amended, including some that have been used to suppress political opposition and expression.<sup>31</sup> The Commission recommended abolishing the Emergency Provisions Act of 1950 (which made it illegal to engage in activities that hindered the ability of the government or the military to perform their duties) and Section 505(b) of the Penal Code (which makes it illegal to circulate, make, or publish any statement, rumor, or report “with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility”), as well as amend Article 18 of the Peace Assembly and Processions Act.

In January 2016, the International Federation for Human Rights (FIDH), a federation of over 180 international human rights organizations, called on the incoming Union Parliament to repeal or amend several laws enacted by the outgoing Union Parliament. The laws identified by FIDH included: The Right to Peaceful Assembly and Peaceful Procession Act of 2011; The Telecommunications Act of 2013; the Printing and Publications Act of 2014; the Media Act of 2014; and the four so-called “Race and Religion Protection Laws” of 2015 (the Interfaith Marriage Law, the Monogamy Law, the Population Control Law, and the Religious Conversion Law), which are seen as discriminating against Burma’s Muslim population. Human Rights Watch issued a report in 2016, entitled “They Can Arrest You at Any Time: The Criminalization of Peaceful Expression in Burma,” that also cited these laws as tools of political oppression, as well as several others, including the Electronic Transactions Act of 2004; the Official Secrets Act of 1923; and various sections of the Penal Code (Sections 124A, 130B, 141-147, 153A, 295A, 298, 503, 405, 505(b), 505(c), and 509).<sup>32</sup>

<sup>30</sup> U.S. Embassy, Rangoon, “Statement,” press release, July 15, 2015.

<sup>31</sup> San Yamin Aung, “Legal Commission Recommends Scrapping 142 Laws,” *Irrawaddy*, April 8, 2016.

<sup>32</sup> Human Rights Watch, *They Can Arrest You at Any Time: The Criminalization of Peaceful Expression in Burma*, June 2016.

Since taking office in January 2016, the NLD-led Union Parliament has made some efforts to repeal or amend a few of the problematic laws. In May 2016, the Union Parliament revoked the State Protection Act of 1975, that allowed the government to declare a State of Emergency and to suspend citizen's basic rights.<sup>33</sup> In October 2016, they repealed the Emergency Provisions Act of 1950, that effectively prohibited criticism of the Tatmadaw or the government.<sup>34</sup> In December 2016, proposals were submitted to amend Section 66(d) of the Telecommunications Act of 2013, but they have not been approved.

## Authority over Criminal Cases

Under Burma's 2008 constitution, the President has limited authority over the arrest and detention of people for alleged criminal activity; the Commander-in-Chief of Defence Services controls the security forces that make arrests. In part as a result, people in Burma continue to be arrested and convicted for their political activities. The President, however, can direct that pending cases be dropped, as well as grant pardons and amnesties once people have been convicted.

Burma's 2008 constitution stipulates "All the armed forces in the Union shall be under the command of the Defence Services" (Article 338) and "The Defence Services shall lead in safeguarding the Union against all internal and external dangers" (Article 339). The Commander-in-Chief is to be appointed by the President, "with the proposal and approval of the National Defence and Security Council" (Article 342).<sup>35</sup> Article 20(c) states, "The Commander-in-Chief of the Defence Services is the Supreme Commander of all armed forces."

Burma's Defence Services includes the Myanmar Armed Forces (or Tatmadaw), the Border Guard Forces, and the Myanmar Police Force.<sup>36</sup> The Myanmar Armed Forces and the Border Guard Forces are part of the Ministry for Defence; the Myanmar Police Force are part of the Ministry for Home Affairs. Article 232(b)(ii) of the 2008 constitution requires the President "obtain a list of suitable Defence Services personnel nominated by the Commander-in-Chief of the Defence Services for Ministries of Defence, Home Affairs and Border Affairs," thereby requiring that those Ministers be active military personnel and giving the Commander-in-Chief authority over who is selected as Minister of Defence, Home Affairs, and Border Affairs. As a result, the Commander-in-Chief of Defence Services has authority over Burma's security forces and, by extension, over the arrest and detention of persons who allegedly have violated the law.

Once arrests have been made, the cases are directed to Burma's attorney general, who is appointed by the president (subject to the approval of the Union Parliament) and reports directly to the president. Public prosecutors, appointed at the local level and under the attorney general's authority, are responsible for prosecuting criminal cases. As such, the President does have the

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<sup>33</sup> Htoo Thant, "Hluttas Revoke Oppressive State Protection Law," *Myanmar Times*, May 26, 2016.

<sup>34</sup> For example, Section 5(b) made it illegal "to depreciate, pervert, hinder, restrain, or vandalise the loyalty, enthusiasm, acquiescence, health, training, or performance of duties of the army organisations of the Union or of civil servants in a way that would induce their respect of the government to be diminished, or to disobey rules, or to be disloyal to the government." Wai Moe, "Myanmar Repeals 1950 Law Long Used to Silence Dissidents," *New York Times*, October 5, 2016.

<sup>35</sup> The National Defence and Security Council includes the President, two Vice Presidents, the Speakers of each chamber of the Union Parliament, the Commander-in-Chief of Defence Services, the Deputy Commander-in-Chief of Defence Services, and the Minister for Defence, the Minister for Border Affairs, the Minister for Foreign Affairs, and the Minister for Home Affairs.

<sup>36</sup> In addition, there are various local militias organized and supported by the Tatmadaw. For more about the militias of Burma, see John Buchanan, *Militias in Myanmar*, Asia Foundation, Policy Dialogue Brief #13, July 2016.

authority to direct the attorney general and the public prosecutors to drop charges considered political in nature. In April 2016, State Counsellor Aung San Suu Kyi exercised such authority to secure the release of over 100 people being detained for the participation in peaceful protests.

Article 204 of the constitution gives the President the power to grant pardons and amnesties (in accord with the recommendation of the National Defence and Security Council). In addition, Section 401(1) of Burma's Code of Criminal Procedures states:

When any person has been sentenced to punishment for an offence, the President of the Union may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

The authority to grant pardons and amnesties was used several times by former President Thein Sein, and by President Htin Kyaw on April 16, 2017.

## **Issues for U.S. Policy**

Some of the options that Congress may consider to address issues of political imprisonment in Burma include:

- Providing technical and other forms of assistance to the Union Parliament and the Ministry of Justice in identifying and revising those laws that have been or could be used to arrest and prosecute people for political reasons;
- Pressuring the NLD-led government to reevaluate and consider repealing laws or regulations that declare any of the ethnic armed organizations (EAOs) illegal under the Unlawful Associations Act of 1908;
- Supporting the reestablishment of a Political Prisoners Review Committee or a similar body to identify alleged political prisoners and develop an official definition of political prisoners;
- Imposing suitable restrictions on relations with Burma until all political prisoners have been unconditionally released;
- Conditioning the provision of certain types of assistance to the NLD-led government and/or the Tatmadaw contingent on the adoption of an official definition of political prisoner, and on the release of political prisoners;
- Imposing suitable restrictions on relations with Burma until sufficient reforms of Burma's security forces, including the Myanmar Police Force, have been undertaken to preclude or reduce the likelihood people will be arrested or prosecuted as political prisoners; and
- Including the absence of political prisoners in Burma as a criteria for determining that a democratic civilian government that respects human rights and civil liberties has been established in Burma, and that certain restrictions on bilateral relations can be removed.

The presence of political prisoners in Burma, however, is only one of several possible issues that Congress may consider when examining U.S. policy toward Burma. Other key issues may be:

- **The Low-grade Civil War:** Burma has endured a low-grade civil war between the Tatmadaw and up to 20 ethnic armed organizations for over 50 years.<sup>37</sup> Aung San Suu Kyi has made the peace process a high priority for the NLD-led government, but the first and second “21<sup>st</sup> Century Panglong Peace Conferences,” held on August 31-September 3, 2016 and May 24-29, 2017, respectively, were less successful than some observers had hoped.<sup>38</sup> According to Burma News International (BNI), fighting between the Tatmadaw and several ethnic armed organizations has increased since the peace conference was held.<sup>39</sup>
- **Ethnic Relations in Rakhine State:** The two main ethnic minorities residing in Rakhine State are the Rakhine (also known as Arakan) and the Rohingya. The Rakhine are predominately Buddhists; the Rohingya are predominately Muslim. Relations between the two ethnic minorities have been problematic for decades. In 1982, Burma’s military junta stripped the Rohingya of their citizenship, and began portraying the vast majority of them as illegal immigrants from Bangladesh and India.<sup>40</sup> Violent unrest broke out in Rakhine State in 2012, resulting in the deaths of at least 57 Rohingya and 31 Rakhine, and the displacement of an estimate 90,000 people, mostly Rohingya.<sup>41</sup> In October 2016, after a group of assailants attacked three police outposts, the Tatmadaw began a “clearance operation” in northern Rakhine State that, according to the U.N. Office of High Commissioner of Human Rights (OHCHR), resulted in the murder, enforced disappearance, torture, rape, arbitrary detention, and forced deportation of hundreds of Rohingya, and may constitute crimes against humanity.<sup>42</sup> As of the date of this report, the NLD-led government and the Tatmadaw have denied any widespread human rights abuses have occurred in Rakhine State, but both organizations have established commissions to investigate the allegations.
- **Constitutional and Legal Reform:** During the parliamentary campaign, the NLD stated that it would seek to implement both constitutional and legal reforms aimed at establishing a more democratic government and protecting the human rights of the people of Burma. Some analysts note that, since taking office in April 2016, the NLD has made little progress on either campaign pledge.

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<sup>37</sup> For more about Burma’s civil war and its current peace process, see CRS In Focus IF10417, *Burma’s Peace Process: Challenges Ahead in 2017*, by Michael F. Martin.

<sup>38</sup> For more about the peace conferences and their problems, see CRS Insight IN10566, *Burma Holds Peace Conference*, by Michael F. Martin and CRS Insight IN10711, *Burma’s Second 21st Century Panglong Peace Conference*, by Michael F. Martin.

<sup>39</sup> “Conflicts Increase in Ethnic Areas After 21<sup>st</sup> Century Panglong Conference, Peace Survey Points Out,” *Burma News International*, January 30, 2017.

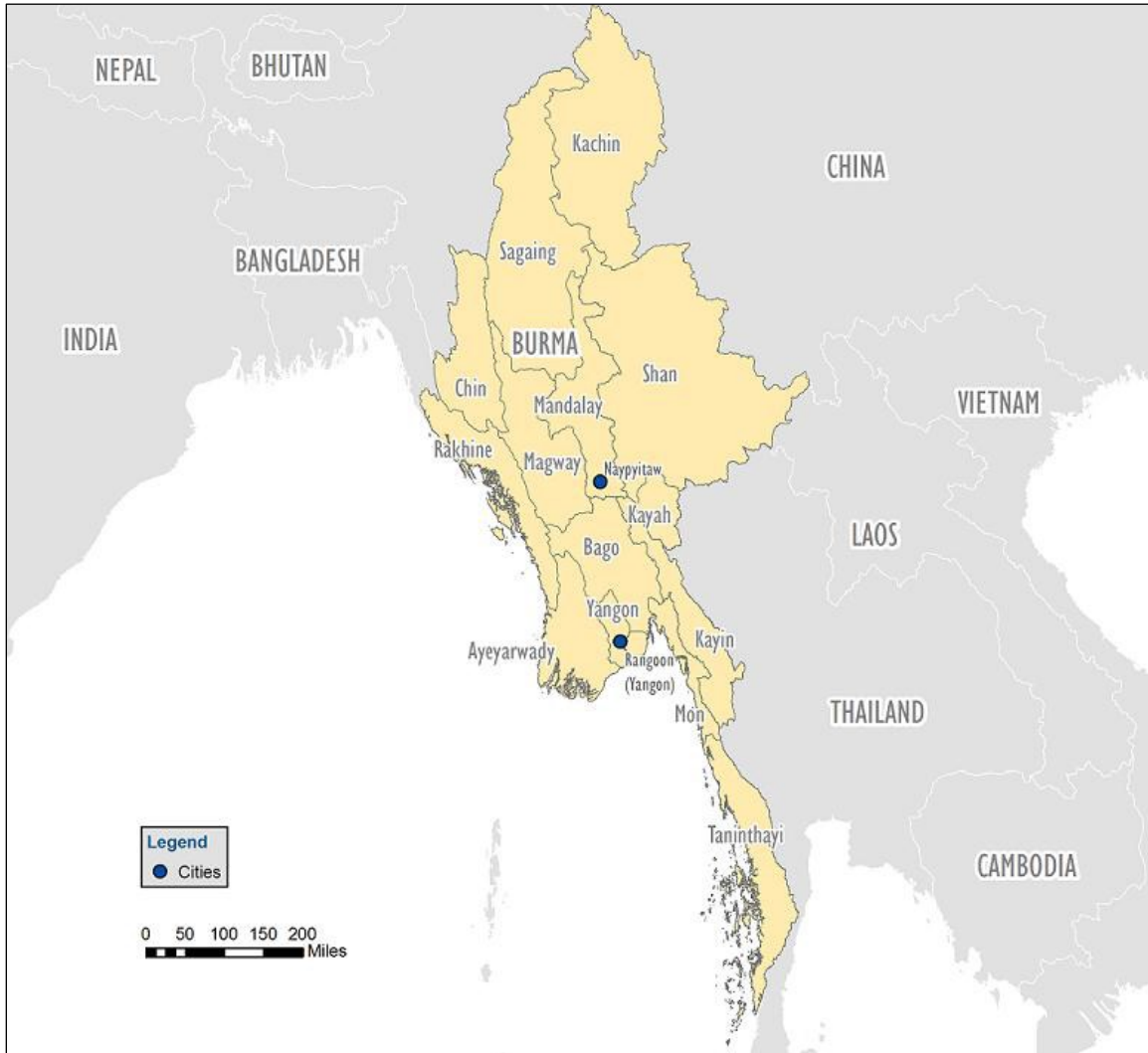
<sup>40</sup> As part of the effort to delegitimize the Rohingya, the military junta began referring to them as “Bengalis,” a reference to their alleged origin from Bangladesh and India.

<sup>41</sup> For a study of the 2012 Rakhine riots and their aftermath, see Human Rights Watch, *All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State*, April 22, 2013.

<sup>42</sup> U.N. High Commissioner of Human Rights, *Interviews with Rohingyas Fleeing from Myanmar Since 9 October 2016*, Report of the OHCHR Mission to Bangladesh, February 3, 2017.



**Figure I. Map of Burma**  
Showing States and Regions



Source: CRS

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