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Burma's Political Prisoners and U.S. Sanctions

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September 15, 2014

Congressional Research Service

7-5700

www.crs.gov

R42363

Summary

The release of all Burma's political prisoners is one of the fundamental goals of U.S. policy. Several of the laws imposing sanctions on Burma—including the Burmese Freedom and Democracy Act of 2003 (P.L. 108-61) and the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (P.L. 110-286)—require the release of all political prisoners before the sanctions can be terminated. The Consolidated Appropriations Act of 2014 (P.L. 113-76) requires the Department of State and the U.S. Agency for International Development (USAID) to “support programs for former political prisoners” in Burma, as well as “monitor the number of political prisoners in Burma.”

Burma's President Thein Sein pledged during a July 2013 trip to the United Kingdom to release all “prisoners of conscience” in his country by the end of the year. Since his announcement, he granted amnesties or pardons on seven occasions. While President Thein Sein has asserted that all political prisoners have been freed, several Burmese organizations maintain that dozens of political prisoners remain in jail and that new political prisoners continue to be arrested and sentenced.

Hopes for a democratic government and national reconciliation in Burma depend on the release of prisoners, including those 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. Also, prospects for stable ceasefires and lasting peace with various ethnic-based militias may depend on the release of their members currently in detention.

Estimates of how many political prisoners are being detained in Burma vary. According to the Assistance Association for Political Prisoners (Burma), or AAPP(B), a nonprofit organization dedicated to identifying and locating political prisoners in Burma, the Burmese government was incarcerating 84 political prisoners as of the end of August.

Differences in estimates of the number of political prisoners in Burma can be attributed to two main factors. First, Burma's prison and judicial system is not transparent, making it difficult to obtain accurate information. Second, there is no consensus on the definition of a “political prisoner.” Some limit the definition of “political prisoner” to “prisoners of conscience”; others include members of the ethnic militias as political prisoners. President Thein Sein established the Political Prisoner Review Committee (PPRC) in February 2013 to identify all political prisoners in Burma, but the committee reportedly has been unable to agree on a common definition.

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

The status of Burma's political prisoners is likely to figure prominently in any future 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 inserting in legislation—such as the FY2015 appropriations bills for the State Department (H.R. 5013 and S. 2499)—language pertaining to the political prisoner issue in Burma. This report will be updated as circumstances require.

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Introduction

On July 15, 2013, Burma's President Thein Sein gave a speech at Chatham House in London in which he raised the issue of political prisoners, stating:

Thousands of prisoners have been freed. A special committee, comprised in part of former prisoners, is working diligently to ensure that no one remains in prison due to his or her political beliefs or actions. We are reviewing all cases. I guarantee to you that by the end of this year there will be no prisoners of conscience in Myanmar.¹

Since making this pledge, President Thein Sein has granted pardons or amnesties to a total of 258 political prisoners on seven separate occasions, the last taking place on January 2, 2014. That same day, in a radio address, President Thein Sein said, "I would also like to inform all of you that with the aim of national reconciliation together with the hard work of the Political Prisoner Review Committee, and in keeping with my promise, *all political prisoners have been freed by the end of last year* [emphasis added]."²

However, several individuals and organizations quickly disputed the president's assessment. Ye Aung, a member of the Political Prisoners Review Committee (PPRC)³ created by President Thein Sein, stated on December 31, 2013, that 35 political prisoners remained in prison because of other charges than those included in the presidential pardon.⁴ Three weeks later, Ye Aung claimed the number of remaining political prisoners to be 33.⁵ On January 3, 2014, the Kachin National Organization (KIO) issued a statement calling for the release of two of its members still in jail, and criticizing the Thein Sein government for "continuing to arrest and sentence fellow Kachins for their political belief."⁶ The European Burma Network, a coalition of Burmese political action organizations in Europe, released a statement on January 16, 2014, indicating that "around 33 political prisoners" remain in prison, more than 100 people are awaiting trial for their political activities, and several hundred Rohingyas are being illegally detained.⁷

The status of Burma's political prisoners is a critical issue for U.S. policy. The full removal of many of the U.S. sanctions on Burma is contingent on certain conditions being met by the Thein Sein government and the Burmese military, including the unconditional release of all political prisoners. Moreover, 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

¹ Thein Sein, "Myanmar's Complex Transformation: Prospects and Challenges," speech given at Chatham House, London, United Kingdom, July 15, 2013.

² President Office, "Committee for Scrutinizing the Remaining Political Prisoners Healthy Constitution Must Be Amended from Time to Time to Address National, Economic, Social Needs of Society," press release, January 2, 2014, <http://www.president-office.gov.mm/en/?q=briefing-room/news/2014/01/02/id-3135>.

³ The committee is also frequently referred to as the Political Prisoner Scrutiny Committee, or PPSC.

⁴ "Thirty-five Political Prisoners Still in Jail Despite Amnesty for 'Other Offenses,'" *Eleven Myanmar*, January 2, 2014.

⁵ Aye Myint San, "33 Political Prisoners Still in Jail, Says Committee," *Mizzima*, January 21, 2014.

⁶ Kachin National Organization, "Kachin National Organization Demand Unconditional Release of All Kachin Political Prisoners," press release, January 3, 2014.

⁷ European Burma Network, "No End in Sight for Political Prisoners in Burma—Permanent Review Mechanism Needed," press release, January 16, 2014.

parties and organizations have stated that they will not participate in parliamentary elections or agree to a national ceasefire until their members are unconditionally freed from detention.

At present, there is no consensus on how many political prisoners there are in Burma. One major reason is the lack of transparency of the records of Burma's 42 prisons and 109 labor camps. Another major reason for variation in estimates is the use of different definitions of political prisoners. Moreover, reports of new political prisoners being arrested and detained periodically appear in the press suggesting the number of political prisoners is a moving target.

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. Neither the White House nor the State Department has issued a comment on President Thein Sein's claimed fulfillment of his promise to release all political prisoners by the end of 2013.

The 113th Congress has demonstrated a continuing concern about Burma's political prisoners. The Consolidated Appropriations Act of 2014 (H.R. 3547, P.L. 113-76), enacted on January 17, 2014, requires the Department of State and the U.S. Agency for International Development (USAID) to "support programs for former political prisoners" in Burma, as well as "monitor the number of political prisoners in Burma." The political prisoner issue was also raised in hearings held by the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific in September and December 2013.⁸

Defining Political Prisoners

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

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

⁸ U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Asia and the Pacific, *An Unclear Roadmap: Burma's Fragile Political Reforms and Growing Ethnic Strife*, 113th Cong., 1st sess., September 19, 2013; and U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Asia and the Pacific, *Oversight of U.S. Policy Toward Burma*, 113th Cong., 1st sess., December 4, 2013.

President Thein Sein has consistently confined his definition to only include “prisoners of conscience,” and has generally used that phrase when discussing the issue. He has repeatedly stated that individuals who have committed criminal acts are not considered “prisoners of conscience,” and are expected to serve out their prison sentences. However, in announcing a prisoner amnesty in July 2013, he stated that individuals were released on “humanitarian grounds and encouraging them to be able to serve the national interest.”⁹ This may indicate a willingness to accept a broader definition in practice, especially if it serves to facilitate negotiations with ethnic minority organizations seeking a nation-wide peace agreement and progress toward national reconciliation.

The Assistance Association for Political Prisoners (Burma), or AAPP(B), an independent organization founded in 2000 by ex-political prisoners,¹⁰ and Human Rights Watch (HRW) use a relatively broad definition of political prisoners. The AAPP(B) defines a political prisoner as “anyone who is arrested because of his or her perceived or real involvement in or supporting role in opposition movements with peaceful or resistance means.”¹¹ 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.”

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.¹²

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

⁹ “Amnesty Granted to 73 Prisoners,” *New Light of Myanmar*, July 24, 2013.

¹⁰ The AAPP(B) describes itself as being dedicated to identifying and locating political prisoners in Burma, and providing support for the prisoners and their families.

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

¹² Definition provided to CRS by the State Department.

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 Burmese government should be “viewed with the backdrop of violent crimes committed by the state, particularly against ethnic minorities.”¹³ 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 distinction between “prisoners of conscience” and a broader definition of political prisoners was highlighted by the sentence suspension of January 13, 2012. Only a few of the prisoners released on that date were associated with the ethnic militias or their affiliated political parties. Following his release, Min Ko Naing, a pro-democracy activist, stated that many political activists associated with ethnic armed groups remained in custody.¹⁴ 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.¹⁵

The Political Prisoners Review Committee (PPRC, also known as the Political Prisoner Scrutiny Committee) 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 have agreed to a definition, but that the Thein Sein government had not formally adopted the definition.¹⁶

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.¹⁷ Representatives of various Burmese organizations and political parties, as well as the International Committee of the Red Cross, attended the workshop. According to press accounts, the draft definition would include anyone arrested, detained, or imprisoned for their direct or indirect activities to promote human rights, freedom, equality for minorities, and civil liberties, and/or were involved in anti-government protests, demonstrations, assemblies, or publications.¹⁸ 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.¹⁹

The plight of two segments of Burmese society has also been raised in association with the issue of political prisoners. First, local Burmese officials are notorious for corruption, and reportedly frequently use their official power to detain people on falsified charges in order to confiscate property or otherwise exact revenge on their opponents. In addition, officials have reportedly used provisions in old and new laws to arrest and detain people protesting alleged violations of their legal rights. These abuses of power by officials have been portrayed as creating a special

¹³ AAPP(B), “The Recognition of Political Prisoners: Essential to Democratic and National Reconciliation Process,” press release, November 9, 2011.

¹⁴ “Burma’s Remaining Jailed Dissidents,” *Irrawaddy*, January 17, 2012.

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

¹⁶ “Burma Releases Political Prisoners Ahead of US State Visit,” *Irrawaddy*, May 17, 2013.

¹⁷ “Myanmar Still Seeks Definition of Political Prisoner,” *Eleven Myanmar*, August 18, 2014.

¹⁸ San Yamin Aung, “Definition of Political Prisoner Sought with Govt, Activists at Odds,” *Irrawaddy*, August 21, 2014.

¹⁹ “NLD Moving to Recognise Myanmar’s ‘Political Prisoners,’” *Eleven Myanmar*, August 20, 2014.

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.

Current Estimates

Different groups provide varying estimates of the number of political prisoners being detained in Burma. AAPP(B)'s August 2014 report on political prisoners states, “By the end of August, 84 political prisoners were incarcerated in Burma, while approximately 122 individuals have been charged for politically motivated actions and await trial.”²⁰ Tun Kyi of the FPPS told reporters on August 24, 2014, that more than 100 activists, including a number of farmers protesting land seizures, have been recognized as political prisoners.²¹ The International Federation for Human Rights (*Federation Internationale des Ligues des Droits de L'Homme*, or FIDH), and the Alternative ASEAN Network on Burma (ALTSEAN-Burma) published a list of eight political prisoners on July 15, 2014,²² and in a separate press statement reported that there were 69 political prisoners in Burmese jails as of July 10, 2014.²³ The State Department's “Burma 2013 Human Rights Report”²⁴ states:

By year's end [2013] one prominent group assisting political prisoners estimated that between 34 and 70 political prisoners remained in detention. This number did not include detainees in Rakhine State, whose numbers were estimated to be in the hundreds.

Amnesty International released a public statement on July 15, 2014, indicating that after a year, President Thein Sein's pledge to release all “prisoners of conscience in Myanmar” remained unfulfilled.²⁵ While the press statement does not provide a precise number of prisoners of conscience in detention, it did state, “So far in 2014, at least 59 individuals have been charged and 17 of them imprisoned under a range of laws which restrict the rights to freedom of expression and peaceful assembly.”

The Thein Sein government has never publicly released an official estimate of the number of political prisoners. Aung Thein, Deputy Minister of the President's Office, told the *Myanmar Times* on August 18, 2014, that 29 alleged political prisoners that were in prison before December 31, 2013, remain incarcerated because they “were found to have broken other penal codes.”²⁶

²⁰ Assistance Association for Political Prisoners (Burma), *Monthly Chronology of July 2014*, August 8, 2014.

²¹ “Protesting Farmers among over 100 Activists Recognised as Political Prisoners,” *Eleven Myanmar*, August 24, 2014.

²² International Federation for Human Rights, *Who Are Burma's Political Prisoners?*, July 15, 2014.

²³ International Federation for Human Rights, “Burma: Increased Number of Political Prisoners Calls for Renewed International Pressure,” press release, July 15, 2014.

²⁴ Department of State, *Burma 2013 Human Rights Report*, February 27, 2014, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dclid=220182#wrapper>.

²⁵ Amnesty International, *Myanmar: One Year On, President's Promise to Release All Prisoners of Conscience Remains Unfulfilled*, ASA 16/014/2014, July 15, 2014.

²⁶ Ye Mon and Lum Min Mang, “Government Denies Political Prisoners Remain Behind Bars,” *Myanmar Times*, (continued...)

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.²⁷

Maintaining an accurate tally of the number of political prisoners is also difficult because the Burmese government and military allegedly continue to arrest and detain new political prisoners, or otherwise infringe on their civil liberties. According to the AAPP(B), the Thein Sein government arrested 12 political activists, sentenced 21 other activists, and released two political prisoners in July 2014.²⁸

Political Prisoners Review Committee

On February 6, 2013, President Thein Sein announced plans to form a committee “to scrutinize the remaining political prisoners serving their terms in prisons throughout the country so as to grant them liberty.”²⁹ The original 16-member Political Prisoners Review Committee (PPRC, also known as the Political Prisoners Scrutiny Committee) was chaired by Union Minister Soe Thein, and included representatives from opposition groups with a history of supporting the release of political prisoners, such as the 1988 Generation Students Group, AAPP(B), and the National League for Democracy (NLD). The committee met several times, but significant differences emerged regarding the definition to be used and, by extension, the estimates of the number of political prisoners in Burma. On May 8, 2013, President Thein Sein reconstituted the committee with 19 members and Soe Thein remaining as chair. The committee reportedly continued to disagree about the proper definition and number of political prisoners in detention in Burma.

Reports indicate that its members struggled to reach agreement on critical aspects of their committee's mandate. In addition, it is unclear what influence the committee's recommendations have had with President Thein Sein or Burma's National Defence and Security Council (NDSC), which has the constitutional authority to recommend prisoner amnesties to the President.³⁰

(...continued)

August 18, 2014.

²⁷ AAPP(B), “Political Prisoner List is Now 1,572—Location of 918 Confirmed and Documented,” press release, December 23, 2011.

²⁸ Assistance Association for Political Prisoners (Burma), *Monthly Chronology of Burma's Political Prisoners for July, 2014*, August 8, 2014.

²⁹ President Office, Republic of the Union of Myanmar, “Committee to be Formed to Grant Liberty to Remaining Political Prisoners,” press release, February 6, 2013.

³⁰ Section 204 of the constitution grants the NDSC the authority to recommend prisoner amnesties to the President.

In his announcement to form the PPRC, President Thein Sein indicated that Union Minister Soe Thane would be the committee chair, and that the other members of the committee would be “representatives from government ministries, civil society organizations and some political parties.” The other 15 members are notable for the inclusion of representatives of three organizations known for their work to free Burma’s political prisoners.

The State Department welcomed the formation of the committee and pointed to its creation as evidence that the Thein Sein government is taking serious steps to address the political prisoner problem.³¹ Domestic and international human rights organizations also supported the creation of the committee, although in some cases with some skepticism.

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

On May 8, 2013, President Thein Sein reconstituted the PPRC, expanding its membership to 19 people (see text box, “Members of Political Prisoners Scrutiny Committee”).³² The decision to augment the membership of the committee reportedly was not discussed with the original 16 members before the President’s announcement.³³

Among the difficulties the group has faced is developing a common definition of political prisoners. Sources indicate that some committee members prefer a narrow definition that would only include prisoners of conscience, while other members support a

Members of Political Prisoners Scrutiny Committee

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

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

³¹ On February 11, 2013, the State Department issued a statement welcoming the formation of the committee, stating that the Union Government “has taken an important step towards national reconciliation,” and that the State Department looked forward “to supporting the implementation of this process.” (State Department, “Progress on Political Prisoners in Burma,” press release, February 11, 2013.)

³² President Office, “Committee for Scrutinizing the Remaining Prisoners of Conscience Reconstituted,” Notification No. 43/2013, May 8, 2013.

³³ Naw Say Phaw Waa, “Activists Slam Reshuffle of Prisoner Body,” *Myanmar Times*, May 13, 2013.

broader definition (see “Defining Political Prisoners”). On March 14, 2013, the FPPS gathered a group of Burmese political activists and lawyers to discuss the definition of political prisoner. A similar event was held in August 2014.

Another issue for the committee is its ability to work as a group. According to an FPPS spokesperson, his organization had submitted a longer list of people to be released prior to the April 23, 2013, amnesty, but the committee chose to ignore some of those on the list, and to include a number of people not considered political prisoners by the FPPS.³⁴ Prior to announcing the amnesty, the committee members were reportedly asked to endorse the committee’s recommendations, but several refused to do. The FPPS spokesperson stated that the committee’s leadership was not interested in the views of the civil society organizations, and was using the committee for political purposes, such as fostering better relations with the European Union.³⁵

On December 31, 2013, the PPRC released a statement on its work to date that was printed in the *New Light of Myanmar* on January 1, 2014.³⁶ The statement recounts that the PPRC had met a total of 12 times between its creation and December 21, 2013, and had submitted the names of 354 people to receive presidential amnesty—which is 33 more than the number of political prisoner released during that time period (see **Table 1** below). On January 14, 2014, the PPRC announced that it would continue to meet because, in the words of one of its members, “there are still political prisoners in Burma.”³⁷ However, it has reportedly met twice since the beginning of 2014, despite repeated requests from AAPP(B) and FPPS for more meetings.

Prisoner Releases

Since his appointment in April 2011, President Thein Sein has granted amnesty to selected prisoners on 17 separate occasions, the latest occurring on January 2, 2014 (see **Table 1**). In total, the Thein Sein government has released an estimated 36,761 prisoners, of whom at least 1,165 were political prisoners, according to the AAPP(B).

Several of the prisoner releases have occurred near the time of a major political development between Burma and the United States (see **Appendix** for details). In some cases, President Thein Sein may have released prisoners in an effort to obtain a desired response from the U.S. government or the international community. In other cases, the prisoners may have been released in response to an action by the U.S. government. This pattern is reportedly causing some concern at the State Department and by other observers as it may imply that the prisoners are being used as political pawns.³⁸

³⁴ “Prisoner Release Draws Criticism from Activists,” *Myanmar Times*, April 24, 2013.

³⁵ Ibid.

³⁶ “Press Release on Work Progress Report of Committee for Scrutinizing the Remaining Political Prisoners,” *New Light of Myanmar*, January 1, 2014.

³⁷ Feliz Solomon, “Not Finished Yet—Political Prisoner Committee to Continue,” *Democratic Voice of Burma*, January 14, 2014.

³⁸ For example, see “Myanmar Uses Prisoners as Pawns,” *Bangkok Post*, May 6, 2013; or Hanna Hindstrom, “Thein Sein Using Political Prisoners as ‘Pawns,’” *Democratic Voice of Burma*, September 19, 2012.

Table I. Burma's Announced Prisoner Releases
(In reverse chronological order)

| Government | Date | Prisoners Released | Political Prisoners Released | Percentage of Political Prisoners |
|-------------------------------------|-----------------------------|--------------------|------------------------------|-----------------------------------|
| Union Government | January 2, 2014 | 13,274 | 3 | negligible |
| | December 30, 2013 (amnesty) | 5 | 5 | 100.0% |
| | December 30, 2013 (pardon) | ~100 | 16 | ~16.0% |
| | December 11, 2013 | 44 | 41 | 93.2% |
| | November 15, 2013 | 69 | 66 | 95.7% |
| | October 8, 2013 | 56 | 56 | 100.0% |
| | July 23, 2013 | 73 | 68 | 93.2% |
| | May 17, 2013 | 23 | 21 | 91.3% |
| | April 23, 2013 | 93 | 69 | 74.2% |
| | November 19, 2012 | 66 | 51 | 77.3% |
| | November 15-16, 2012 | 452 | 0 | 0.0% |
| | September 17, 2012 | 514 | 88 | 17.1% |
| | July 3, 2012 | 46 | 25 | 54.3% |
| | January 13, 2012 | 336 | 302 | 89.9% |
| | January 2, 2012 | 651 | 34 | 5.2% |
| | October 11, 2011 | 6,359 | 247 | 3.9% |
| | May 16, 2011 | 14,600 | 73 | 0.5% |
| State Peace and Development Council | September 17, 2009 | 7,114 | 128 | 1.8% |
| | February 20, 2009 | 6,313 | 24 | 0.4% |
| | September 23, 2008 | 9,002 | 10 | 0.1% |
| | January 3, 2007 | 2,831 | 50 | 1.7% |
| | July 6, 2005 | 334 | 253 | 75.7% |
| | January 3, 2005 | 5,588 | 26 | 0.5% |
| | December 13, 2004 | 5,070 | 21 | 0.4% |
| | November 29, 2004 | 5,311 | 12 | 0.2% |
| November 18, 2004 | 3,937 | 28 | 0.7% | |

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

Most Recent Releases

On December 30, 2013, President Thein Sein granted amnesty for five prisoners “on humanitarian grounds” who were reportedly on the PPRC list of political prisoners,³⁹ and issued Order No. 51/2013, pardoning all persons who had been convicted, awaiting trial, or under investigation as of December 31, 2013, for the following crimes:

- Violations of the Unlawful Association Act;
- Treason (Code of Criminal Procedure Article 122);
- Sedition (Code of Criminal Procedure Article 124(a));
- Violations of the Law to Safeguard the State from Danger of Subversive Elements;
- Violations of the Peaceful Gathering and Peaceful Procession Law;
- “Harming public interests” (Code of Criminal Procedure Article 505); and
- Violations of the 1950 Emergency Act.⁴⁰

An estimated 100 prisoners were released under Order No. 51/2013, of which 16 have been identified as political prisoners by the AAPP(B).

On January 2, 2014, President Thein Sein issued Order No. 1/2014, commuting all death sentences to life in prison, cutting all sentences of over 40 years to no more than 40 years, and reducing all sentences of under 40 years by one-fourth of the proscribed term “with the aim of honouring the 66th Anniversary Independence Day.”⁴¹ On January 6, 2014, the government-run newspaper, *The New Light of Myanmar*, reported that 13,274 prisoners had been released under Order No. 1/2014.⁴² According to the AAPP(B) and the FPPS, only 3 of the released prisoners were political prisoners.⁴³

Conditional or Not?

The use of Section 401 authority for some of the recent prisoner releases raises the issue of possible conditions on the prisoners’ sentence suspension. Section 401 of Burma’s Code of Criminal Procedure grants the president authority to suspend or remit sentences, with or without conditions, as well as cancel the suspension or remission if the person in question fails to fulfill the conditions for her or his release. As a result, a person released from detention under Section 401 may be required to serve out the rest of his or her suspended sentence if she or he is convicted of another crime or fails to fulfill the conditions of her or his release. At least one pardoned political prisoner, Nay Myo Zin, had been sentenced to serve the rest of his previous

³⁹ “Amnesty Granted for Five Prisoners,” *New Light of Myanmar*, December 31, 2013.

⁴⁰ “Order No. 51/2013—Pardon,” *New Light of Myanmar*, December 31, 2013.

⁴¹ President Office, “Order No. (1/2014)—Presidential Pardon,” January 2, 2014, published in the *New Light of Myanmar*, January 3, 2014.

⁴² “13,274 Prisoners Released Under Pardon,” *New Light of Myanmar*, January 6, 2014.

⁴³ Ei Ei Toe Lwin, “Activists Say Political Prisoners Remain in Jail,” *Myanmar Times*, January 6, 2014.

sentence (six years) after being convicted of a crime after his release, until he was granted a second pardon in May 2013.⁴⁴

Following their release on January 13, 2012, several former political prisoners indicated that they had been provided unconditional pardons, but a few said that they were instructed to limit their political activities. None of the prisoners released were placed under house arrest. However, Sithu Zeya said to reporters that he was told that if he committed any crime, he would have to serve the remainder of his 18-year sentence. “It is like we are being freed with leashes still attached to our necks,” he reportedly said.⁴⁵

The use of Section 401 may also suggest the possibility of some opposition to the release of political prisoners within the Thein Sein government and/or within the Burmese military. Because President Thein Sein based the sentence suspensions on Section 401, he did not need to obtain the approval of Burma's National Defence and Security Council (NDSC), a constitutional body with significant power, consisting of Burma's president; its two vice presidents; the speakers for each chamber of its parliament; the commander-in-chief and deputy commander-in-chief of defense services; and the ministers of border affairs, defence, foreign affairs, and home affairs.⁴⁶ 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.⁴⁷

Continuing Arrest of Political Prisoners

While President Thein Sein claims that there are no political prisoners in Burma, his government reportedly continues to arrest and detain new political prisoners for alleged illegal activities. As previously mentioned, the AAPP(B) reports that as of the end of July around 114 people have been detained and are awaiting trial for what it considers to be political actions. The Asian Human Rights Commission (AHRC), a nonprofit nongovernmental organization located in Hong Kong, is also tracking the detention of political prisoners in Burma. According to the AAPP(B) and AHRC, many have been detained for violations of Section 505 of Burma's Penal Code and/or Section 18 of the Peaceful Assembly and Peaceful Procession Law of 2011—two of the laws President Thein Sein identified in his pardon of December 30, 2013. To many observers, the Union Government's response to popular protests, as well as its arrest of several journalists, have raised questions about the sincerity of its support of basic human rights, such as freedom of speech and freedom of the press.

As the year 2013 ended, several prominent voices of opposition were arrested, detained and/or sentenced for what were seemingly political reasons. For example, three people released under

⁴⁴ Nay Moe Zin was released in January 2012, with six more years to serve on his sentence. He was originally sentenced to 10 years in prison in August 2011 for breaking the Electronic Transactions Act, a law that is highly criticized by free speech advocates. In May 2013, he chose to serve a three-month sentence for allegedly defaming a police officer. The Ministry of Home Affairs subsequently decided to reinstate his previous sentence. (“Burma Cancels Amnesty for Former Political Prisoner,” *Irrawaddy*, May 8, 2013)

⁴⁵ “Burma Frees High-Profile Dissidents in Amnesty,” *BBC*, January 13, 2012.

⁴⁶ Hla Hla Htay, “Myanmar Prisoner Release Delayed,” *Agence France Press*, November 14, 2011.

⁴⁷ On January 2, 2012, President Thein Sein issued Presidential Order No. 1/2012, granting a partial amnesty to all existing Burmese prisoners using authority granted by section 204(a) of Burma's 2008 Constitution. Amnesties granted under section 204(a) are subject to the approval of the NDSC. That amnesty was reportedly delayed by NDSC for nearly three months.

the December 11, 2013, presidential amnesty – Aye Thein, Htin Kyaw, and Thein San—were reportedly re-arrested within hours of their release for alleged violations of local offenses.⁴⁸ The *Democratic Voice of Burma* reported on November 29, 2013, that six activists were convicted for violating Article 18 of the Peaceful Gathering and Peaceful Procession Law for organizing unauthorized demonstrations in Pegu and Rangoon.⁴⁹ *Mizzima* reported on December 2, 2013, that nine activists against a copper mine in Letpadaung were also charged for violating Article 18 of the Peaceful Gathering and Peaceful Procession Law.⁵⁰

Another prominent case is that of Naw Ohn Hla, who was sentenced in August 2013 to two years in prison for organizing a demonstration without a permit, but was granted amnesty on November 15, 2013. Naw Ohn Hla is one of the leaders of the anti-copper mine demonstration Sagaing Division. On December 11, 2013, lawyers for Naw Ohn Hla said that she was re-arrested on November 29, 2013, for organizing another demonstration, and has subsequently been charged with disturbing the peace in 2007 by publicly praying for the release of Aung San Suu Kyi.⁵¹

In 2014, the pattern of arresting, detaining, and trying demonstration organizers and journalists continued. For example, *Eleven Myanmar* reported that Sein Than was sentenced by a court in Latha Township in Yangon Division to four months in prison with hard labor on August 19, 2014, for violating the Peaceful Assembly and Peaceful Procession Act.⁵² Sein Than helped organize a march in March 2014 to protest what was considered inadequate compensation for land seized by the Burmese military.

Htin Kyaw, the leader of the community-based Movement for Democracy Current Force, according to *Mizzima*, was sentenced to one year with hard labor by a court in Dagon Seikkan Township in Yangon Division on August 19, 2014, for the Peaceful Assembly and Peaceful Procession Act.⁵³ The land rights activist has already been sentenced to seven and a half years in prison by other courts for organizing demonstrations. He reportedly is awaiting trials in three other townships on similar charges.

The Thein Sein government arrested and detained four journalists and the chief executive officer (CEO) of the Burmese-language *Unity Journal* at the end of January 2014 for publishing a story alleging that the Burmese military was constructing a secret chemical weapons facility in the mountains of Magway Division.⁵⁴ On July 10, 2014, the four journalists—Aung Thura, Lu Maw Naing, Sithu Soe, and The Yazar Oo—and CEO Tin Hsan were sentenced to 10 years with hard labor for violating the State Secrets Act. On July 12, Burmese police reportedly arrested about 50 journalists protesting the *Unity Journal* sentences for violating the Peaceful Assembly and Peaceful Procession Act.⁵⁵ The charges against the 50 journalists were supposedly dropped and

⁴⁸ “Pardoned Prisoners Re-arrested within Hours, Says Activist Group,” *Mizzima*, December 11, 2013.

⁴⁹ Shwe Aung, “Activists Convicted Under Article 18 in Rangoon, Pegu,” *Democratic Voice of Burma*, December 3, 2013.

⁵⁰ Assistance Association for Political Prisoners (Burma), Monthly Chronology of Burma’s Political Prisoners for December, 2013, January 13, 2014, http://www.aappb.org/AAPP_December_chronology_2013..pdf.

⁵¹ Kyaw Hsu Mon, “Burma Activist Naw Ohn Hla Faces ‘Religious Disturbance’ Complaint,” *Irrawaddy*, December 11, 2013.

⁵² “Protest Leader Sentenced to Four Months with Hard Labour,” *Mizzima*, August 20, 2014.

⁵³ “MDCF’s Founder Geta Another Year in Prison,” *Eleven Myanmar*, August 19, 2014.

⁵⁴ Committee to Protect Journalists, “Burma Holds 4 Journalists for Chemical Weapons Report,” February 3, 2014. The Thein Sein government and the Burmese military deny that they are constructing a chemical weapons factory.

⁵⁵ Front Line Defenders, *Burma - More than 50 Journalists Charged for Protesting the 10-year Prison Sentence of* (continued...)

the Speakers of the two chambers of the Union Parliament have reportedly agreed to revise the penal code to address the treatment of journalists.⁵⁶

Political Prisoners, Parliamentary Elections, and National Reconciliation

The release of political prisoners has potentially important implications for future parliamentary elections and prospects for national reconciliation. The NLD's decision to participate in the April 2012 parliamentary by-elections was apparently based in part on the October 11, 2011, amnesty, which included 39 NLD members, according to the AAPP(B).⁵⁷ At the same time, several political parties (including the Chin National Party, the Mon National Democratic Front, the Rakhine National Democratic Party, the Shan Nationalities League for Democracy (SNLD), and the Zomi National Congress) said they would not participate in the 2012 by-elections because some of their members remained in detention.⁵⁸ While the January 2012 and July 2013 prisoner releases included a significant number of NLD members and people associated with ethnic organizations, neither amnesty included members of political parties boycotting or barred from the April by-election. Regardless of how the by-elections were conducted, some groups may argue that future parliamentary elections would not be free and fair so long as some political parties are unwilling to participate because of what they perceive to be the detention of their members for political reasons.

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

It is unclear how committed the Thein Sein government and Burma's military, the Tatmadaw, are pursuing national reconciliation at this time. According to some observers, the Thein Sein government has made the signing of a nationwide ceasefire agreement (NCA) with the ethnic militias a top priority, and may pardon some prisoners associated with the ethnic organizations to obtain their support for the NCA. Other observers, however, contend that the talks could be designed to provide the Tatmadaw with time to redeploy and rearm troops in the field and resume

(...continued)

Unity Weekly Journalists, July 15, 2014.

⁵⁶ Yen Snaing, "Parliament Speakers Consider Revision of Penal Code for Journalists," August 21, 2014.

⁵⁷ Another 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.

⁵⁸ 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. In June 2103, the Chin National Party, Rakhine National Democratic Party, the Shan Nationalities League for Democracy (SNLD), and 12 other ethnic parties agreed to form a united Federal Union Party for the 2015 elections. The Mon National Democratic Front (renamed the Mon Democracy Party) and the Zomi National Congress also decided to participate in the 2015 elections, but as individual parties.

a military campaign against the militias if the negotiations fail to result in an NCA. As such, it is uncertain if the Thein Sein government would be willing to release alleged ethnic militia members and supporters as part of the ceasefire negotiations.

U.S. Sanctions, Laws, and Political Prisoners

Burma's detention of political prisoners was a major reason for the United States to impose sanctions on Burma between 1988 and 2008.⁵⁹ 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**).⁶⁰ 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 (including 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."⁶¹ 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.

The Burmese sanction laws, however, generally include provisions that allow for a presidential waiver if the President determines that it is in the national interest of the United States. The ban on new U.S. investments in Burma was waived on July 11, 2012. The BFDA import ban was waived on November 15, 2012, by the State Department using presidential authority granted in

⁵⁹ For more about the history of U.S. sanctions on Burma, see CRS Report R41336, *U.S. Sanctions on Burma*, by Michael F. Martin.

⁶⁰ 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.

⁶¹ The general import ban and company-specific import ban in the BFDA lapsed in July 2013, when Congress did not pass the required annual resolution to renew the trade restrictions. The other sanctions specified in the law remain in effect.

the BFDA. President Obama waived the financial sanctions in the JADE Act on August 6, 2013, as part of Presidential Executive Order 13651. As a consequence, most of the sanctions tied to political prisoners have been waived.

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> <p>(i) releasing all political prisoners;</p> <p>(ii) allowing freedom of speech and the press;</p> <p>(iii) allowing freedom of association;</p> <p>(iv) permitting the peaceful exercise of religion; and</p> <p>(v) bringing to a conclusion an agreement between the SPEC and the democratic forces led by the NLD and Burma's ethnic nationalities on the transfer of power to a civilian government accountable to the Burmese people through democratic elections under the rule of law.</p> <p>(C) Pursuant to Section 706(20) of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228), Burma has not been designated as a country that has failed demonstrably to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take other effective counternarcotics measures...</p> |
| The Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 | <p>(T)he President determines and certifies to the appropriate congressional committees^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.

Beyond the laws imposing sanctions on Burma, Congress has also enacted legislation addressing the issue of political prisoners in Burma. Section 7043(b)(3)(A) of the Consolidated Appropriations Act of 2014 (H.R. 3547, P.L. 113-76) stipulates:

Not later than 60 days after enactment of this Act, the Secretary of State, in consultation with the USAID Administrator, shall submit to the appropriate congressional committees a comprehensive strategy for the promotion of democracy and human rights in Burma, which shall include support for civil society, *former prisoners*, monks, students, and democratic parliamentarians [emphasis added].

The explanatory statement by the Chairman of the House Committee on Appropriations regarding the law elaborates further on the required support for former prisoners, stating:

In addition to programs specified in section 7043(b)(2) of this Act, the Department of State and USAID shall support programs for former political prisoners (including health, education, and vocational training activities); ... and programs to monitor the number of political prisoners in Burma.⁶²

U.S. Efforts Regarding Political Prisoners

U.S. officials have consistently called for the release of all political prisoners in Burma. As previously mentioned, President Obama spoke of the continued detention of prisoners of conscience during his speech at the University of Yangon in November 2012. National Security Advisor Tom Donilon stated in a presentation in Washington prior to the President's trip to Burma that

The President's meetings—as well as his speech to the people of Burma—will also be an opportunity to reaffirm the progress that still must be made. This includes **the unconditional release of remaining political prisoners** [emphasis added], an end to ethnic conflicts, steps to establish the rule of law, ending the use of child soldiers, and expanded access for humanitarian assistance providers and human rights observers in conflict areas.⁶³

In her testimony at a December 4, 2013, hearing on U.S. policy in Burma, held by the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific, then-State Department Senior Advisor on Burma Judith Cefkin stated:

⁶² "Explanatory Statement by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations regarding the House Amendment to the Senate Amendment on H.R. 3547, Consolidated Appropriations Act, 2014," *Congressional Record*, daily edition, vol. 160, No. 9 - Book II (January 15, 2014), p. H1169.

⁶³ Office of the Press Secretary, The White House, "President Obama's Asia Policy and Upcoming Trip to Asia," press release, November 15, 2012.

We are committed to working with the government, Aung San Suu Kyi and political opposition, and with civil society to fully implement commitments announced before President Obama's visit just a year ago. In particular, we are watching closely the commitment to release all political prisoners by the end of the year.... We are committed to assisting the reintegration of these heroic individuals back into society and ensuring that they are released without conditions.⁶⁴

In its report to Congress required by section 7043(b)(3)(A) of the Consolidated Appropriations Act of 2014, the State Department indicated that it intends to continue to work with the PPRC “to resolve remaining cases of prisoners convicted under repressive laws or for political activism.”⁶⁵ The report also stated that the technical assistance programs would be established to “rehabilitate released political prisoners so they can effectively resume their role promoting democratic transition and human rights.”

Secretary Kerry reportedly raised the case of the five *Unity Journal* staffers in his meetings with President Thein Sein and other senior Burmese officials during his August 2014 trip to Burma.⁶⁶

The State Department has also raised the issue of political prisoners in Burma with other governments. U.S. Ambassador to Burma Derek Mitchell traveled to China, Japan, and South Korea following Secretary Clinton's 2011 trip to Burma to discuss the status of U.S. policy towards Burma during his time as U.S. Special Representative and Policy Coordinator for Burma. The issue of political prisoners was reportedly raised during his meetings on that trip. Similar discussions have been held with other governments and the European Union. Following his visit to Burma, British Foreign Secretary William Hague told reporters that EU sanctions on Burma should not be lifted while political prisoners remain in detention.⁶⁷

In addition to leading an international effort to press 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.⁶⁸ 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.

Issues for Congress

The continued detention of political prisoners in Burma—as well as the state of human rights in general—are likely to figure prominently in congressional consideration of U.S. policy towards Burma. In the coming months, Congress may decide to examine the status of the implementation of existing U.S. sanctions on Burma. It may also assess the political prisoner issue, either in

⁶⁴ Department of State, “Oversight of U.S. Policy Toward Burma: Testimony of Judith Beth Cefkin,” press release, December 4, 2013.

⁶⁵ Department of State, *Strategy for the Promotion of Democracy and Human Rights in Burma*, Ref: Sec. 7043(b)(3)(A) of H.R. 3547, “Consolidated Appropriations Act, 2014,” April 21, 2014.

⁶⁶ Michael R. Gordon, “Kerry Urges Myanmar to Stay on Path to Democracy, Despite Stumbles,” *New York Times*, August 10, 2014.

⁶⁷ Ba Kaung, “EU Sanctions Remain Until Burmese Prisoner Release: Hague,” *Irrawaddy*, January 6, 2012.

⁶⁸ Interview with CRS, January 2012.

isolation or as part of a broader consideration of human rights in Burma and sanctions policy. Congress may take up legislation to amend or alter U.S. sanctions on Burma, depending on the evolving conditions in the country. In addition, the Obama Administration may ask Congress for additional funding for humanitarian programs in Burma to address the serious humanitarian needs of Burma's internally displaced people (IDPs), refugees, and other vulnerable populations.

Existing U.S. sanctions on Burma are based on several laws specifically focused on Burma, 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, including the status of political prisoners, may warrant congressional consideration of whether existing sanctions should be altered or removed. Similarly, the President has the authority—which he has used several times—to waive or suspend some of the existing sanctions on Burma if he determines that the necessary conditions have been met, or if he determines that doing so is in the national interest of the United States. If the President were once again to exercise this executive authority, Congress may choose to review the President's determination.

Congress may also choose to monitor and evaluate the Obama Administration's efforts to address the political prisoner and human rights situation in Burma. As previously mentioned, the Consolidated Appropriations Act of 2014 (H.R. 3547, P.L. 113-76) requires the Department of State and the U.S. Agency for International Development (USAID) "support programs for former political prisoners," as well as "monitor the number of political prisoners in Burma." A State Department "Fact Sheet" on U.S. assistance to Burma released on August 8, 2014, specially mentioned "rehabilitation and reintegration programs for released political prisoners."⁶⁹ Congress may decide to use its oversight authority to check the Obama Administration's compliance with its legal obligations.

Taken together, information available to CRS suggests that the level of detail provided by the Obama Administration to Congress about the conduct of U.S. policy toward Burma, including its efforts to address the political prisoner problem, falls short of some Members' expectations.⁷⁰ 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."⁷¹ However, the post of Special Representative and Policy Coordinator has been vacant since June 2013.⁷² The nomination of a new Special Representative and Policy Coordinator could provide Congress with an additional point of contact through which to communicate with the Obama Administration on the conduct of U.S. policy in Burma. Congress may choose to press President Obama to nominate a Special Representative and Policy Coordinator. 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.

Prior to Secretary Kerry's August trip to Asia, which included two days in Burma, Members of the House of Representatives and the Senate sent letters to Secretary Kerry expressing concern

⁶⁹ Department of State, *U.S. Assistance to Burma*, August 8, 2014.

⁷⁰ Based on CRS communications with Members of Congress and their staff.

⁷¹ JADE Act, Section 7(c)(4).

⁷² While the Special Representative position has been vacant, the State Department created the position of Senior Advisor for Burma in March 2013. The first Senior Advisor was W. Patrick Murphy, and his successor in August 2013 was Judith Cefkin.

about the conduct of U.S. policy toward Burma and indicating dissatisfaction with recent trends in the country. The House letter to Secretary Kerry, which was signed by 72 members, observed, among other things:

Political prisoners remain behind bars and those released still have sentences hanging over their heads, despite President Thein Sein's explicit commitment to President Obama and the United States Congress that all such prisoner would be released.⁷³

The letter also cites the “jailing and harsh sentences of 10 years of imprisonment with hard labor” of the five *Unity Journal* journalists as evidence that “press freedoms have gone awry.” The letter to Secretary Kerry from Senator Marco Rubio and Senator Mark Kirk also indicates that “[f]resh arrests of journalists for simply doing their jobs ... have sent a chill through the press corps.”⁷⁴ Congress as a whole, the two chambers separately, or Members individually or collectively, may decide to continue to press the Obama Administration and the State Department to address the political prisoner issue with Burmese officials, as well as its implications for further political reform in Burma.

Beyond its oversight function, Congress may decide that circumstances warrant consideration of new legislation related to U.S. policy towards Burma. Section 7043(b) of P.L. 113-76 places new requirements and restrictions on State Department Economic Support Funds in Burma, including support for former political prisoners. It is also possible that the Obama Administration may request Congress consider legislation to amend existing laws to facilitate adjustments in U.S. policy.⁷⁵

Congress may also be called upon to consider additional funding for assistance to Burma. For FY2015, the Obama Administration requested \$58.7 million for various projects inside Burma “to promote national reconciliation, democracy, human rights, and the rule of law; foster economic opportunity; increase food security; and meet other basic human needs to enable Burma’s population to contribute to and sustain reforms.”⁷⁶

If it chooses, Congress could place conditions on the availability of assistance to Burma, including requirements related to the identification and release of political prisoners. Neither the House version of the FY2015 appropriations bill for the Department of State and foreign operations, H.R. 5013, nor the Senate version, S. 2499, contain restrictions and conditions on the use of appropriated funds for Burma, but none explicitly related to political prisoners.

⁷³ Letter from 72 Members of the House of Representatives to John Kerry, Secretary of State, July 31, 2014.

⁷⁴ Letter from Marco Rubio, Senator, and Mark Kirk, Senator, to John Kerry, Secretary of State, August 7, 2014.

⁷⁵ The Obama Administration has previously asked Congress to amend Burmese sanctions law. The 112th Congress passed P.L. 112-192, at the request of the Obama Administration. The law grants the President the authority to waive U.S. opposition to international financial institution assistance to Burma required under Section 5 of the 2003 BFDA if the President determines to do so is in the national interest of the United States.

⁷⁶ Department of State, *Congressional Budget Justification*, Volume 32: Foreign Operations—Fiscal Year 2015, June 18, 2014.

Appendix. Reverse Chronology of Prisoner Releases by Thein Sein Government

Since his appointment in March 2011, President Thein Sein has granted pardons or amnesties to prisoners in Burma on 17 separate occasions, resulting in the release of 36,761 prisoners, of whom at least 1,165 were political prisoners, according to the AAPP(B). The following table provides a quick summary of each of those prisoner releases in reverse chronological order.

Table A-I. Summary of Prisoner Releases by Their Sein Government
in reverse chronological order

| Date and Type | Description |
|------------------------------|--|
| January 2, 2014 Pardon | President Thein Sein issues Order No. 1/2014, commuting all death sentences to life imprisonment, reducing all sentences of over 40 years to 40 years, and reducing all sentences under 40 years by 25%. The pardon results in the release of a reported 13, 274 prisoners, of which only 3 are considered political prisoners by the AAPP(B). |
| December 30, 2013 Amnesty | Using authority granted by Section 204(a) of Burma's 2008 constitution and Section 401(i) of Burma's Criminal Procedure, President Thein Sein granted amnesty to five people, all of which are considered political prisoners by the AAPP(B). |
| December 30, 2013 Pardon | President Thein Sein issues Order No. 51/2013, pardoning all prisoners sentenced on or before December 31, 2013, under seven specific laws (see "Most Recent Releases" above). An estimated 100 prisoners are released under the pardon, of which 16 have been identified as political prisoners by the AAPP(B). |
| December 11, 2013 Amnesty | President Thein Sein granted amnesty to "41 prisoners who were in the list of the committee for scrutinizing remaining political prisoners." The amnesty was granted using authority provided by Section 204(a) of Burma's 2008 constitution and Section 401(i) of Burma's Criminal Procedure. Two of those released, however, were reportedly rearrested within hours of their release. In addition to the 41 prisoners included in the official amnesty announcement, three child soldiers were reportedly released from prison on the same day. The amnesty announcement coincided with the opening of the 27 th Southeast Asian Games, which were being held in Burma. |
| November 15, 2013 Amnesty | Using authority granted by Section 204(a) of Burma's 2008 constitution and Section 401(i) of Burma's Criminal Procedure, President Thein Sein granted amnesty to 69 people. Among the released were nine activists who had organized demonstrations in support of the Rohingyas in Rakhine State and an activist who had organized protests against the expansion of the Letpadaung copper mine in Sagaing Division. |
| October 8, 2013 Amnesty | President Thein Sein granted amnesty to 56 prisoners using authority granted by Section 204(a) of Burma's 2008 constitution and Section 401(i) of Burma's Criminal Procedure. Nearly half of those released—27 people—were reportedly alleged members of the Kachin Independence Army (KIA), the militia associated with the Kachin Independence Organization (KIO). Another 24 people were either alleged members of the Restorative Council of the Shan State (RCSS) or its affiliated militia, the Shan State Army (SSA). Most of the people granted amnesty had been convicted of violating Section 17(1) of Burma's Unlawful Associations Act, among other charges. Some observers think the release was designed to promote progress in ongoing ceasefire talks with the KIO and the RCSS. The amnesty announcement came just before Brunei formally transferred the chair of the Association of Southeast Asian Nations (ASEAN) to Burma during the 23 rd ASEAN Summit held on October 8-10, 2013. |
| July 23, 2013 Amnesty | President Thein Sein granted amnesty to 73 prisoners using authority granted by Section 204(a) of Burma's 2008 constitution and Section 401(a) of Burma's Criminal Procedure. Some sources considered all 73 of the released prisoners as political prisoners. According to AAPP(B) and the FPPS, however, only 68 of those released were political prisoners, including at least 30 people associated with Kachin Independence Army and the Shan State Army–South. A week after the release, Deputy Minister of Home Affairs Brigadier General Kyaw Zan Myint reportedly told the Union Parliament that the prisoners had been granted a conditional release, and that they may have to serve out the remainder of the sentence if they break the law in the future. |
| May 17, 2013 Amnesty | Four days before his historic trip to the United States in May 2013, President Thein Sein granted amnesty to 23 prisoners, of whom 21 were considered political prisoners by the AAPP(B). Among those released was Nay Myo Zin, who had been previously released, but subsequently returned to prison to serve out the remaining six years of his sentence after his arrest for insulting a police officer. Nay Myo Zin was the first ex-political prisoner re-imprisoned after being granted amnesty. |

| Date and Type | Description |
|---------------------------------|--|
| April 23, 2013 Amnesty | President Thein Sein granted amnesty to 93 prisoners. According to AAPP(B), 69 of those released were political prisoners. Also included among the 69 political prisoners were 40 "Shan rebel soldiers," according to the opposition publication, <i>Irrawaddy</i> . The prisoner release was announced the day after the European Union voted to terminate all its sanctions on Burma, except for the arms embargo. In addition, the Political Prisoners Review Committee reportedly recommended a number of people to be released, but President Thein Sein apparently chose to release other individuals, raising questions about the influence of the committee. |
| November 19, 2012 Amnesty | Using authority granted by section 204(a) of Burma's 2008 constitution and Section 401(a) of Burma's Criminal Procedure, President Thein Sein granted amnesty to 66 prisoners on November 19, 2012, during President Obama's visit to Burma. The AAPP(B) identified 51 of those released as being political prisoners. |
| November 15-16, 2012 Amnesty | President Thein Sein granted amnesty to 452 prisoners using authority granted by section 204(a) of Burma's 2008 constitution and Section 401(a) of Burma's Criminal Procedure. None of the prisoners released were identified as political prisoners by AAPP(B). |
| September 17, 2012 Amnesty | Shortly before President Thein Sein was scheduled to visit the United States to speak before the United Nations General Assembly, he granted amnesty to 514 people. The AAPP(B) identified 88 political prisoners among those released. According to some observers, the prisoner release was intended to bolster the chances that the Obama Administration would announce a further easing of sanctions during President Thein Sein's visit to the United States. |
| July 3, 2012 Amnesty | Using authority granted by section 204(a) of Burma's 2008 Constitution, President Thein Sein granted amnesty to 46 domestic prisoners and 34 foreign nationals. The AAPP(B) identified 25 of the domestic prisoners as political prisoners. |
| January 13, 2012 Amnesty | 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. The AAPP(B) identified 302 political prisoners among the 336 people released. 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. |
| January 2, 2012 Amnesty | President Thein Sein issued Presidential Order No. 1/2012, granting a partial amnesty to all existing Burmese prisoners "[a]s a gesture of hailing the 64 th Anniversary Independence Day and for the sake of State peace and stability." The AAPP(B) considered 34 of the 651 people released as political prisoners. |
| October 11, 2011 Amnesty | President Thein Sein issued Order No. 49/2011, terminating the prisoner sentence for 6,359 individually named persons, including 247 political prisoners. |
| May 16, 2011 Amnesty | President Thein Sein issued Order No. 28/2011, commuting all death sentences to life in prison, and reduced all other sentences by one year in duration (exclusive of remission days). As a result, 14,600 prisoners are released, but only 73 are identified as political prisoners by the AAPP(B). |

Source: CRS.

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