



Burma's April Parliamentary By-Elections

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Summary

The Republic of the Union of Myanmar (Burma) held parliamentary by-elections on April 1, 2012. According to the official results announced by Union Election Commission (UEC), the National League for Democracy (NLD) won all but two of the 45 seats, including NLD Chair Aung San Suu Kyi winning a seat in the lower house of Burma's national parliament. Depending on its assessment of the conduct of the election and the official election results, the Obama Administration may seek to alter policy towards Burma, possibly including the waiver or removal of some current sanctions. Such a shift may require congressional action, or may be done using executive authority granted by existing laws.

The by-elections originally were to fill 46 vacant seats in Burma's national parliament (out of a total of 664 seats) and 2 seats in local parliaments. On March 23, the UEC postponed voting for three seats from the Kachin State for security reasons. A total of 17 political parties ran candidates in the by-elections, including the NLD and the pro-military Union Solidarity and Development Party (USDP). The by-elections are viewed as significant primarily because of the decision by the NLD to compete for the vacant seats.

The NLD and others allege that some Burmese officials and the USDP took steps to disrupt the NLD's campaign and possibly win the by-elections by fraudulent means. Despite these problems, events at which Aung San Suu Kyi spoke routinely drew tens of thousands of people. In response to international pressure, the Union Government invited the Association of Southeast Asian Nations (ASEAN), the European Union (EU), the United Nations, the United States, and other nations to send election observers.

Although largely free and fair by-elections would be a significant development, the current political situation in Burma remains a source of serious concern for U.S. policy makers. Hundreds of political prisoners remain in detention. Despite ceasefire talks, fighting between the Burmese military and various ethnic militias continues, resulting in a new flow of internally displaced people (IDPs) and refugees into nearby countries. Reports of severe human rights abuses by the Burmese military against civilians in conflict areas regularly appear in the international press.

The response of the Obama Administration to Burma's by-elections will depend on the conduct of the campaign, the balloting process, the veracity of the official election results, and possibly on how the winners of the elections are treated once they become members of Burma's parliaments. In addition, the assessments of opposition parties (particularly the NLD and its chairperson, Aung San Suu Kyi), other nations and the EU to the by-elections may influence the U.S. response.

Under current law, President Barack Obama has the authority to waive many—but not all—of the existing sanctions on Burma, and he may choose to exercise that authority following the by-elections. Alternatively, the White House may ask Congress to consider legislation removing or altering some of the existing sanctions. For its own part, Congress may decide to re-examine U.S. policy toward Burma and make whatever changes it deems appropriate.

For additional information on Burma, see CRS Report R41971, *U.S. Policy Towards Burma: Issues for the 112th Congress*; CRS Report R41336, *U.S. Sanctions on Burma*; and CRS Report R42363, *Burma's Political Prisoners and U.S. Sanctions*. The report will be updated following the announcement of the official results of the by-elections, and as circumstances warrant.

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Overview of the By-Elections

The Republic of the Union of Myanmar (Burma)¹ held parliamentary by-elections on April 1, 2012. Depending on the conduct of the election, the official election results, and the treatment of the newly elected members of parliament, U.S. policy toward Burma may undergo a major shift, possibly including the waiver or removal of some of the current U.S. sanctions. Other nations and the European Union (EU) are reportedly also considering removing sanctions or restrictions on Burma depending on their assessments of the by-elections.

The by-elections originally were to fill 48 vacant seats in Burma's various parliaments. Burma's parliamentary system consists of the bicameral Union Parliament (*Pyidaungsu Hluttaw*) plus separate local parliaments for each of the nation's seven states and seven regions.² The two chambers of the Union Parliament are the lower house People's Assembly³ (*Pyithu Hluttaw*) with 440 seats, and the upper house National Assembly⁴ (*Amyotha Hluttaw*) with 224 seats. The number of seats in the local parliaments vary. One-quarter of the seats in each chamber of the Union Parliament and in each of the local parliaments are appointed by the commander-in-chief of Burma's military, the Tatmadaw.

The April by-elections were to fill 40 vacant seats in People's Assembly, 6 seats in the National Assembly, 1 seat in Ayeyarwady (Irrawaddy) Region, and 1 seat in the Bago (Pegu) Region (see **Figure 1**). However, on March 23, 2012, the Union Election Commission (UEC) postponed voting for three People's Assembly seats in the Kachin State for security reasons.⁵ Forty-five of the seats are vacant because the elected member accepted a position in the Union Government.⁶ Two seats are vacant because the elected member was removed from office, and the last seat is vacant due to the member's death. All 48 seats were previously held by members of the pro-military Union Solidarity and Development Party (USDP).

In terms of the overall balance of power in the Union Parliament, the by-elections will have only a marginal impact. Less than 9% of the total seats in the People's Assembly and under 3% in the National Assembly were contested (see **Table 1**). The by-elections are largely considered significant because of the participation of the NLD, and its Chair Aung San Suu Kyi, who is viewed both domestically and internationally as the leader of Burma's democracy movement.

¹ The 2008 constitution declares the official name of the country to be "The Union of the Republic of Myanmar." The United States continued to refer to the nation as "The Union of Burma."

² Burma consists of seven states (Chin, Kachin, Kayah, Kayin, Mon, Rakhine, and Shin) and seven regions or divisions (Ayeyarwady, Bago, Magway, Mandalay, Sagaing, Tanintharyi, and Yangon). The constitution stipulates that the capital of Nay Pyi Taw shall be a Union Territory under the direct administration of the president.

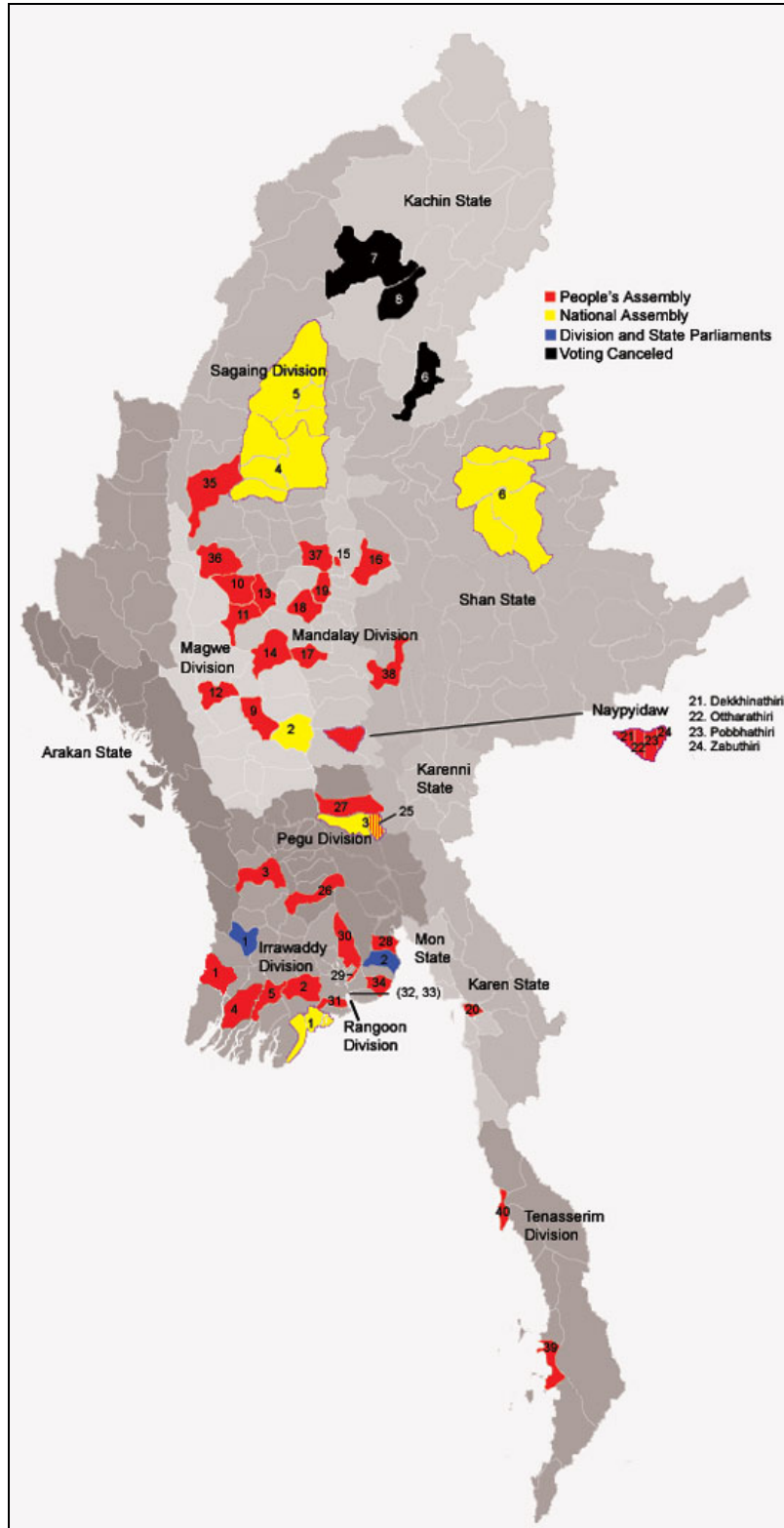
³ Sometimes referred to as the House of Representatives.

⁴ Sometimes referred to as the House of Nationalities.

⁵ Union Election Commission, "Announcement on the List of Constituencies Postponed for By-election," Announcement No. 16/2012, March 23, 2012, as published in the *New Light of Myanmar* on March 24, 2012.

⁶ Burma's constitution states, "If the Union Minister or Deputy Minister is a representative of a Hluttaw, it is to be assumed that he has resigned as a Hluttaw representative from the date he is appointed Union Minister or Deputy Minister."

Figure I Map of Contested Seats in April By-Election



Source: Alternative ASEAN Network on Burma.

Note: Regions are sometimes referred to as divisions.

Table 1. Proportion of Union Parliament Seats Contested in By-Election

	People's Assembly (Lower House)	National Assembly (Upper House)
Total Number of Seats	440	224
Seats Appointed by Commander-in-Chief	110	56
Seats Being Contested in By-election	37	6
Percentage of Total Seats Contested	8.4%	2.7%
Percentage of Nonmilitary Seats Contested	11.2%	3.6%

Source: CRS.

The election campaign unofficially began in March 2012, after each party registered its slate of candidates with the Union Election Commission (UEC). President Thein Sein and the Union Government pledged to make the by-elections free and fair. However, a number of incidents during the campaign period revealed efforts by government officials to undermine the ability of the NLD to carry out its campaign, as well as intimidate or coerce people to support the USDP. The exclusion of certain political parties and the campaign irregularities also raised doubts about how free and fair the by-elections were.

On March 20, 2012, it was reported that the Burmese government had notified the Association of Southeast Asian Nations (ASEAN) that it could send election observers to Burma as of March 28, 2012.⁷ Invitations to send election observers soon went out to the European Union, the United States, and a number of other nations. In contrast to election day in November 2010, voting on April 1 went comparatively smoothly. Of particular note, there was no repeat of the mysterious appearance of “advance votes” that had marred the previous parliamentary elections.

According to the official results released by the UEC, the NLD won all 37 seats in the People's Assembly, 4 seats in the National Assembly, and both of the seats in the regional assemblies. The USDP won 1 seat in the National Assembly in Sagaing Region. The Shan Nationalities Democratic Party (SNDP) won the seat in the National Assembly in the Shan State. As a result of the by-elections, the pro-military parties—the USDP and the National Unity Party (NUP)—and the military control 77.5% of the seats in the People's Assembly, 82.6% of the seats in the National Assembly, and 79.2% of the seats in the combined Union Parliament. This is more than enough votes to pass laws or amend the constitution without the support of any opposition party members.⁸

The initial international response to the by-elections was generally positive. The White House issued a short statement congratulating the people of Burma for the elections. A statement attributable to the Spokesperson for Secretary-General Ban Ki-moon also congratulated “the people, Government, and political parties of Myanmar for the peaceful and largely orderly manner in which Sunday's by-elections for vacant parliamentary seats were held.”⁹ The 10 ASEAN leaders, who were meeting in Cambodia, called for the removal of all sanctions on their fellow ASEAN member. A spokesperson for the European Commission reportedly hinted that the EU would consider removing some of its sanctions on Burma when it meets in late April.

⁷ “Burma Gets ASEAN Poll Monitor Boost,” *Democratic Voice of Burma*, March 20, 2012.

⁸ To pass a constitutional amendment requires 499 votes out of the 664 members of the Union Parliament.

⁹ Full text of the statement is available online at <http://www.un.org/sg/statements/index.asp?nid=5969>.

Who's Ran – and Who Did Not Run

A total of 17 political parties registered the minimum number of three candidates running for office in the by-elections including the pro-democracy NLD and the pro-military USDP (see *textbox*).¹⁰ Two newly registered parties—the 88-Forces of People's Party and the Democratic Alliance Party—were abolished for failing to field at least three candidates for the by-elections. The NLD and the USDP reportedly filed candidates for all 48 seats initially to be contested.¹¹ A spin-off party from the NLD, the National Democratic Front (NDF), and military's political party in the 1990 elections, the National Unity Party, contested approximately 20 seats.

A number of political parties did not participate in the by-elections for a variety of reasons. In addition to the two parties abolished for failing to field enough candidates, at least four political parties were unable to participate in the by-election because the UEC did not act on their applications.¹² Two political parties—the Chin National Party and the Rakhine National Development Party (RNDP)—are not participating because none of the contested seats are located in their home states of Chin and Rakhine, respectively. Four political parties—the Arakan League for Democracy, the Mon National Democratic Front, the Shan Nationalities League for Democracy, and the Zomi National Congress—announced plans to register with the UEC, but not run candidates in the by-elections.¹³ Members of the 88-Generation students group, an informal association of the student leaders of Burma's 8888 Uprising,¹⁴ also announced that they would not run candidates as part of a separate political party, but would support the NLD. Several political parties—such as the Karen National Union, the Karenni National Progressive Party, and the Pa-O National Liberation Organization—also decided not to participate in the by-elections because some of their members

Political Parties Participating in the April By-Elections

All Mon Region Democracy Party*
 Democratic Party (Myanmar)*
 Kokang Democracy and Unity Party*
 Lahu National Development Party*
 Modern People's Party
 Myanmar National Congress
 Myanmar New Society Democratic Party*
 National Democratic Force*
 National League for Democracy
 National Unity Party*
 New National Democracy Party
 Pa-O National Organization*
 People's Democracy Party
 Shan Nationalities Democratic Party*
 Union of Myanmar Federation of National Politics*
 Union Solidarity and Development Party*
 Unity and Peace Party

*participated in November 2010 elections

¹⁰ Under Burma's elections laws, a party must run at least three candidates.

¹¹ "Seventeen Political Parties to Contest By-Election," *Mizzima*, February 8, 2012.

¹² Four parties—the All National Races Unity and Development Party (Kayah State), Kachin State Progressive Party (KSPP), Northern Shan State Progressive Party, and the People's New Society Party (PNSP)—submitted applications to the UEC before the November 2010 elections, but were never granted permission to register as political parties.

¹³ "Ethnic Shan Leader in Myanmar to Re-register Party," *Associated Press*, January 19, 2012, and "Four Dissolved Ethnic Parties to Re-Register," *Mizzima*, January 20, 2012.

¹⁴ The 8888 Uprising was the largest ever national Burmese uprising demanding democracy, erupting on August 8, 1988 (8-8-88) in Rangoon by various student groups. The uprising was brutally suppressed by the ruling military junta, but is generally considered a contributing factor to the military's decision to hold parliamentary elections in 1990.

remain in detention and/or because the Burmese militia continue to attack their associated militias.

The Campaign

President Thein Sein and the Union Government repeatedly promised free and fair by-elections. Each of the 17 political parties was provided air time on the radio and television during the month of March.¹⁵ In addition, each party was allowed to print a party policy statement in the government-run newspaper, *The New Light of Myanmar*. However, both the texts of the broadcasts and the printed policy statements had to be submitted in advance and were subject to censorship.¹⁶

The election campaign was marred by reports of government officials using their official powers to hinder the NLD's ability to hold political rallies, as well as intimidating and threatening voters to support USDP candidates.¹⁷ In addition, the USDP allegedly developed a "dirty tricks" campaign to ensure their candidates win the elections. The Union Election Commission (UEC) took steps to undo the roadblocks placed before the NLD candidates, but reports of unfair campaign practices continue to appear in the press.

One of the most common impediments placed before the NLD campaign was the refusal of the Ministry of Sports to allow the NLD to hold rallies in football (soccer) stadia. NLD rallies at which Aung San Suu Kyi spoke routinely drew over 10,000 people, making it desirable to use the stadia. On February 17, 2012, the NLD wanted to hold a rally at Pyapon Stadium in the Irrawaddy region, but the sports ministry refused permission and the event was relocated to the outskirts of the city.¹⁸ Previous requests to use a football stadium on February 15 in the Rangoon region and in Mandalay on February 4 were also denied by the sports ministry.¹⁹ On February 20, 2012, the UEC instructed the sports ministry to lift its restrictions on the use of sports stadia.²⁰ While the block on NLD access to sports stadia seemed over, the Mon State Election Commission refused to grant permission for the NLD to hold a rally at Than Lwin Garden in the city of Moulmein.²¹

Besides their apparent attempts to block NLD rallies, it was alleged that local government officials and the USDP intimidated and threatened voters to support the USDP as part of what opposition groups saw as a larger "dirty tricks" campaign. Civil servants in the capital of Nay Pyi Taw (Naypyidaw) were reportedly told not to attend NLD rallies.²² The residents of one village were told they would not be connected to the electric grid if someone in their household attended

¹⁵ A timetable providing the dates on which each party will be on the air was published in the government-run newspaper, *The New Light of Myanmar*, on February 18, 2012.

¹⁶ The restrictions on the text of the broadcasts were published in *The New Light of Myanmar* on February 17, 2012, and include such items as ban on tarnishing the image of the State and the Tatmadaw, or making statements that are "detrimental to security, prevalence of law and order and peace and tranquility."

¹⁷ For a more detailed list of attempts to obstruct the NLD campaign, see Alternative ASEAN Network on Burma, *Burma Bulletin*, Issue 62, Bangkok, Thailand, February 2012.

¹⁸ Myo Thant, "Sports Ministry Denying Suu Kyi Access to Stadiums," *Mizzima*, February 20, 2012.

¹⁹ Ibid.

²⁰ "Ban on Suu Kyi Rallies is Lifted," *Mizzima*, February 21, 2012.

²¹ Lawi Weng, "NLD Venue Snub for Suu Kyi Rally," *Irrawaddy*, March 9, 2012.

²² "Suu Kyi Lashes Out in Taungoo," *Irrawaddy*, March 6, 2012.

an NLD rally.²³ Factory workers reportedly were warned that they will lose their jobs if they do not vote for the USDP.²⁴ One report alleged that the USDP had a secret election strategy paper calling for the use of bribery, vote-buying, intimidation, and fraud to win the parliamentary seats in the by-election.²⁵

The NLD also reported other forms of campaign irregularities. It claimed that the official voter registration lists included a significant number of dead people, but omitted many eligible voters.²⁶ In addition, the NLD reported that in some parts of the country, advance ballots had been collected well ahead of the official dates of March 30 and 31.²⁷ It was alleged that advanced ballots were used by the SPDC, the UEC, and the USDP to steal some of the seats in the November 2010 parliamentary elections.

The UEC's decision to postpone the voting for the three People's Assembly seats from the Kachin State was criticized as being politically motivated. Some of the opposition party candidates for those seats disputed the UEC's claim of security problems, maintaining that the districts were not in areas where the Tatmadaw and the Kachin Independence Army (KIA) have been fighting.²⁸ The NLD, NDF, USDP, and the Shan Nationalities Democratic Party had candidates running in one or more of the postponed constituencies.

The Alternative ASEAN Network on Burma (ALTSEAN)²⁹ released an overview of the by-elections on March 27, 2012, asserting that the conduct of the elections had fallen short of international standards.³⁰ According to ALTSEAN's assessment, the by-elections fell short of international standards in several ways, including:

- The election laws limited political participation;
- The UEC is neither independent nor impartial;
- Campaign restrictions remained in place;
- The complaint process is ineffective and inaccessible;
- Government officials and UEC representatives interfered in the activities of opposition parties;
- Government officials and USDP members threatened, harassed, or attempted to bribe voters;
- Thousands of voters were disenfranchised because of inaccurate voter registration lists; and
- Campaign materials were censored.

²³ Hpyo Wai Tha, "NLD Supporters Left in the Dark," *Irrawaddy*, March 9, 2012.

²⁴ Larry Jagan, "USDP Plans Dirty Tricks Campaign for Burma By-election," *Irrawaddy*, February 28, 2012.

²⁵ *Ibid.*

²⁶ "Complaints Lodged over Accuracy of Burma's Voter Registration Rolls," *Mizzima*, March 8, 2012.

²⁷ "Suu Kyi Questions the Fairness of the Burmese Election," *Mizzima*, March 19, 2012.

²⁸ Myo Thant, "Authorities Cancel Election in Three Kachin Constituencies," *Mizzima*, March 26, 2012.

²⁹ ALTSEAN (Alternative ASEAN Network on Burma) is a network of organizations and individuals based in ASEAN member states working to support the movement for human rights and democracy in Burma.

³⁰ ALTSEAN, *Burma's By-elections: Still Short of International Standards*, BN 2011/1089, March 27, 2012.

Despite the reported irregularities, rallies at which Aung San Suu Kyi spoke proved to be very popular. Turnout at these rallies regularly topped 10,000 people, and in some cases over 40,000 people attended the event. The press did not provide much coverage of the political rallies held by the USDP or the smaller opposition parties, but it is presumed that these events were not as well attended.

The Union Government was under significant international pressure to allow international election monitors or observers for the April by-election. The Burmese government initially said that international observers were not necessary, but President Thein Sein indicated on February 21 that the Burmese government was “seriously considering” allowing observers from ASEAN.³¹ On March 20, 2012, the Association of Southeast Asian Nations (ASEAN) announced that it had been invited to send 5 observers and 18 parliamentarians (2 from each of the other 9 ASEAN member nations) starting on March 28, 2012.³² On March 22, the European Union (EU), the United Nations, and the United States were also invited to send a limited number of election observers.³³ Other nations also were allowed to send election monitors. However, at the same time reports of the invitation of international observers from ASEAN, the EU, the United Nations, and the United States appeared in the press, an election monitor for the Bangkok-based Asian Network for Free Elections was deported by the Union Government.³⁴

The Vote

By most accounts, voting on April 1, 2012, proceeded largely without a repeat of the irregularities that marred the parliamentary elections held on November 7, 2010. By and large, the polling centers opened and closed on time, with few technical difficulties. While there were allegations of inaccuracies in voter registration rolls, people were able to vote and the participating political parties, members of the diplomatic community, international election witnesses, and the local and international press were able to observe from inside the polling centers.

After the polls were closed, the ballot counting was generally conducted in the presence of witnesses for the contesting political parties and members of the public. In some cases, spoiled ballots were shown to demonstrate that they were not valid. After sorting, the ballots were counted before witnesses and the results for the polling center were recorded.

The April by-election vote differed from the November election in several important ways. For example, no unexplained boxes of “advanced votes” appeared after the polling centers were closed on April 1, as happened in November 2010. In addition, the ballot counting and recording of the results on April 1 was done before witnesses, in contrast to being done behind closed doors in many polling centers in November 2010.

³¹ “Myanmar to Consider ASEAN Poll Monitors,” *Channel News Asia*, February 21, 2012.

³² “Burma Gets ASEAN Poll Monitor Boost,” *Democratic Voice of Burma*, March 20, 2012; and “Myanmar to Allow Some Election Observers,” *Channel News Asia*, March 20, 2012.

³³ “U.S., EU Election Observers Invited to Burma,” *Mizzima*, March 22, 2012; “Burma Invites US and EU Observers to April By-Elections,” *BBC*, March 21, 2012; and “Myanmar invites US, EU, UN Election Observers,” *Straits Times*, March 22, 2012.

³⁴ Saw Yan Naing, “Election Coordinator Deported from Burma,” *Irrawaddy*, March 21, 2012.

The Results

The UEC announced the official results on April 2 and 3, 2012, and the text of the official announcements were printed in the government-run newspaper, *The New Light of Myanmar*, on April 3 and 4, 2012. The NLD won all 37 seats in the People's Assembly, four seats in the National Assembly, and both of the seats in the regional assemblies. Aung San Suu Kyi was among the NLD winners; she will be a member of the People's Assembly for the Yangon (Rangoon) Region. The USDP won one seat in the National Assembly located in the Sagaing Region. The Shan Nationalities Democratic Party (SNDP) won one the National Assembly located in the Shan State.

Table 2. Balance of Power in the Union Parliament
Number of Seats Held by Political Parties Before and After By-elections

Political Party	People's Assembly		National Assembly	
	Before By-election	After By-election	Before By-election	After By-election
<i>Pro-Military Parties</i>	381 (86.6%)	341 (77.5%)	190 (84.8%)	185 (82.6%)
USDP	259 (58.9%)	219 (49.8%)	129 (57.6%)	124 (55.4%)
NUP	12 (2.7%)	12 (2.7%)	5 (2.2%)	5 (2.2%)
Military Seats	110 (25.0%)	110 (25.0%)	56 (25.0%)	56 (25.0%)
<i>Opposition Parties</i>	54 (12.3%)	91(20.7%)	34 (15.2%)	39 (17.4%)
NLD	0 (0.0%)	37 (8.4%)	0 (0.0%)	4 (1.8%)
SNDP	18 (4.1%)	18 (4.1%)	3 (1.3%)	4 (1.8%)
Rakhine Nationals Progressive Party (RNPP)	9 (2.0%)	9 (2.0%)	7 (3.1%)	7 (3.1%)
National Democratic Front (NDF)	8 (1.8%)	8 (1.8%)	4 (1.8%)	4 (1.8%)
Other	19 (4.3%)	19 (4.3%)	20 (8.9%)	20 (8.9%)
Vacant	5 (1.1%)	8 (1.8%)	0 (0.0%)	0 (0.0%)

Source: Alternative ASEAN Network on Burma; *The New Light of Myanmar*, April 3 and 4, 2012.

Notes: Elections for five seats in People's Assembly for the Shan State were not held in November 2010 or April 2012 for security reasons; three seats in the People's Assembly for the Kachin State were not held in April 2012 for security reasons.

While the results may be considered a landslide victory for the NLD and a stunning defeat for the USDP, they do not significantly alter the balance of power in the two chambers of the Union Parliament (see **Table 2**). The pro-military parties—the USDP and the NUP—combined with the appointed military seats hold an overwhelming majority in both chambers and 79.2% of the seats in the Union Parliament, enough to pass laws and amend the constitution without support from opposition parties. The NLD has become the largest opposition party in both chambers of the Union Parliament, overtaking the SNDP in the People's Assembly and the Rakhine Nationals Progressive Party in the National Assembly.

U.S. Response

After the UEC officially announced the dates for the parliamentary by-elections, the Obama Administration called upon the Burmese government to take the measures necessary to ensure that the elections would be held in a free and fair manner. During his trip to Burma three weeks before the by-elections, Special Representative and Policy Coordinator for Burma Derek Mitchell reiterated the U.S. position, saying, "What we're interested in is the process. We're committed to a free, fair, and transparent process that truly represents the will of the people of this country."³⁵ In addition, senior U.S. officials indicated to the Burmese government that it should consider allowing international observers to watch the election campaign, the balloting process, and the vote-counting to confirm that the election was conducted according to internationally accepted standards.

The day after the by-elections, the White House issued a brief statement, saying:

We congratulate the people of Burma on their participation in the electoral process, and Aung San Suu Kyi and the National League for Democracy on their strong showing in the polls. This election is an important step in Burma's democratic transformation, and we hope it is an indication that the Government of Burma intends to continue along the path of greater openness, transparency, and reform.³⁶

The Obama Administration has signaled that it would consider modifying or waiving some of the existing sanctions on Burma if it determines that the elections were sufficiently free and fair to warrant such a response. It has not, however, announced what changes in the sanctions are being considered. Nor has it disclosed the manner in which the possible changes would be made, including whether it intends to approach Congress to pass legislation. Among the criteria to be considered in determining if the by-elections were sufficiently free and fair are the conduct of the campaign, the voting process, and the official results. Many observers believe that Aung San Suu Kyi's assessment of the election process will influence the Obama Administration's decision as well. Some analysts suggest that the U.S. response may be done in a series of steps, with some possible sanction modifications being made only after the winners of the by-elections have been sworn into office and sufficient time has passed to assess how the new members of Parliament are being treated by the USDP majority.

The Obama Administration's response to the by-elections may also be influenced by how other countries and the EU react to the election results. On January 23, 2012, the EU suspended a visa ban against 87 individuals, including President Thein Sein, the nation's two vice presidents, its cabinet members, and the speakers of the two houses of Burma's parliament.³⁷ In addition, the EU has indicated that—pending the conduct of Burma's by-elections and continuing progress in a number of areas—it could relax other restrictive measures during the next comprehensive review of Burma sanctions, most likely to occur in late April.³⁸ Australia and Japan have also signaled

³⁵ Aung Hla Tun, "U.S. Urges Free and Fair Polls in Myanmar—Envoy," *Reuters*, March 15, 2012.

³⁶ Office of Press Secretary, The White House, "Statement by the Press Secretary on the Elections in Burma," press release, April 2, 2012.

³⁷ See *Council Conclusions on Burma/Myanmar*, <http://register.consilium.europa.eu/pdf/en/12/st05/st05618.en12.pdf>. The decision was formalized and detailed Council Decision 2012/98/CFSP on February 17, 2012 (see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:047:0064:0068:EN:PDF>).

³⁸ Since 2003, the EU's Common Position on Burma expires every 12 months. Prior to the expiration date, the position (continued...)

their intent to review their sanctions on Burma following the by-elections. The Obama Administration may decide to weigh its response after consultation with other entities that have imposed sanctions on Burma.

Other Developments in Burma

While the parliamentary by-elections are drawing much of the attention in Burma, important developments have occurred with respect to other major issues of concern for the United States, particularly the continued detention of political prisoners, the Tatmadaw's continued attacks on ethnic militias, and the continued human rights violations of civilians in conflict areas.³⁹ The perceived status of these issues is likely to influence the Obama Administration's potential response to the outcome of the parliamentary by-elections.

Political Prisoners

Since assuming office in April 2011, President Thein Sein has authorized four separate amnesties or pardons for large groups of prisoners in Burma, including several hundred political prisoners (see **Table 3**). However, hundreds of political prisoners remain in detention. Burma's political prisoners include members of the NLD and other opposition parties, representatives of various ethnic groups in Burma, Buddhist monks and nuns, student and youth organizers, news reporters, and other dissidents.

Conditions for the political prisoners are reportedly harsh.⁴⁰ According to the Thailand-based advocacy group Assistance Association for Political Prisoners (Burma) (AAPP(B)), 458 political prisoners reportedly remained in detention in Burma as of March 17, 2012.⁴¹ The AAPP(B) has also compiled a list of 403 additional political prisoners allegedly under detention but whose location has not been verified.⁴² The Organization of Former Political Prisoners (OFPP), a group of recently

Table 3. Prisoner Reprieves, 2011-2012
(in reverse chronological order)

Date	Total Prisoners	Political Prisoners
January 13, 2012	651	302
January 2, 2012	6,656	34
October 11, 2011	6,359	237
May 16, 2011	14,578	55

Source: Assistance Association for Political Prisoners (Burma).

(...continued)

comes up for renewal, amendment, or replacement, and is accordingly reviewed by EU foreign ministers at the Council of the European Union. The next expiration date is April 30, 2012. Decisions require consensus among all 27 EU member countries.

³⁹ For more information on Burma's political prisoners, see CRS Report R42363, *Burma's Political Prisoners and U.S. Sanctions*, by (name redacted). For more information on human rights in Burma, see CRS Report R41971, *U.S. Policy Towards Burma: Issues for the 112th Congress*, by (name redacted) and (name redacted).

⁴⁰ According to a story in the *Los Angeles Times*, some prisoners are tortured and placed in solitary confinement for years. Others are forbidden to speak. Medical care is limited, and the provided food is "barely edible." ("Political Prisoners in Burma Face Bleak Conditions," *Los Angeles Times*, December 3, 2010.)

⁴¹ The complete list of names is available at http://www.aappb.org/Updated_Confirmed_PP_list_1.html.

⁴² The complete list of names is available at http://www.aappb.org/Updated_To_Confirm_PP_list_1.html.

recent political prisoners, has released a list of 619 political prisoners still under detention.⁴³ The State Department's Bureau of Democracy, Human Rights, and Labor has compiled and continues to update a list of all known political prisoners in Burma based on nongovernmental organization (NGO) and government sources, which forms the basis of the State Department's ongoing engagement with the government of Burma on political prisoners.

The Burmese government has given significantly different estimates of the number of political prisoners in custody. President Thein Sein told reporters in Bali, Indonesia, on November 20, 2011, that there were no political prisoners in Burma and that "all prisoners have broken the law."⁴⁴ However, Ko Ko Hlaing, a close political advisor to President Thein Sein, estimated the number of political prisoners in detention in Burma at about 600 prior to the October 2011 prisoner amnesty.⁴⁵ Following the January 13 release, Home Affairs Minister Lieutenant General Ko Ko told the press that 302 of the 651 people released were "prisoners of conscience," and that 128 dissidents remain in detention.⁴⁶

Ethnic Conflicts and Ceasefire Talks

The Union Government has apparently abandoned the SPDC initiative to transform the various ethnic militias into Border Guard Forces (BGFs) and returned to a policy of negotiating ceasefire agreements with the militias' representative organizations.⁴⁷ Nine of the 16 ethnic minority groups have signed initial ceasefire agreements with the Union Government, but in many cases fighting continues. Ceasefire talks with the larger ethnic groups—particularly the Kachin Independence Organization (KIO)—have been unsuccessful. President Thein Sein has instructed Commander-in-Chief General Min Aung Hlaing to order his troops to stop all offensives against the ethnic militias, but such assaults reportedly continue. In addition, the Tatmadaw allegedly continue their past practices of mistreating the civilians in conflict areas, resulting in the internal displacement of tens of thousands of people and the flight of an unknown number of people across the borders into China and Thailand. As a result, the human rights situation in Burma—particularly in conflict areas—has not improved significantly over the last year, according to a recent report by Human Rights Watch.⁴⁸

A negotiating team headed by Minister of Railways Aung Min has concluded initial ceasefire agreements with several ethnic organizations. A second negotiating team, headed by member of Parliament Aung Thaung and responsible for the talks with the KIO, has had less success. The negotiating teams' goals appear to be to secure promises to not secede from Burma and stop hostilities in exchange for autonomy in militia-controlled areas and a promise for future talks aimed at a more permanent ceasefire or peace agreement. The two major stumbling blocks in the negotiations are the general terms of the permanent ceasefire or peace agreement and the militias' lack of trust of the Burmese government and the military, given their past history of breaking ceasefire agreements.

⁴³ Nyein Nyein, "US Envoy Told 619 Political Prisoners in Burma," *Irrawaddy*, March 16, 2012.

⁴⁴ "Myanmar President Insists No Political Prisoners in Jails," *Asia-Pacific News*, November 20, 2011.

⁴⁵ "Only 600 Political Prisoners in Burma; President's Advisor," *Irrawaddy*, October 18, 2011.

⁴⁶ "Burma's Remaining Jailed Dissidents," *Irrawaddy*, January 17, 2012.

⁴⁷ For a history of Burma's ethnic militias, and the SPDC's Border Guard Force initiative, see Transnational Institute, *Neither War Nor Peace: The Future of the Cease-fire Agreements in Burma*, Amsterdam, The Netherlands, July 2009.

⁴⁸ Human Rights Watch, *World Report 2012: Country Report—Burma*, January 2012.

Preliminary ceasefire agreements have been signed with the Chin National Front, the Democratic Karen Buddhist Army, the Karen National Union, the New Mon State Party, the Shan State Army—North, the Shan State Army—South, and several smaller ethnic militias. Talks with the KIO have so far failed to come to a preliminary agreement. To date, the Union Government has refused to hold ceasefire talks with the Arakan Liberation Party.

Human Rights

The ongoing fighting in the ethnic conflict areas and reports of continued political repression in Burma's urban areas indicate that progress on human rights remains slow. According to Human Rights Watch, "Burma's human rights situation remained dire in 2012 despite some significant moves by the government...."⁴⁹ The organization noted the relaxation of some media restrictions and censorship of the press, as well as the passage of legislation allowing the formation of trade unions and the holding of peaceful protests. However, pre-publication censorship is still required for most publications, and certain topics remain forbidden, such as coverage of the ongoing fighting in conflict areas or criticism of the Tatmadaw. In addition, the new laws have yet to be enforced. For example, attempts to register labor unions have been rejected supposedly because of a lack of implementing rules and regulations.

In the conflict areas, reports of grievous human rights abuses conducted by the Burmese military continue to appear in the international press. The Tatmadaw allegedly have engaged in the following activities since the Union Government took power:

- Summary execution of militia members and civilians;
- Rape and sexual assault of women and girls in conflict areas;
- Forced labor of civilians as porters, human shields, or as human "minesweepers";
- Impressments of under-aged children as "child soldiers"; and
- Destruction and expropriation of property.

Similar allegations have been made against some of the ethnic militias.

The continued fighting in Burma has resulted in ten of thousands of internally displaced people (IDPs) and thousands of new refugees fleeing into China and Thailand. The situation is apparently quite severe for the IDPs in the Kachin state, where the Union Government and the Tatmadaw have largely refused to allow international relief organizations access to the IDPs. The Chinese government recently admitted that hundreds of Burmese refugees have crossed the border. Thailand has also acknowledged that the recent fighting in eastern Burma has led to an inflow of refugees.

Implications for Congress

The April parliamentary by-elections provide Burma's Union Government, its Union Parliament, and the Tatmadaw another opportunity to demonstrate their commitment to political reform and

⁴⁹ Human Rights Watch, *World Report 2012: Country Summary—Burma*, January 2012.

national reconciliation. They also provide Congress with more evidence by which to assess the present situation in Burma and to possibly re-examine current U.S. policy. In addition, Congress may be asked by the Obama Administration to alter or amend one or more of the existing laws governing U.S. sanctions on Burma, depending on the outcome of the parliamentary by-elections.⁵⁰

One of the key issues likely to be considered is the criteria by which to assess the by-elections. Events to date suggest that the elections did not achieve the four standards set forth by U.N. Special Rapporteur Tomás Quintana—free, fair, transparent, and inclusive.⁵¹ The exclusion of some political parties, constraints on campaigning activities, and censorship of campaign speeches and materials are examples of actions where expectations for inclusive, free, and fair elections may not have been fully met.

Another likely key issue is the establishment of the criteria by which to select and construct a U.S. response. One criterion used in the past has been the rewarding of positive developments by providing Burma with something it desires. A second criterion suggested is to respond in a manner that is expected to encourage or create incentives for the Burmese government to undertake further reforms. A third criterion is to take actions that bolster the political power or authority of Burmese officials identified as being pro-reform, and/or undermine the power or authority of Burmese officials views as being barriers to progress in Burma. Other criteria for the formation of the U.S. response have been discussed, but it may benefit Congress to consider its goals and objections when taking up the issue of a possible response to the April by-elections.

Finally, the Obama Administration may approach Congress with specific requests for the alternation or amendment of existing laws imposing sanctions on Burma. In many cases, the President has the authority to temporarily or permanently waive existing sanctions. However, in some cases, such authority does not exist and reduction or removal of the sanctions will require congressional action. The Obama Administration has already begun consultations with Congress on the future development of U.S. policy towards Burma. During the period prior to and after the by-elections, Congress may decide to conduct hearings and undertake other forms of investigation into the situation in Burma in preparation for its response to a request from the Obama Administration.

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⁵⁰ For more information on which sanctions are subject to presidential waivers and which require congressional action, see CRS Report R41336, *U.S. Sanctions on Burma*, by (name redacted).

⁵¹ Special Rapporteur Quintana included the four standards in his most recent progress report to the United Nations Human Rights Council (United Nations Human Rights Council, *Progress Report of the Special Rapporteur of the Situation of Human Rights in Myanmar, Tomás Ojea Quintana, A/HRC/19/67*, March 7, 2012).

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