



# Human Rights, Civil Unrest, and Political Reform in Burma in 2013

-name redacted-

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## Summary

An accurate and objective assessment of the status of human rights, civil unrest, and political reform in Burma is critical to congressional oversight of the Obama Administration's conduct of U.S. policy towards the country, as well as any congressional examination of U.S. policy towards Burma. CRS Report R43035, *U.S. Policy Towards Burma: Issues for the 113<sup>th</sup> Congress*, examines the discernible shift in the conduct of U.S. policy towards Burma that has taken place over the last two years. CRS Report R42939, *U.S. Sanctions on Burma: Issues for the 113<sup>th</sup> Congress*, summarizes the existing U.S. economic and political sanctions imposed on the country, including the conditions with respect to human rights and democracy necessary to terminate those sanctions.

The Obama Administration and many other observers have focused their analysis on the apparent progress that has been made since Burma's military junta transferred power to a new, quasi-civilian government in 2011. These analyses highlight the country's political reforms and human rights improvements, while acknowledging that the situation remains fragile and reversible.

This approach implicitly assumes that Burma's political leaders, particularly President Thein Sein, are committed to making further political reforms designed to establish a democratic government that respects the human rights of its people. To date, neither Thein Sein nor the nation's other political leaders, including Aung San Suu Kyi, have provided a fully detailed vision of post-reform Burma or a clear roadmap for continuing political reforms or addressing the grievances of ethnic minorities. One critical question for U.S. policy is how to address conditions in a country that has begun a process of political reform, but where substantial human rights abuses continue. Given current conditions, many observers believe it is unclear whether future political reform in Burma will be fully consistent with the goals established in U.S. laws that form the basis of U.S. policy in Burma.

This report examines the current situation in Burma from the implicit perspective shaped by U.S. laws setting policy toward Burma, and discusses the challenges of responding to reforms in a nation in political transition which has gone only part way to dealing with human rights abuses. In general, these laws establish a set of standards or thresholds to achieve before the sanctions are lifted and bilateral relations are normalized. Based on the criteria enumerated in laws, this report concludes: (1) prospects for an end to internal inter-ethnic conflict and national reconciliation appear slim in the short-run; (2) the critical political forces in Burma do not currently share a common vision of or path towards a democratic civilian government; and (3) human rights abuse remain a serious problem in Burma, and most civil liberties are subject to major restrictions.

With respect to specific criteria mentioned in sanctions laws—ending the nation's ethnic conflicts, protecting human rights, and establishing a democratic civilian government based on the rule of law—the report recounts that (1) The ceasefire negotiations between the Burmese Government and various ethnic organizations appear to have stalled at a preliminary stage; (2) Ethnic and religious tensions have erupted in various parts of the country, leading to the deaths of dozens of people and the creation of thousands of internally displaced persons; (3) Reports of serious human rights abuses appear in the media on a regular basis, particularly accounts of the Burmese Army abusing non-combatants in conflict areas; (4) Hundreds of political prisoners remain in detention; (5) The status of the 2008 constitution is a pivotal issue for political reform and national reconciliation; and (6) The views of the Burmese military about the nation's reforms remain unknown. This report will be updated as circumstances warrant.

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## Introduction

In the two years since Burma's ruling military junta, the State Peace and Development Council (SPDC), transferred power to a partially civilian government, the new Union Government and the Union Parliament have implemented a number of political reforms and approved several laws providing additional protections to the civil liberties of Burma's citizens. However, the last two years have also seen the perpetration of serious human rights abuses in Burma, particularly by the Burmese military, also known as the Tatmadaw, against non-combatants in locations where fighting with ethnic militias continues. In addition, religious and ethnic tensions between Burma's Buddhist majority and various ethnic Christian and Muslim minorities have erupted into deadly civil unrest and rioting. Overall, most observers wonder if the initial promising progress in Burma's political reforms and human rights situation has become less certain and stable.

A comprehensive and impartial assessment of Burma's political reforms and human rights situation is critical for Congress to accurately assess U.S. policy towards Burma and determine what, if any, measures to take in realigning the conduct and details of that policy. A separate CRS report provides an assessment of the Obama Administration's conduct of U.S. policy towards Burma since March 2011.<sup>1</sup>

Burma, much like other countries undergoing a major political transition, presents a serious challenge in accurately assessing the internal political dynamics of the country, and based on that assessment, determining the proper manner by which to conduct U.S. policy so as to improve the prospects that future political changes will correspond with U.S. goals and objectives. While Burma has undergone many significant political changes over the last two years, it is uncertain whether these changes represent a long-term trend to further reforms, or whether the current situation is close to the endpoint desired by the current political leadership.

In addition, it is unclear if the policies and actions of the United States can or will have an important effect on the political dynamics of Burma. After over six decades of domestic unrest and low-grade civil war, many observers believe the attention of Burma's major political forces may be focused on internal, rather than external issues. To whatever extent U.S. policy may influence Burma's future political developments, Congress and the Obama Administration must decide what steps or actions are most likely to encourage or pressure Burma further along the path towards the goals they have identified with respect to Burma's transformation to a democratic civilian government under the rule of law that protects and respects the human rights and civil liberties of all of its people.

Most media accounts and think-tank studies of Burma's political transition have focused on the seemingly rapid and unexpected changes that have taken place over the last two years. In general, these accounts have been historical, focusing on how much or little conditions in Burma have changed since the SPDC handed power over to the Union Government and the Union Parliament. The most recent State Department report on human rights in Burma also utilized a largely historical perspective in assessing the situation in the country.<sup>2</sup>

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<sup>1</sup> CRS Report R43035, *U.S. Policy Towards Burma: Issues for the 113<sup>th</sup> Congress*, by (name redacted).

<sup>2</sup> Department of State Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2012: Burma*, Washington, DC, April 19, 2013.

This report examines the political and human rights situation in Burma in 2013 from a different perspective, focusing on those objectives identified by Congress as being important criteria for evaluating U.S. policy towards Burma.<sup>3</sup> Those objectives are:

- Progress towards national reconciliation between the nation's Burman majority and its over 130 ethnic minorities, including the cessation of fighting between the Burmese military and various ethnic militias;
- The establishment of a democratic civilian government based on a popularly supported constitution and the rule of law; and
- The protection of internationally recognized human rights and civil liberties, including workers' rights and the unconditional release of all political prisoners.

The current status of political reforms and human rights conditions in Burma reflects significant progress since 2011, but provides no clear indication if or how the three objectives identified by Congress can be achieved in short or medium term. More specifically:

- **Prospects for peace and national reconciliation in the next few years appear slim.** Preliminary ceasefire agreements have been concluded with most, but not all, of the ethnic organizations. Negotiations for more robust peace agreements appear stalled. Fighting continues in Kachin State, and periodic skirmishes occur in Shan State. The Union Government and the ethnic groups have not agreed upon the process of negotiating a final peace agreement, nor on the general terms of a national reconciliation. The Burmese military's support for the proposed peace talks is questionable. Little consideration has been given to accommodating the return of hundreds of thousands of refugees and internally displaced person (IDPs) to permanent homes in Burma.
- **The critical political forces in Burma have not enunciated a common vision of or a path toward a democratic government.** The Union Government, led by President Thein Sein, has indicated a willingness to discuss amending the controversial 2008 constitution. The Union Parliament has taken some initial steps to consider possible amendments to the constitution, but the scope and prospects of such amendments are unknown. Several of the ethnic organizations reject the legitimacy of the constitution, and wish to negotiate the formation of a new federal government similar to the Panglong Agreement of 1948.<sup>4</sup> The Burmese military have stated that any changes must preserve a leading role for the military in the political system.
- **Human rights abuse remains a serious problem in Burma, and most civil liberties are subject to major restrictions.** Reports of serious human rights abuses of various kinds appear in the international media on a regular basis, particularly accounts of the Burmese Army abusing non-combatants in conflict areas. In addition, ethnic and religious civil unrest has erupted in different parts

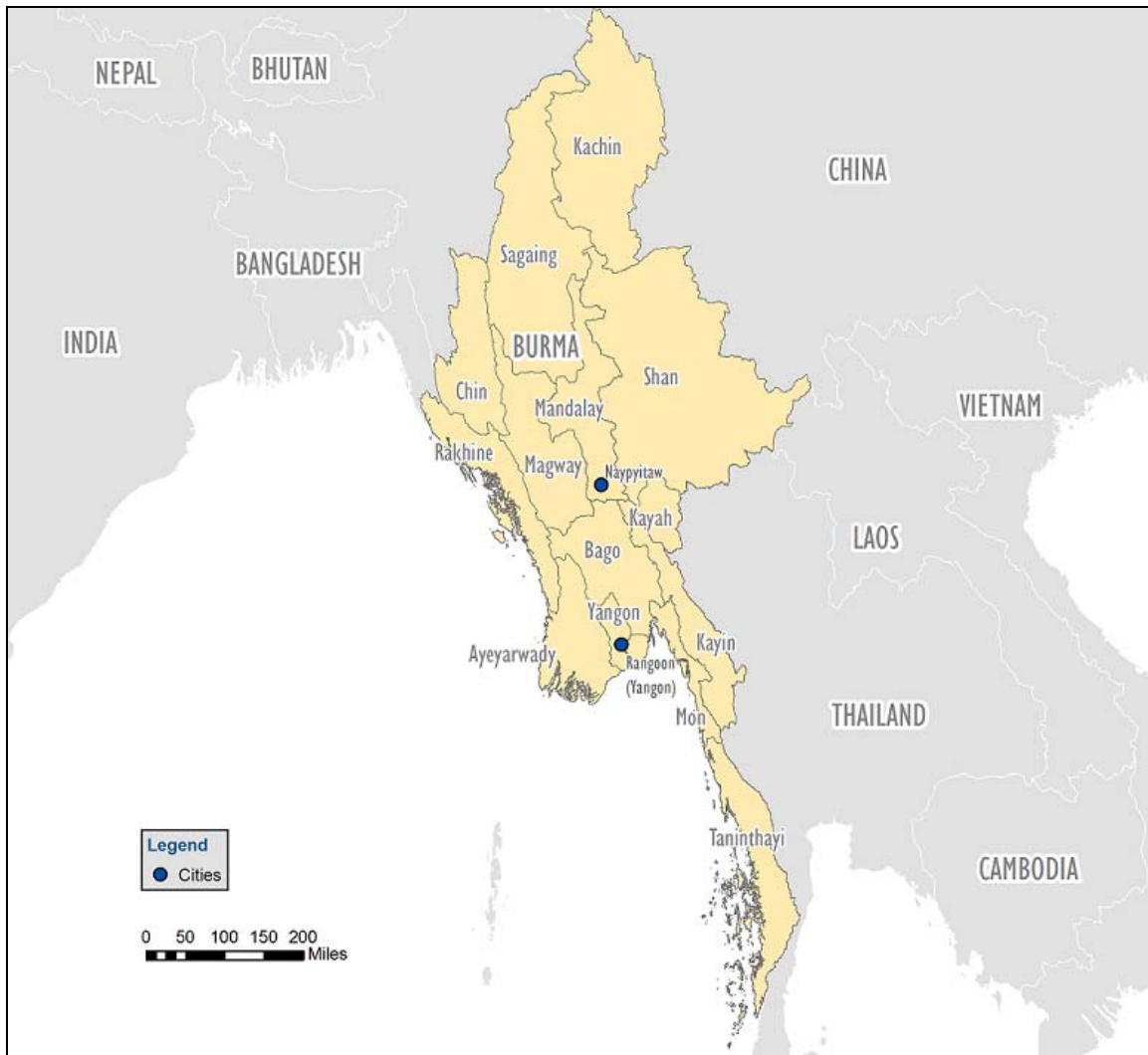
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<sup>3</sup> Another key objective not covered in this report is the termination of military relations with the People's Democratic Republic of Korea (North Korea), including the cessation of arms sales.

<sup>4</sup> The Panglong Agreement of 1948 established an understanding between Burma's predominantly Burman independence movement, led by General Aung San (father of Aung San Suu Kyi) and several of the country's major ethnic groups about the eventual structure of the Burmese government. The Panglong Agreement provided for a federation of relatively autonomous states and a limited central government.

of the country during the last 12 months, resulting in the murder of hundreds of people and the displacement of thousands. Most of the improvements in human rights and civil liberties have occurred in the seven Regions where Burmans are the majority. Conditions in the seven States largely populated by ethnic minorities appear to be relatively unchanged or to have worsened. Newly passed laws designed to protect civil liberties are improvements on past laws, but contain restrictions and constraints on basic freedoms. The Union Government has released at least 800 political prisoners over the last two years, but about 150 remain in custody and new political prisoners are being arrested and detained, according to some sources.

**Figure I. Map of Burma**



**Source:** CRS.

The Obama Administration and many other observers of Burma’s dynamic changes see potential for further reforms and improvements, but caution that the situation remains fragile and reversible. The Obama Administration and others maintain that by supporting reformers within the Union Government, the Union Parliament, and the Burmese military, it may be possible to

foster further improvements in the human rights situation in Burma and create the conditions for peace, national reconciliation, and the establishment of a democratic civilian government based on the rule of law. They point to the progress over the last two years as evidence of Burma's ability and desire to change.

Others, however, state that it is uncertain if the current political leadership and the Burmese military accept the goals of a democratic civilian government, the protection of human rights and civil liberties, and reconciliation with the ethnic organizations. In addition, they maintain that without outside pressure, the Union Government and the Burmese military are unlikely to negotiate in good faith with the ethnic organizations about terms for national reconciliation and the formation of a democratic government that sufficiently accommodates the objectives of the ethnic minorities.

The following sections of this report briefly summarize the current situation with respect to the more critical political and human rights issues in Burma as established by current U.S. law.

## **Peace Talks with Ethnic and Other Organizations**

The Union Government has entered into negotiations with 20 different ethnic organizations or armed groups (see textbox, "Organizations Negotiating with Union Government") to discuss terms for ceasefire agreements and national reconciliation.<sup>5</sup> Some of the ethnic organizations formed militias, and have engaged in off-and-on fighting with the Burmese military since Burma became an independent country in 1948. While the specific goals of the different ethnic organizations vary, most are seeking some relative autonomy as part of a federal government, protection of their culture, and equal opportunity.

The Union Government has created a Peace Committee, headed by President Thein Sein, and a Working Committee, headed by Vice President Dr. Sai Mauk Kham, to coordinate the negotiations with the various ethnic organizations and other groups. Presidential Minister and Working Committee Vice Chairman Aung Min is generally viewed as the leader of the negotiating team, but Deputy Attorney General Tun Tun Oo has been increasingly active in more recent talks. The Burmese military has not consistently attended the negotiations with the various groups. Deputy Commander-in-Chief and Commander of the Army and Working Committee Vice Chairman General Soe Win has been the main representative for the military in the peace negotiations.

Up until recently, the Union Government's approach to the peace talks has been to work with each organization separately, pressing for an immediate preliminary ceasefire with the State governments as the first step in a three-step peace process. The preliminary ceasefire is to be followed by negotiations between the Union Government and the organizations concerning the terms for social and economic development of the affected region and the organization's participation in the existing political system, including participation in parliamentary elections. The third step calls for a national conference to discuss the final terms for peace and national reconciliation, which will then be adopted by the Union Parliament.

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<sup>5</sup> The All Burma Student Democratic Front (ABSDF) and the United Nationalities Federal Council (UNFC) are collective organ organizations representing more than one group.

In February 2013, the Union Government held informal talks with the United Nationalities Federal Council (UNFC), an association of 12 organizations, and agreed to hold future talks. The Union Government is willing to discuss the possibility of limited constitutional amendments (see “The Status of the 2008 Constitution,” below), but such amendments have to be considered and possibly adopted by the Union Parliament as stipulated in the 2008 constitution. In addition, the Union Government wants the ethnic militias to disband or merge into the Burmese military under the command of the Commander-in-Chief.

The various organizations have differing views on the necessary conditions for national reconciliation, as well as the path for negotiating peace agreements. Most ethnic organizations seek recognition and protection of their ethnic culture, and some form of federal system in which the States have administrative autonomy from the central government, including the preservation of their militias. The organizations also seek to have greater local control over natural resources and receive a greater share of the proceeds of development projects in their states or regions. In general, the ethnic organizations and armed groups do not recognize the legitimacy of the 2008 constitution, and consider the negotiation of a new constitution as a necessary condition of any peace agreement.

Two initiatives have arisen to organize a united front among the larger ethnic organizations. The aforementioned UNFC is an association of 12 ethnic organizations, 9 of which have undertaken ceasefire negotiations with the Union Government. The last three organizations—the Kachin National Organization (KNO), the Lahu Democratic Union (LDU), and the Wa National Organization (WNO)—are not seeking separate ceasefire agreements. Representatives of the 12 organizations are discussing their political objectives and the framework for negotiations with the Union Government.

### **Union Government Peace Talks with Ethnic and Other Organizations**

Status as of June 2013; UNFC members in **bold**

Groups with preliminary ceasefire agreements:

- Arakan Liberation Party (ALP)
- **Chin National Front (CNF)**
- Democratic Karen Benevolent Army (5<sup>th</sup> Brigade, DKBA)
- **Karen National Union (KNU)**
- Karen National Union/Karen National Liberation Army Peace Council (KNU/KNLA-PC)
- **Karenni National Progressive Party (KNPP)**
- Mongla (SR 4, aka National Democratic Alliance Army, NDAA)
- National Socialist Council of Nagaland (Khaplang) (NSCN(K))
- **New Mon State Party (NMSP)**
- **Pa’O National Liberation Organization (PNLO)**
- Restorative Council of Shan State (RCSS, aka Shan State Army-South, SSA-S)
- **Shan State Progressive Party (SSPP, aka Shan State Army – North, SSA-N)**
- Wa (SR2, aka United Wa State Army, UWSA)

Groups in negotiations, but no ceasefire agreement:

- **Kachin Independence Organization (KIO)**

Groups interested in negotiations, but no talks held:

- **Arakan National Council (ANC)**
- Democratic Party of Arakan (DPA)
- Kokang
- National United Party of Arakan (NUPA)
- **Palaung State Liberation Front (PSLF)**

Groups not pursuing negotiations:

- All Burma Student Democratic Front (ABSDF)

**Source:** PACRIM Research Associates.



Besides the UNFC, another broad-based ethnic association is the Working Group for Ethnic Coordination (WGEC), which consists of a mix of ethnic organizations with and without militias, as well as various civil society groups. During a September 2012 meeting in Chiang Mai, Thailand, the WGEC proposed a six-point roadmap for peace (see textbox, “Alternative Proposed Paths to Peace”).

A fundamental underlying difference between the two alternative paths to peace is the status of the 2008 constitution and the existing Union Government and Union Parliament. President Thein Sein’s proposed three-step process assumes the legitimacy of the constitution and its associated Union Government and Union Parliament, and requires that the final peace agreement be adopted by the process prescribed in the 2008 constitution. The WGEC plan and many of the armed ethnic organizations are calling for the negotiation of the peace agreement outside of the confines of the 2008 constitution.

### **Alternative Proposed Paths to Peace**

#### **Union Government’s Three Step Process:**

1. Preliminary ceasefire agreement between state governments and each ethnic organization; or “state-level talks.”
2. Separate negotiations by Union Government with each ethnic organization on terms of economic, political, and social issues for peace agreement.
3. National conference to resolve final terms of national peace agreement and national reconciliation to be adopted by Union Parliament.

#### **Working Group for Ethnic Coordination (WGEC) Six-Point Roadmap for Peace:**

1. Ethnic organizations (armed, unarmed, and civil society) meet to discuss “Framework for National Dialogue.”
2. Meetings with Union Government to negotiate “Framework for National Dialogue,” preferably with international watch group in attendance.
3. State and regional conferences to discuss “Framework for National Dialogue.”
4. National conference of WGEC groups, political parties and other organizations to discuss terms of peace agreement and national reconciliation.
5. National conference with Union Government and representatives of groups involved in 4<sup>th</sup> point to negotiate terms of “genuine union” government.
6. Negotiate timeline for peace process.

**Source:** Lawi Wng, “President Vows to Continue Push for Peace,” *Irrawaddy*, October 22, 2012; and “Six-Point Ethnic Peace Road Map Underway,” *Phoptaw News*, October 11, 2012.

A second critical factor is the Burmese military’s willingness to abide by the terms of any negotiated peace agreement. Despite instructions from President Thein Sein to stop offensive actions against ethnic militia and the signing of multiple preliminary ceasefire agreements, the Burmese Army reportedly has continued to attack ethnic militias in Kachin State and Shan State (see “Continuing Military Conflict”). In addition, Commander-in-Chief Min Aung Hlaing in his speech to Burmese troops on Armed Forces Day said that Burmese military would continue to play a “leading political role” in the Burmese government, possibly foreshadowing the Tatmadaw’s opposition to proposals to reduce the military’s role in politics.

## Continuing Military Conflict

Burma has been beset with domestic and sometimes violent unrest since its independence in 1948. Burma is an ethnically diverse nation, consisting of a Burman majority and over 130 ethnic minorities.<sup>6</sup> The Panglong Agreement of 1947 between the interim Burmese government, led by General Aung San (father of Aung San Suu Kyi), and representatives of the Chin, Kachin, and Shan ethnic groups was to have established a federal government in which the ethnic States would retain a degree of autonomy. The perceived failure of the Burmese government to carry out the commitments in the Panglong Agreement precipitated the emergence of ethnic organizations and militias committed to protect and preserve their people, their culture, and the autonomy of their State. Over 20 different mostly ethnic-based militias arose across Burma since the country's independence in January 1948. The Burmese government and the Tatmadaw perceive these organizations and militias as a threat to the territorial integrity of Burma.

Fighting between the Burmese Army and the various ethnic militias erupted soon after independence, and has continued off and on until today. Following a 1962 military coup, the Burmese military alternated between a policy of attempting to eradicate the ethnic militias and negotiating ceasefire agreements with the ethnic organizations. Over the next six decades, the various ethnic organizations and their militias took control over portions of Burma, establishing effectively autonomous governments.

Two years before the transfer of power to the Union Government, Burma's ruling military junta, the SPDC, announced that the various ethnic militias would either have to accept being transformed into border guard forces (BGFs) under the Tatmadaw or face possible assault by the Burmese military. Several militias accepted the condition; several did not.

In August 2009, the Tatmadaw launched an offensive against the Myanmar National Democratic Alliance Army (MNDAA), a militia consisting of mostly Kokangs, a primarily ethnic Han Chinese group living in northeastern Shan State. As a result of the military assault, over 30,000 people fled across the border into China's Yunnan Province. For the Tatmadaw, the attack successfully eliminated the MNDAA as a force in the Shan State, but it created diplomatic tensions with China and heightened anxiety among the other ethnic militias.

In the months leading up to the March 2011 installation of the Union Government, the Tatmadaw broke existing ceasefires with several other militias, including the Chin National Front, the Kachin Independence Army (KIA), the Karen National Union (KNU), the Shan State Army-North (SSA-N), Shan State Army-South (SSA-S), and the United States Wa Army (USWA). Periodic fighting resulted in a number of civilian casualties and the internal displacement of thousands of people. In addition, various ethnic groups, international human rights organizations, and the media reported that the Tatmadaw were severely abusing civilians in the conflict areas. Repeated accounts of the rape of women and girls, the use of civilians as forced labor, the impressment of child soldiers, and the seizure and destruction of private property by Burmese Army personnel appeared in the press (see "Human Rights Abuses").<sup>7</sup>

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<sup>6</sup> Precise information on Burma's ethnic mix is not available. The nation has not conducted an official census since 1983. The Union Government is planning on conducting a census in 2014, with the assistance of the United Nations.

<sup>7</sup> For more detailed accounts of alleged human rights violations by the Burmese military in the conflict areas, see "Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar," United Nations, February 16, (continued...)

In contrast to the attack on the MNDA, the Tatmadaw's offensives against the other ethnic militias were not as decisive. The SPDC, and then later the Union Government, began approaching the militias and their associated political organizations about possible ceasefire agreements. By August 2012, preliminary ceasefire agreements had been reached with 13 different ethnic groups. However, no such agreement had been reached with the KIA and its associated political group, the Kachin Independence Organization (KIO). Also, despite the preliminary ceasefire agreements, episodic fighting between the Tatmadaw and several ethnic militias continued, especially in Shan State. Associated with the ongoing fighting are regular reports of human rights violations, most of which have allegedly been committed by the military.

## **Kachin State**

Kachin State, in northern Burma, is inhabited primarily by the Kachin, one of Burma's larger ethnic minorities. The Kachin Independence Organization (KIO) and its affiliated militia, the Kachin Independence Army (KIA) have been engaged in a struggle since 1948 for a federal government in which Kachin State would have a high degree of autonomy. A ceasefire signed in February 1994 between the KIO/KIA and the Burmese military left the Kachin State split, with the KIO/KIA in control of a significant portion of the state. The military, however, retained control over some of Kachin State's more lucrative jade mines.

The 1994 ceasefire largely held until June 9, 2011, when two Burmese Army battalions reportedly attacked a small KIA contingent at Sang Gang in southern Kachin State. Fighting between the two forces quickly escalated and has continued intermittently ever since. The Burmese military has reportedly used a wide range of weaponry including fighter jets, helicopter gunships, and artillery in their assaults on KIA positions. These attacks allegedly have resulted in a significant number of civilian deaths and injuries. Civilians caught in the conflict areas also report serious human rights violations by Burmese Army soldiers, including forced labor, confiscation of property, sexual assaults on women and girls, extrajudicial detentions and killings, and torture. On February 3, 2013, 31 ethnic women's groups in Burma released a joint statement condemning the continued sexual abuse of women in Kachin State. Estimates of the number of Kachin internally displaced by the fighting vary from 50,000 to 90,000 people. Efforts by international relief organizations to provide water, food, shelter and medical care to civilians generally have been blocked by the Burmese Army, citing safety concerns. On the occasions when relief supplies have been allowed into conflict areas, the Burmese Army allegedly has used the truck conveyors as cover for moving in troops and armaments.

President Thein Sein apparently sent a letter to Commander-in-Chief Vice-Senior General Min Aung Hlaing on December 10, 2011, instructing him to stop all military offenses against KIA bases in Kachin State.<sup>8</sup> It is not known if General Min Aung Hlaing issued such an order, as attacks on KIA positions have continued despite President Thein Sein's instructions.

On December 17 and 18, 2012, U.S. Ambassador to Burma Derek Mitchell and Acting Special Representative and Policy Coordinator for Burma W. Patrick Murphy travelled to Kachin State to

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2103; "Untold Miseries," Human Rights Watch, March 20, 2012; and "Extreme Measures: Torture and Ill Treatment in Burma since the 2010 Elections," Network for Human Rights Documentation—Burma, May 2012.

<sup>8</sup> An unofficial copy obtained by CRS of the letter to Commander-in-Chief Min Aung Hlaing indicates that the document was signed by Director-General Min Zaw of the Office of the President, and not by President Thein Sein.

meet with Union Government officials, internally displaced persons (IDPs), and representatives of various political, religious, and social organizations. It is not known whether they met with KIO/KIA officials. Following their visit, the U.S. Embassy in Rangoon issued a press release stating that the U.S. government “urges both sides in this conflict to take immediate steps to establish a dialogue process that will build trust, address the underlying causes of the conflict, and facilitate international access to all IDP camps in Kachin State...”<sup>9</sup>

On January 19, 2013, a preliminary ceasefire was to take effect in Kachin State, but various sources reported that the Tatmadaw continued its offensives against KIA positions close to the KIO/KIA headquarters in Laiza. The U.S. Embassy in Rangoon issued a statement on January 24, 2013, stating:

The United States is deeply concerned by ongoing violence in Burma’s Kachin State... The United States strongly opposes the ongoing fighting, which has resulted in civilian casualties and undermined efforts to advance national reconciliation... The United States urges both sides to take all necessary steps to create an atmosphere for dialogue to achieve sustainable peace in Kachin State.<sup>10</sup>

The following day, Burma’s Ministry of Foreign Affairs issued a press release, accusing the KIA of breaking the ceasefire and asserting that the Army forces had acted in self-defense. The press release also objected to the use of the words, “Burma,” “Burmese Government,” and “Burmese Military” in the U.S. Embassy statement.<sup>11</sup>

Initial negotiations between representatives of the Union Government and the KIO/KIA were held in February 2013 in the town of Ruili, in China’s Yunnan Province. On May 28-30, 2013, the two sides met again, this time in Kachin State’s capital Myitkyina, and signed a seven-point agreement that may lead to a ceasefire agreement. The KIO and the Thein Sein government agreed to continue political dialogue, discuss the reposition of troops, and “undertake efforts to achieve de-escalation and cessation of hostilities.” They also agreed to consult with each other about providing humanitarian assistance to IDPs.

Fighting reportedly continues in Kachin State despite the negotiations between the KIO/KIA and the Union Government. It is unclear if the Tatmadaw support the negotiations with the KIO/KIA, or if they will abide by any agreement reached.

## **Shan State**

Shan State, in northeastern Burma, contains several different ethnic groups, the largest being the Shan, but also the Kokang, Pa-O, and Wa. Several different ethnic organizations are active in Shan State; the most important are: the Restorative Council of Shan State (RCSS) and its affiliated militia, the Shan State Army-South; the Shan State Progressive Party (SSPP) and its affiliated militia, the Shan State Army-North; and the United States Wa Army (USWA). All three

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<sup>9</sup> U.S. Embassy Rangoon, press release, December 20, 2012.

<sup>10</sup> U.S. Embassy Rangoon, “Statement by Embassy Rangoon Spokesperson: Ongoing Conflict in Burma’s Kachin State,” press release, January 24, 2013.

<sup>11</sup> Under the 2008 Constitution, the official name of the country is the “Republic of the Union of Myanmar,” or “Myanmar.” The United States has not accepted the new name for the nation, and continues to officially refer to the country as the “Union of Burma,” or “Burma.”

organizations have signed preliminary ceasefire agreements with the Union Government, but all three have reported periodic clashes between their militias and the Tatmadaw since the signing of these agreements. The RCSS claims that between November 2011 and October 2012, 68 separate clashes occurred between the SSA-S and the Burmese Army or its People's Militia Force (PMF). The SSPP claimed that the Burmese Army fired at SSA-N soldiers on several occasions in March and April 2013; the resulting firefights reportedly resulted casualties on both sides.<sup>12</sup>

The outbreak of fighting in the spring of 2013 apparently was precipitated by the Burmese Army's Northeast Regional Commander demanding that the SSPP and the SSA-N leave an area so that work can begin on a Chinese-funded dam project.<sup>13</sup> The area in question reportedly had been agreed to be SSPP/SSA-N territory in the current and previous ceasefire agreements. Following the SSPP/SSA-N refusal to relocate, the Burmese Army moved its troops into the contested area, resulting in the outbreak of fighting. A Shan news agency reported that during its incursion, Burmese Army soldiers murdered, detained, and tortured civilians.<sup>14</sup> The fighting has supposedly led thousands of residents to flee the area.

Despite the ceasefire agreements, civilians in Shan State claim that the Burmese military continues to abuse their human rights in various ways. Burmese officers and enlisted men reportedly sexually assault Shan women and girls. The Shan Women's Action Network (SWAN), a local human rights organization, has demanded that the Burmese Army stop its sexual violence against women.<sup>15</sup> Burmese troops allegedly extort money from people travelling along roads. In some cases, the Tatmadaw reportedly force adults and children to serve as porters, carrying goods and materials for the military, without compensation. These allegations have been routinely denied by the Tatmadaw and the Union Government.

## **Ethnic and Religious Civil Unrest**

Besides the continuing conflict between the Burmese Army and various ethnic militias, Burma has been struck by ethnic and religious unrest among the civilian population. During the summer and autumn of 2012, rioting broke out in Rakhine State between the predominately Buddhist Arakans or Rakhine, and the largely Muslim Rohingyas, also referred to as Bengalis, resulting in hundreds of deaths and thousands of internally displaced persons (IDPs). In November 2012, local villagers and Buddhist monks rallying against the expansion of a nearby copper mine were attacked by local police, resulting in the serious injury of dozens of protesters. The violent suppression of the protest resulted in the formation of an investigation committee (headed by Aung San Suu Kyi). In March 2013, a reportedly minor disagreement over a business transaction in Mandalay Region quickly escalated into violent civil unrest between Buddhists and Muslims in both Mandalay Region and Bago Region, in which dozens of people were killed, hundreds of homes and businesses destroyed, and thousands of residents were displaced. Taken together, these three examples of civil unrest reveal a serious problem of ethnic and religious tension in Burma

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<sup>12</sup> "Peace vs Burma Military Build-Ups and Clashes in Central Shan State," *Shan Herald Agency*, March 14, 2013; "Shan Rebels-Burma Army Clash, Thousands Flee," *Shan Herald Agency*, April 8, 2013; and "Burma Army, Shan Rebels Renew Clashes During Myanmar New Year," *KP*, April 17, 2013.

<sup>13</sup> "Shan Army Told to Make Way for Salween Dam," *Mizzima*, April 5, 2013.

<sup>14</sup> "Shan Rebels-Burmese Army Clash, Thousands Flee," *Shan Herald Agency for News*, April 8, 2013.

<sup>15</sup> "Stop Rapes: Shan Women Demand," *KP*, April 22, 2013.

that may prove to be a barrier to national reconciliation and the establishment of a peaceful, democratic government.

## **Civil Unrest in Rakhine State**

Rakhine State, also known as Arakan State, is located in western Burma, on the border with Bangladesh. It is populated by two main ethnic groups—the predominately Buddhist Arakans or Rakhine, and the largely Muslim Rohingyas—as well as mostly Christian Chin, and the principally Muslim Kaman. Both the Rakhine and the Rohingyas claim that Rakhine State is their ancestral homeland, and that other ethnic groups are more recent settlers in the region. Like the military juntas that preceded it, Burma’s current Union Government considers the most of Rohingyas—whom it calls Bengalis—to be illegal immigrants. The current government denies the Rohingyas citizenship, as well as many other political and economic rights. Decades of discrimination have created a serious undercurrent of ethnic tension in Rakhine State.

The ethnic tension erupted into rioting and civil unrest in early June 2012 following the rape and murder of a Rakhine woman allegedly by three Rohingya men.<sup>16</sup> The Union Government sent in Burmese soldiers to quell the rioting after the death of dozens of people. On June 10, 2012, President Thein Sein declared a state of emergency in Rakhine State. Dozens of people—both Rakhine and Rohingya—were arrested for violating an imposed curfew and/or public disorder. The civil unrest gradually subsided over the following two weeks, but tensions between the two ethnic groups remained high.

The Ministry of Home Affairs appointed a 16-person investigation team on June 6, 2012, to look into the causes of the civil unrest. According to the Union Government’s initial assessment, the June rioting in Rakhine State resulted in the murder of about 50 people and the displacement of more than 30,000 persons. A special commission established to examine the unrest stated in the executive summary of its April 2013 report that 192 people were killed, 265 injured, 8,614 houses destroyed, and an estimated 100,000 people internally displaced.<sup>17</sup>

The murdered and displaced people were largely Rohingyas by most accounts. To assist the internally displaced persons (IDPs), the Burmese government established more than 80 temporary relief camps. Several international non-governmental organizations (INGOs) provided emergency shelters and food supplies.

In the aftermath of the June rioting, various rumors began to spread. Allegations arose that the Burmese military had fomented the rioting as a prelude to “ethnic cleansing” of Rohingyas from Rakhine State. Such rumors were bolstered by President Thein Sein’s comment that the “only solution” was to relocate the Rohingyas into refugee camps run by the U.N. High Commissioner for Refugees (UNHCR), and that he would welcome an offer by “any third country” to accept the

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<sup>16</sup> The three men accused of the crime—Htet Htet (aka Raushi), Luyub, and Rauhi—were arrested on May 29, 2012, the day after the body of Ma Thidar Htwe was found. Htet Htet allegedly hanged himself while in detention. Luyub and Rauhi were convicted of murder on June 18, 2012, and were given the death sentence. All three were described by the Union Government and the press as Rohingyas. However, some sources assert that one of the three was actually Rakhine and the other two were Kamans. Sources also claim that all three are innocent, and that they had discovered the body and reported it to the authorities.

<sup>17</sup> Unofficial translation of the commission’s executive summary is available online at <http://www.burmapartnership.org/wp-content/uploads/2013/04/Executive-SummaryEnglish-Version.pdf>.

estimated 800,000 to 1 million Rohingyas in Burma. Claims also were made that the INGOs were refusing to provide assistance to displaced Rakhines, and that relief was only being given to the Rohingyas.

On August 17, 2012, President Thein Sein appointed a new 27-member investigation commission to look into the causes of the June unrest and to propose suggestions on how to address those causes. The commission included six representatives from Muslim organizations, but no Rohingyas. Burma's Ministry of Foreign Affairs announced on August 21, 2012, that the violence in the Rakhine State was not related to "any kind of religious persecution or religious discrimination." After eight months, the commission released its findings, recommending the continued segregation of the two ethnic groups, the deployment of more security personnel into Rakhine State, and a family planning program targeted at the Rohingya to reduce the growth rate of the Muslim population.<sup>18</sup>

Violence broke out again in the Rakhine State in late October 2012. President Thein Sein announced on October 31, 2012, that 89 people had been killed and over 30,000 people displaced by the renewed civil unrest. A political party in Burma maintained that the number of people murdered during the rioting was over 500. The U.N. Office for the Coordination of Humanitarian Affairs (OCHA) increased its IDP estimates for Rakhine State to at least 140,000 people.<sup>19</sup> Martial law was declared once again and a new curfew imposed.

During both the June and October civil unrest in Rakhine State, an unknown number of people—principally Rohingyas—attempted to escape the violence by fleeing on land to neighboring Bangladesh or by boat to Malaysia or Thailand. Bangladesh responded to the influx of refugees by closing its border and forcing people back into Burma. Thai authorities reportedly forced overloaded boats back to sea. Some of the boats were lost at sea, resulting in an unknown number of deaths. Both Bangladesh and Thailand already accommodate hundreds of thousands of Burmese refugees and are apprehensive about attracting more Burmese nationals. Various international human rights organizations have called upon both Bangladesh and Thailand to stop their refusals of entry to Burmese nationals.

The situation for the displaced Rohingyas within Burma is also an increasing concern for international human rights organizations. Representatives for the Rohingyas claim that the Burmese government is forcing people to relocate into relief camps, purportedly for their protection, but in reality to confiscate their land, homes, and property for redistribution to Rakhine residents. They also say that the movement of Rohingyas in the camp is restricted, preventing them from working or running their businesses. International relief organizations say that conditions in the relief camps are substandard, and that additional assistance is needed to insure adequate food, water, and medical care. The U.S. government has provided over \$7 million in assistance for IDPs in Rakhine State since June 2012.

Domestic discussion of the ethnic tensions in Rakhine State is almost a taboo subject due to the attitudes of many Burmese citizens, especially Burmans, towards the Rohingyas. Under the 1982 Citizenship Law imposed by the SPDC and still in force, the Rohingyas are not Burmese citizens,

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<sup>18</sup> Unofficial translation of the commission's recommendations is available online at <http://www.burmapartnership.org/wp-content/uploads/2013/04/RecommendationEnglish-Version.pdf>.

<sup>19</sup> OCHA, *Inter Agency Preparedness Plan for the Rainy Season*, Humanitarian Bulletin: Rakhine State, Myanmar, April 2013.

but are classified as “Bengali Muslims” and are illegal immigrants. Most Burmans seemingly accept this determination, and would prefer the Rohingyas “return” to Bangladesh. This attitude is reinforced by the generally darker complexion, religious difference, and different language and culture of the Rohingyas.

By most assessments, public officials and politicians who express support for the Rohingyas risk losing popular support from their political base. As a result, many prominent Burmese figures, including Aung San Suu Kyi, have been very cautious in their comments about the situation in Rakhine State. A proposal to amend the 1982 Citizenship Law to confer the Rohingyas citizenship was met with strenuous opposition from members of the Union Parliament from the Rakhine National Development Party (RNNDP) who suggested such an amendment would threaten the security and stability of the country.<sup>20</sup>

Proposals for greater discrimination against the Rohingyas, and Muslims in general, have surfaced in Burma following the civil unrest. In early May 2013, six members of the newly formed Democracy and Human Rights Party were not allowed to register because they listed their ethnicity as “Rohingyas.”<sup>21</sup> The Rakhine State government announced in May that it would begin to enforce an existing law that limits Rohingya couples to only two children.<sup>22</sup> About 200 senior Buddhist monks have drafted legislation that would restrict marriages between Buddhist women and Muslim men.<sup>23</sup> President Thein Sein has distanced himself from the actions of the Rakhine State and the monk’s proposed legislation. However, he has expressed public support for the controversial Buddhist monk Wirathu, who many see as a leader of Burma’s anti-Islam movement.

## **Copper Mine Protests**

As previously mentioned, one of the core issues for national reconciliation is the degree to which local populations and their representatives will control the development of natural resources. A local protest over the expansion of the Latpadaung copper mine in Sarlingyi Township Sagaing Region was violently attacked by local police, resulting in serious injuries to dozens of protesters, including a number of Buddhist monks. The copper mine is a joint project between Myanmar Economic Holdings, Ltd., a company owned by the Burmese military, and the Myanmar Wanbao Mining Copper, Ltd., a Chinese mining company. At the heart of the protest is local opposition to the expansion of the copper mine (approved by the SPDC before it relinquished power) and dissatisfaction with the offered compensation for the seized land.

In July 2012, local residents affected by the more than 7,800 acres of land taken from 26 villages in the Sarlingyi Township began to rally in front of the company’s office. Over time, support for the protesters grew, including a number of Buddhist monks. Local authorities periodically arrested some of the protesters, but the rally continued to gather support, as well as national and international attention.

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<sup>20</sup> “MP’s Object to Amend ‘82 Citizenship Law,” *Eleven Myanmar*, June 13, 2013.

<sup>21</sup> “Burma Expels Rohingya Members from Political Party,” *Democratic Voice of Burma*, May 17, 2013.

<sup>22</sup> “Myanmar’s Rakhine State Imposes Two-Child Limit on Rohingyas,” *Radio Free Asia*, May 23, 2013.

<sup>23</sup> “Monks’ Convention in Burma Calls for Restricting Buddhist-Muslim Marriage,” *Irrawaddy*, June 13, 2013.



On November 27, 2012, local authorities told the protesters to leave or face arrest. Two days later, in an early morning raid, police in riot gear assaulted the protesters with a combination of water cannons, tear gas, and incendiary canisters that subsequently were revealed to contain white phosphorus. Dozens of villagers and Buddhist monks were injured during the police assault, including a number of people with severe burns across much of their bodies.

Although no one was killed during the police raid, the violence of the assault, particularly against Buddhist monks, shocked many people in Burma. President Thein Sein appointed an investigation committee, headed by Aung San Suu Kyi, to look into the causes of the protest and the police's conduct during the early morning raid.

The investigation committee released its findings on March 11, 2013, recommending the continuation of the copper mine expansion (to avoid difficulties in relations with China) and refraining from recommending disciplinary action against the police. While the committee acknowledged that the mine failed to meet international environmental and social impact standards and that the villagers were inadequately compensated for their loss of land, it also asked that the protests stop, so that all the concerned parties could hold talks to address the villagers' grievances.

The committee's findings were rejected by the villagers and the protests continued. When Aung San Suu Kyi traveled to an affected village near the copper mine three days after the committee's findings were released, she was met with an angry gathering of hundreds of villagers. According to some Burmese observers, Aung San Suu Kyi's reputation was significantly tarnished by her involvement in the investigation committee and her support for the committee's findings. President Thein Sein formed a new committee to examine ways to address the problems identified by investigation committee's March 2013 findings. Sources indicate that the new committee is overseeing the distribution of additional compensation to affected villagers.

The protests over the Latpadaung copper mine expansion continues. Several hundred residents of the affected area rallied on April 5 and 6, 2013, calling for the closure of the mine and disciplinary action against the police involved in the November 2012 raid. Some local farmers are protesting the project by proceeding with their spring plowing of confiscated fields. On April 25, 2013, local police reportedly opened fire upon some farmers plowing fields, wounding at least one person, beating others, and arresting at least five people.<sup>24</sup>

The Latpadaung copper mine protests are not the only local demonstration against projects supported by Burma's Union Government since the transfer of power two years ago. Widespread protests against the proposed Myitsone Dam in Kachin State led to President Thein Sein suspending the project in September 2011. Thousands of gold miners staged protests in June and November 2012 when their employer, Myanmar National Prosperity Public Company (MNPPC), ordered them to stop working in an area in Mandalay Region. In addition, hundreds of local residents rallied against the Chinese-funded Shwe Gas pipeline in Kayukpyu township in Rakhine State on April 19, 2013, demanding better compensation for their land-use rights, greater investment in local infrastructure, and a share of the electricity and jobs generated by the

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<sup>24</sup> Nyein Nyein, "Letpadaung Farmers Beaten, Shot at for Plowing Fields," *Irrawaddy*, April 25, 2013; and "Police Crackdown on 'Plough Protestors' near Latpadaung," *Democratic Voice of Burma*, April 25, 2013.

project. The protest rally was held after local authorities reportedly refused to issue permits for the protest three times.<sup>25</sup>

While the Latpadaung copper mine protests had no overt ethnic or religious basis, the events are indicative of the tensions between the Burman-dominated Union Government and the ethnic minorities, particularly with respect to economic development projects. The protests also appear to reveal a serious urban-rural split in Burma. As more international companies consider investment opportunities in Burma, especially in States where ethnic groups are the majority, there is a serious potential for more civil unrest and an increased possibility of violence associated with disputes over the authority to approve the projects financed by foreign companies.

## **Rioting in Central Burma**

On March 20, 2013, inter-communal violence broke out in the town of Meikhtila in Mandalay Region, north of Naypyitaw. A business disagreement between a Muslim jeweler and Buddhist customer reportedly turned violent and the situation quickly escalated into rioting between the community's Buddhist and Muslim residents.<sup>26</sup> The seemingly religious violence spread to other townships in Mandalay Region, leaving at least 44 people dead, over a thousand houses destroyed, and over 12,000 displaced persons.<sup>27</sup>

On March 22, 2013, President Thein Sein declared a state of emergency for four townships in Mandalay Region, and imposed a curfew and martial law.<sup>28</sup> Despite the declaration of a state of emergency, inter-communal violence soon erupted in townships in Bago Division, south of Naypyitaw. On March 28, President Thein Sein warned during a televised address that he would “not hesitate to use force as a last resort” to stop the civil unrest. It took until March 29, 2013, for Burma's military and its security forces to stop the local violence.

On April 12, 2013, the Muslim jeweler, his wife, and a Muslim employee were sentenced to 14 years for attacking the Buddhist customer. The BBC released on April 22, 2013, film footage showing Burmese police and security officers standing by idly while Buddhist rioters looted Muslim stores and in one scene, seemingly kill an unarmed Muslim youth.<sup>29</sup> In early May, religious/ethnic violence flared again, this time in the town of Okkan, about 60 miles north of Rangoon.

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<sup>25</sup> Nang Mya Nadi, “Police Crack Down on ‘Unlawful’ Gas Pipeline Protestors,” *Democratic Voice of Burma*, April 19, 2013.

<sup>26</sup> “Anti-Muslim Violence in Central Burma,” *Alternative ASEAN Network on Burma*, April 17, 2013.

<sup>27</sup> UNOCHA, *Myanmar: Meikhtila Inter-Communal Violence Situation Report No. 4*, April 9, 2013.

<sup>28</sup> President Office, “Declaration of State of Emergency,” Ordinance No. (1/2013), March 22, 2013, published in the *New Light of Myanmar*, March 23, 2013.

<sup>29</sup> “Burma Riots: Video Shows Police Failing to Stop Attack,” *BBC*, April 22, 2013.

### **Burma's Refugees and Internally Displaced Persons (IDPs)**

Six decades of low-grade civil war, ethnic and religious discrimination, and military oppression have turned Burma into a major source of refugees and internally displaced persons (IDPs). The nation's capacity to create refugees and IDPs has not stopped since the transfer of power to the quasi-civilian government. The military's fighting with ethnic militias has resulted in up to 90,000 IDPs in Kachin State, and 30,000 IDPs in Shan State. The civil unrest in Rakhine State generated an estimate 100,000 IDPs and an unknown number of refugees. The rioting in central Burma produced approximately 12,000 IDPs. Altogether, approximately 230,000 new IDPs have been generated by internal ethnic tensions inside Burma since the establishment of the Union Government, plus an unknown number of refugees.

#### **Burma's IDPs of 2012**

Three separate phenomena generated large number of IDPs in Burma in 2012. The continuing fighting in Kachin State and Shan State (see "Continuing Military Conflict") displaced tens of thousands of people. In Kachin State, many chose to relocate into areas controlled by the KIO/KIA, and outside of the reach of NGO assistance as permitted by the Burmese government. In Rakhine State, ethnic violence in June and October forced over 100,000 Rohingyas into government-run relief camps (see "Civil Unrest in Rakhine State"). The residents of these camps have complained about the poor conditions, and strict controls over their movement and activities. Thousands of the IDPs from Rakhine State have fled the country by land and by sea. Finally, the spring outbreak of violence in central Burma has generated thousands of IDPs, most of which are Muslims (see "Rioting in Central Burma"). A disturbing characteristic of all three cases is that the vast majority of the IDPs are members of local ethnic minorities that have historically been subjected to official and unofficial discrimination.

#### **The Peril of Burma's Refugees**

Burma's refugees have historically settled mostly in Bangladesh, India, Malaysia, and Thailand, depending on where they were residing in Burma and their ethnicity. In western Burma, Rohingya refugees from Rakhine State generally cross into Bangladesh and India by land, or attempt to travel to Malaysia or Thailand by boat. In eastern Burma, many refugees travel across the border into Thailand, with some seeking to move on to Malaysia. The U.N. High Commissioner for Refugees (UNHCR) estimated that there were over 414,000 Burmese refugees as of the end of 2011, making Burma the 6<sup>th</sup> largest source of refugees in the world.

Most of the Burmese refugees located in Thailand reside in nine refugee camps supported by along the international border. According to UNHCR, the nine camps housed over 128,000 people, of which over 83,000 were registered with UNHCR as refugees. Nearly two-thirds of the Burmese refugees in Thailand are from Kayin (Karen) State. The Border Consortium, a consortium of 10 international non-governmental organizations (NGOs) working with Burmese refugees in Thailand, reported over 129,000 Burmese refugees at the end of March 2013, with nearly 8 out of 10 being Karen.

According to Refugees International (RI), over 200,000 Burmese refugees have fled to Bangladesh, settling in camps near the city of Cox's Bazaar. The vast majority of these refugees are Rohingyas, fleeing persecution in Burma. In contrast to Thailand, most of the refugee camps on Bangladesh are not supported by UNHCR, resulting in rather poor conditions. In 2011, the Bangladesh government turned down \$33 million in U.N. aid targeted at providing assistance to the Burmese refugees.

A significant number of Burmese refugees are located in other countries. UNHCR reports over 80,000 in Malaysia. According to the *Wall Street Journal*, over 80,000 Burmese refugees have relocated to India, of which over 90% are Chin ("As Krishna Visits Myanmar," *Wall Street Journal*, June 21, 2011). In late 2011, a reported 10,000 Kachins crossed into China to escape the fighting between the Burmese Army and the KIA. Most of the Kachin have apparently returned to Burma, only to become IDPs.

**Sources:** Internal Displacement Monitoring Centre, Refugees International (RI), The Border Consortium, U.N. High Commissioner for Refugees (UNHCR).

The apparent religious rioting in central Burma is important for several reasons. First, the rioting revealed deep-seated religious and ethnic tensions that exist across the country. The Muslims in central Burma are predominantly the descendants of immigrants from South Asia who moved to Burma many years ago; the Buddhists are mostly Burmans or from ethnic groups of Southeast Asia. As a result, while most news reports focused on the religious differences underlying the rioting in Bago Division and Mandalay Division, the events were likely also fueled by ethnic tensions. Similarly, the ultra-nationalist ideas of Burma's 969 Movement—nominally led by

Buddhist monk Wirathu, the self-described “Burmese Bin Laden”—are as much pro-Burman as they are pro-Buddhists.<sup>30</sup>

Second, the initial failure of the local security forces to respond to quell the violence, and the subsequent presidential threat to use force, may indicate that Burma’s security forces and the Thein Sein government still harbor some of the authoritarian attitudes of the days of military rule in Burma. A similar pattern of initial disinterest and subsequent harshness by security forces occurred during the civil unrest in Rakhine State and at the Latpadaung copper mine protests.

Third, the rioting in central Burma, as well as the ethnic violence in Rakhine State and the various anti-project protests, reflects the centrist approach of the Thein Sein government. It appears that the Union Government and its Ministries are continuing the SPDC policy of establishing a strong central government with subservient State and Regional governments. Many of the protests have their roots in decisions by the Union Government to promote projects opposed by local residents and in some cases, local government officials. As previously mentioned, many ethnic organizations seek to establish a federal government in which the State and Regional governments maintain a high degree of autonomy. The centrist approach of the Thein Sein government may prove to be a substantial barrier to national reconciliation and the reduction in religious and ethnic tensions.

## **Human Rights Abuses**

In the last two years, allegations of similar human rights violations perpetrated by the Burmese military have appeared frequently in the local and international media. The Burmese Army supposedly committed many of the grievous human rights abuses in conflict areas; civilian non-combatants were frequently the victims. Efforts by the President Thein Sein to curtail the abusive actions of the Burmese military have been relatively ineffectual, raising doubts about the Tatmadaw’s support for political reform, as well as their willingness to accept civilian authority. In addition, the Myanmar National Human Rights Commission (MNHRC), created by President Thein Sein in September 2011, has not demonstrated an ability to address human rights issues in the country.

The Obama Administration has begun efforts to work with Burma’s military leaders to educate them about the role of a professional military in a democratic civilian government. The Administration is also considering possible ways to foster military-to-military communications to reduce the incidences of human rights violations in Burma, as well as attitudinal changes in the Burmese military. However, such efforts are currently constrained by existing U.S. legal restrictions on U.S. military programs in Burma.

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<sup>30</sup> The “969 Movement” obtains its name from the 9 special attributes of the Buddha, the 6 special attributes of Buddhist teachings, and the 9 special attributes of Buddhist monks. The 969 Movement calls for Buddhists to shop only at Buddhist stores and boycott Muslim stores, and to defend Buddhism from the corrupt teaching of Muslim extremists. Some more radical 969 Movement members maintain that the Organization of Islamic Countries (OIC) is financing jihadists charged with the destruction of Buddhism through the Muslim “786 Movement.” The 969 radicals support the use of violence to defend Buddhism.

## **Allegations Since the Transition to Quasi-Civilian Rule**

The problems of restrictions on civil liberties and the detention of political prisoners is discussed in separate sections of this report. This section will focus on three other reoccurring forms of human rights violations of particular concern for U.S. policy towards Burma and the existing sanctions on the country: (1) violence against civilian and non-combatants in conflict areas; (2) child soldiers; and (3) human trafficking.

### **Violence Against Civilians and Non-Combatants**

Accompanying the regular reports of fighting between the Burmese military and various ethnic militias are allegations that Burmese officers and soldiers routinely commit acts of violence against civilians and non-combatants in conflict areas. These acts of violence include extrajudicial killings, torture, rape and sexual assaults, arbitrary arrest and detention, and forced labor. In his March 6, 2013, report to the U.N. Human Rights Council, Special Rapporteur Tomás Ojea Quintana expressed his concern about “the allegations he continues to receive of attacks against civilian populations, extrajudicial killings, sexual and gender-based violence, arbitrary arrest and detention, as well as torture.”<sup>31</sup> Various human rights organizations—such as Amnesty International (AI), Human Rights Watch (HRW), and the Network for Human Rights Documentation—Burma (ND-Burma)<sup>32</sup>—have also reported on the Burmese Army murdering civilians, detaining and torturing non-combatants, and forcing people to porter supplies for the troops.

Many of these claims originate in Kachin State (see section, “Kachin State,” above). However, ND-Burma states in its most recent human rights report that human rights violations occurred in all 14 of Burma’s States and Regions.<sup>33</sup> While the situation in Kachin may be the most serious, the March 2013 outbreak of fighting in northern Shan State despite the existence of preliminary ceasefire agreements (see “Shan State,” above) has given rise to a flurry of alleged human rights abuses by the Burmese Army against civilians in the conflict area.

Reports of human rights abuse are not confined only to the Burmese Army. Burma’s border guard forces (also known as “Nasaka,” an acronym of their Burmese name) and local police have been accused of committing serious human rights violations during the recent bouts of civil unrest (see “Ethnic and Religious Civil Unrest,” above), including organizing attacks on Muslim residents, arbitrary arrest and detention, and the use of unnecessary force. In its April 2013 report, “All You Can Do is Pray,” Human Rights Watch stated that the events in Rakhine State amounted to “crimes against humanity carried out as part of a campaign of ethnic cleansing.”<sup>34</sup> In addition, periodic claims of human rights abuses committed by ethnic militias appear in the international media. The Burmese Army and the Union Government have generally denied the accuracy of such claims.

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<sup>31</sup> Tomás Ojea Quintana, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, U.N. Human Rights Council, A/HRC/22/58, March 6, 2013.

<sup>32</sup> ND-Burma was created in 2004 by 12 human rights and Burmese ethnic minority organizations to document incidents of human rights violations in Burma.

<sup>33</sup> Network for Human Rights Documentation—Burma, *Report on the Human Rights Situation in Burma*, 2013.

<sup>34</sup> Human Rights Watch, *All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State*, April 2013.

## **Child Soldiers**

The Burmese military and some of the ethnic militias have been known to use child soldiers for many years. According to Human Rights Watch, Burma had the largest number of child soldiers in the world in 2002.<sup>35</sup> While the nation may no longer have that dubious distinction, World Vision estimates that Burma has up to 5,000 child soldiers in the ranks of the Burmese Army and the country's various ethnic militias.<sup>36</sup>

In June 2012, the Union Government and the United Nations agreed to an action plan establishing a timetable and measures to be taken to release child soldiers in the Burmese military and reintegrate them into society, as well as to prevent the future recruitment of under-aged soldiers. According to Child Soldiers International (CSI), an international human rights research and advocacy organization, the Burmese government has not taken adequate measures to identify child soldiers among the ranks of the Burmese military or its associated Border Guard Forces, nor has it established procedures to demobilize and rehabilitate child soldiers in its military forces. In May 2013, Human Rights Watch released a report that also concluded that the Burmese government had failed to make progress on its recruitment and retention of child soldiers.<sup>37</sup> In addition, little has been done in the recruitment process to prevent or discourage the enlistment of under-aged soldiers. Similarly, CSI reports that while some of the ethnic militias have issued instructions not to recruit child soldiers, the age verification methods being used are inadequate to prevent the enlistment of under-aged children into the militias.<sup>38</sup>

On November 4, 2010, the SPDC promulgated Law No. 27/2010 requiring every citizen between the ages of 18 and 45 to undergo compulsory military training and serve in the armed forces for a period of between two and three years if the country's head of state determines that such a policy is in the nation's interest. To date, that law has never been put into effect. As a result, the Burmese military remains an all-volunteer force and continues to rely on recruitment to fill the ranks of its armed services. Burmese regulations prohibit the enlistment of anyone under the age of 18 into the Burmese military or its Border Guard Forces.<sup>39</sup>

According to CSI, low salaries, low morale, and frequent desertions force the Burmese military to engage in constant recruitment. Recruitment officers are under pressure to meet quotas and receive bonuses for exceeding target recruitment levels. Some military recruiters rely on informal civilian brokers to find prospective candidates. This has led, according to CSI and other sources, to the forging of identification documents and a willingness of recruiters to take a lax approach when verifying the age of a potential recruit. In addition, both the Burmese military and some of the militias have reportedly forcibly enlisted under-aged civilians into military service in conflict areas. The involuntary conscripts are often used as porters and many of the local girls are also sexually abused by the officers and enlisted men.

It is difficult to compile accurate information on the number of child soldiers in Burma. The ILO estimates that there are up to 5,000 child soldiers there. Since establishing a complaint

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<sup>35</sup> Human Rights Watch, "Burma: World's Highest Number of Child Soldiers," October 17, 2002.

<sup>36</sup> Graeme Green, "Forced into Fighting: The Battle to Rid Burma of its Child Soldiers," *Metro*, March 18, 2013.

<sup>37</sup> Copy of the report is available online at <http://www.hrw.org/node/115918>.

<sup>38</sup> Child Soldiers International, *Chance for Change: Ending the Recruitment and Use of Child Soldiers in Myanmar*, January 2013.

<sup>39</sup> Directive No. 13/73 (1974), issued by Burma's Defense Services and War Office Council.

mechanism in 2007, the ILO has assisted with the discharge of over 300 boys from the Burmese military.<sup>40</sup> A 2012 United Nations report stated that the number of complaints about underage recruitment rose from 194 in 2010 to 243 in 2011.<sup>41</sup>

The SPDC signed an agreement with the ILO in 2002 to collaborate on the elimination of forced labor in general in Burma, including the recruitment of child soldiers. That agreement has been extended by the current Union Government. In addition, the United Nations has formed a Country Task Force on Monitoring and Reporting of grave violations of child rights in armed conflict (CTFMR). It is working with the Union Government and seven ethnic militias identified as using child soldiers (Democratic Karen Buddhist Army, the Kachin Independence Army, the Karen National Liberation Army, the Karen National Liberation Army-Peace Council, the Karenni Army, the Shan State Army-South, and the United Wa State Army) to eliminate the recruitment of underage civilians, and demobilize and rehabilitate child soldiers.

## **Human Trafficking**

Burma continues to have a major problem with human trafficking, driven by such factors as ongoing domestic conflict, poor economic conditions, and continuing political oppression. Men, women, and children seeking to escape fighting between the Burmese military and ethnic militias are sometimes trafficked into neighboring nations, the Middle East and elsewhere around the world and subjected to forced labor and sexual exploitation. Burmese men seeking better economic opportunities cross legally and illegally into Bangladesh, Malaysia, and Thailand, only to be “sold” by government officials and entrepreneurs to local fishermen to serve as underpaid or unpaid workers.<sup>42</sup> Some members of Burma’s ethnic minorities subjected to discriminatory policies—particularly the Chin, Karen, Rohingya, and Shan—are ensnared by human traffickers as they attempt to escape from political oppression and denial of basic human rights.

The State Department had identified Burma as a Tier 3 country in all of its annual Trafficking in Persons (TIP) report from 2001 to 2011, but classified Burma as a Tier 2 Watch List nation in the 2012 TIP report.<sup>43</sup> Tier 3 nations are defined as “countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.” Tier 2 Watch List nations are countries:

whose governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards AND:

- a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;

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<sup>40</sup> Interview with ILO liaison officer in Burma, Steve Marshall, on November 16, 2012, posted online at [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_193299/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_193299/lang-en/index.htm).

<sup>41</sup> U.N. General Assembly, “Children and Armed Conflict,” Report of Secretary-General, U.N. Doc. A/66/782/S/2012/261, April 26, 2012.

<sup>42</sup> For more about human trafficking of Burmese nationals in Malaysia and Thailand, see U.S. Congress, Senate Committee on Foreign Relations, *Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand*, committee print, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., April 3, 2009, S. Prt. 111-18.

<sup>43</sup> Copies of the State Department’s TIP reports going back to 2001 are available online at <http://www.state.gov/j/tip/rls/tiprpt/index.htm>.

- b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or
- c) The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

The report does not provide a direct explanation of the shift from Tier 3 to Tier 2 Watch List, but does comment on Burma's significant efforts to comply with international standards for the elimination of human trafficking. The report mentions new laws passed by the Union Parliament to prohibit forced labor, efforts by the Union Government to reduce cross-border sex-trafficking of women and girls, and an action plan with the ILO to eradicate forced labor by 2015.

Various international human rights organizations view Burma as having a serious human trafficking problem and give mixed reviews of the quasi-civilian government's efforts to combat human trafficking. Safe World for Women (also known as Safeworld International Foundation), an international non-profit organization, has reported on Burmese women trafficked into China and being forced to marry Chinese men.<sup>44</sup> The Myanmar Police Force reportedly claims that 80% of the known cases of human trafficking between 2006 and 2011 were women smuggled into China for forced marriages.<sup>45</sup> The Alternative ASEAN Network on Burma (ALTSEAN) has released evidence that the civil unrest in Rakhine State in 2012 led to the human trafficking of hundreds of Rohingyas.<sup>46</sup> The Network for Human Rights Documentation—Burma continues to confirm cases of human trafficking of Burmese nationals, although the numbers appeared to decline in 2012.

The United States and the Union Government agreed to a joint plan to combat human trafficking in Burma on November 18, 2012.<sup>47</sup> The plan calls for the enactment of new laws prohibiting forced labor, the establishment of a "comprehensive action plan" with the ILO to tackle forced labor, the conclusion of a child soldier action plan with the U.N., increased cross-border cooperation with Thailand to combat human trafficking, and the release of all child soldiers from the Burmese military. The plan also calls for regular bilateral dialogue on human trafficking.

## **Myanmar National Human Rights Commission**

President Thein Sein established the Myanmar National Human Rights Commission (MNHRC) on September 5, 2011.<sup>48</sup> The 15-member commission was formed "with a view to promoting and safeguarding fundamental rights of citizens described in the constitution of the Republic of the Union of Myanmar." Since its creation, the MNHRC has been most noted for its decisions not to look into major events in which serious human rights violations allegedly occurred and its criticisms of international organizations that have reported on human rights violations in Burma. The MNHRC has also avoided commenting on alleged human rights abuses by the Burmese military or security forces.

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<sup>44</sup> See <http://www.asafeworldforwomen.org/trafficking/ht-asia-pacific/ht-burma.html>.

<sup>45</sup> Soe Sandar Oo, "Myanmar's Brides to China Top Human Trafficking List," *Myanmar Times*, January 7, 2013.

<sup>46</sup> ALTSEAN, *Burma's Facade: An Update on Conflicts, Displacement, and Human Rights Violations*, March 12, 2013.

<sup>47</sup> The full text of the joint plan is available online at <http://www.state.gov/r/pa/prs/ps/2012/11/200675.htm>.

<sup>48</sup> Union Government Notification No (34/2011), published in the *New Light of Myanmar*, September 6, 2011.



In its first major pronouncement of human rights, the MNHRC released a six-point statement on December 13, 2011, regarding the situation of displaced persons resulting from “armed skirmishes” in Kachin State.<sup>49</sup> The first five points of the statement briefly described the efforts made by the MNHRC to assess the situation in Kachin State. The sixth point largely praised the Union Government for its efforts to provide for the basic humanitarian needs of the displaced persons, and the efforts made by the Union Government and the Burmese military to negotiate an end of hostilities in Kachin State. The statement also welcomed the decision of Burmese military to observe a unilateral ceasefire, and called upon the Kachin Independence Army (KIA) to reciprocate. Nothing was said about the numerous reports of the Burmese Army killing, torturing, raping, and detaining unarmed civilians during the fighting in Kachin State.

In January 2012, Human Rights Watch (HRW) released its annual global report in which it said that Burmese military and security forces “violate international humanitarian law through the use of anti-personnel landmines, extrajudicial killings, forced labor, torture, beatings, and pillaging of property.” The MNHRC responded by criticizing the HRW report for its failure to emphasize what it perceived as a break with SPDC policies, including the formation of the MNHRC.<sup>50</sup>

In February 2012, the MNHRC said that it would not look into allegations of human rights abuses in ethnic minority areas. According to MNHRC Chairman Win Mra, doing so “would not be appropriate at this time.”<sup>51</sup> The MNHRC Chairman added, “The national reconciliation process is political,” implying that examining human rights abuses would either impede national reconciliation or be construed as a political act. On March 28, 2013, the MNHRC did release Statement No. (2/2013) recommending the demining of Kachin State, the education of the local population on the danger of landmines, an end to forced recruitment and human rights violations by all armed groups, and the provision of humanitarian assistance to IDPs.

Regarding the rioting in Rakhine State, the MNHRC issued Statement No. (4/2012) on July 11, 2012, calling for the strengthening of the rule of law, efforts to “build mutual trust,” a special program to improve basic education of children, and the provision of more assistance to affected people. The statement makes no mention of allegations that the Burmese military and the local security forces committed human rights abuses. It did state that the Commission was “concerned about the said violations of human rights,” and that the “loss and suffering on both sides took a heavy toll on the victims not only physically but also mentally.”

The MNHRC has largely refrained from commenting on the Latpadaung Copper Mine protests, the rioting in central Burma, and other cases where serious human rights violations allegedly happened. Critics charge that the Commission lacks autonomy from President Thein Sein’s government, and does not comply with the Principles Relating to the Status of Independent National Human Rights Institutions (or Paris Principles).

## Civil Liberties

The SPDC was widely viewed as a highly oppressive and repressive government, severely restricting the civil liberties of Burmese nationals. Through a series of draconian laws, some

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<sup>49</sup> Full text published in the *New Light of Myanmar* on December 14, 2011.

<sup>50</sup> Ko Htwe, “Burma Rights Body Lays into HRW Report,” *Democratic Voice of Burma*, January 24, 2012.

<sup>51</sup> Simon Roughneen, “Human Rights Commission in Burma Rules Out Inquiry,” *Irrawaddy*, February 17, 2012.

dating back to British rule, the SPDC denied Burmese citizens most of their basic rights, including the freedom of association and assembly, freedom of speech, and freedom of the press. The SPDC also dramatically curtailed the economic rights of the Burmese people, prohibiting the formation and membership in trade unions, and legally permitting forced labor under certain conditions.

Under the provisions of the 2008 Constitution and the transfer of power in March 2011, Burma's existing laws remain in force, unless amended or nullified by new laws passed by the Union Parliament. As a result, many of Burma's past draconian measures continue to be part of the country's legal code, and they are periodically used to detain political dissidents and restrict the civil liberties of the people of Burma. The Union Parliament has passed several laws intended to supersede the past, oppressive laws, and protect the citizens' civil liberties. However, critics say that the new laws are flawed and are often used to restrict the peoples' rights.

What follows is a brief examination of some of the basic civil liberties in which some efforts have been made to improve the situation in Burma, but for which some serious concerns remain to be addressed.

## **Freedom of Assembly and Association**

The SPDC prohibited the unauthorized gathering of five or more Burmese people. On December 2, 2011, President Thein Sein signed the Peaceful Assembly and Peaceful Procession Law, nullifying past restrictions on assembly and association, but subjecting the gathering of Burmese citizens to a number of conditions. The law requires that organizers of public assemblies obtain the permission of local government officials at least five days prior to the scheduled event. In filing for the required permit, the names and biographies of the organizers and speakers at the assembly must be provided. The decisions of the local authorities are final, after an appeal to the relevant state or regional police chief, and cannot be appealed to the courts. Assemblies that are "contrary to Union security, prevalence of law and order, community peace and tranquility or public order and morality" are illegal and violators may be sentenced to up to one year in prison.

Burma's central government and local government have reportedly used the permit provisions of the law to prevent some planned demonstrations and political rallies. Burmese officials have also used other Burmese laws, such as Section 505 of the penal code—making "statements conducing to public mischief"—to arrest and prosecute persons organizing public protests.

The law has also allegedly been used to block demonstrations over labor and land disputes. In some cases, the Burmese government has punished persons who were denied

### **Land Rights and Land Grabs**

Section 37 of Burma's 2008 Constitution stipulates that all land is the property of the Union, and grants the Union Government to set laws governing the use of land. The Farmland Law passed in March 2012 stipulates that land use can be legally bought, sold, or transferred if the owner possesses a land use certificate (LUC). The Vacant, Fallow, and Virgin Land Law, also passed in March 2012, allows the Union Government and the local governments to transfer use rights to land that are unclaimed or unused. Finally, the Foreign Investment Law, approved in November 2012, permits foreign investment in agriculture, but only for larger projects.

According to some observers, the combined effects of the three laws is providing an incentive to local officials to push local farmers off their land and selling the use rights to large foreign investors. The copper mine expansion in Sagaing Region is one example cited by this observers. Because many farmers cannot document their land use rights, they are unable to obtain LUCs, and the land is declared vacant. In addition, in some parts of Burma, traditional farming practice is to leave a portion of the land fallow for a year. Local officials reportedly reclaim the fallow land using the Vacant, Fallow, and Virgin Land Law.

demonstration permits for allegedly violating the provisions of the law. During the campaign before the April 2012 parliamentary by-election, some local officials reportedly used the new law to prohibit political rallies to be held by the NLD and other opposition parties. In July 2012, a rally being organized by the All Burma Federation of Students' Unions to commemorate the destruction of the Rangoon University Student Union building in 1962 was blocked by city's police commander. Other political events have also been denied permits under the new law.

Arguably the most serious violation of the freedom of assembly and association to occur in Burma since the transfer of power happened on November 29, 2012, when the police attacked a peaceful protest against a copper mine near the city of Monywa in Sagaing Region in northern Burma (see "Copper Mine Protests"). At least 80 people were injured, including several monks who were seriously burned.

Legislation was introduced in the Union Parliament to amend the Peaceful Assembly and Peaceful Procession Law to eliminate its apparent contradiction with Article 354 of Burma's constitution that grants citizens the right of peaceful assembly and protest.<sup>52</sup> The legislation reportedly will also reduce the severity of the sentences proscribed in the current law.

## **Freedom of Speech and the Press**

Burma's military junta maintained a fairly comprehensive system of laws restricting the freedom of speech and the press. All printed materials were subjected to pre- and post-publication censorship by the Press Scrutiny and Registration Division (PSRD) of the Ministry of Information. Broadcast media—television, radio and movies—were also censored prior to distribution. Access to information, including the Internet, was strictly controlled; the use of satellite television antennas was prohibited. Direct criticism of the Burmese government and the military was illegal. Violators of the SPDC's laws restricting speech and the media were subject to fines, prison, and suspension of their publication or broadcast licenses. In May 2013, Freedom House rated Burma 162<sup>nd</sup> out of 197 countries in terms of its freedom of the press.

Burma's quasi-civilian government has taken a number of steps to loosen its restrictions on the freedom of speech and the press, but it has also introduced new measures adding additional constraints on the civil liberties of the Burmese people. During the summer of 2011, the new government quietly removed its filters on foreign news websites and webpages. It also lifted its ban on satellite television antennas, but required people to purchase expensive licenses for the antenna. However, in May 2011, it introduced new restrictions on public access centers (PACs) providing Internet access, and banned the use of the Internet to provide international telephone services. In August 2012, the Union Government ended the pre-publication censorship of all publications (except for movies), but publishers are still subject to post-publication censorship and punishment for the distribution of unacceptable materials or content.

The changes in the media restrictions are supposedly part of a three-step reform process headed by the Ministry of Information. The first step relaxes restrictions on the press to allow domestic publishers to practice "press freedom with responsibility and accountability." The second step will involve the approval of a new print media law to replace the 1962 Registration of Printers

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<sup>52</sup> "Myanmar's MP's Propose to Abolish Section 18," *Eleven Myanmar*, June 17, 2013.

and Publishers Law. In the third step, the Ministry will work with the private media to ensure the “harmonious exercise of freedom and accountability under the new print media law.”

As part of its efforts to advance the second step, the Ministry attempted in August 2012 to establish a quasi-governmental Myanmar Core Press Council (MCPC) to replace the PSRD until the new media law has been passed. The MCPC was to supervise and discipline Burma’s domestic media in its compliance with a code of conduct to be developed by the Ministry. The Myanmar Journalist Association (MJA) refused to cooperate with the government’s plan to create the MCPC. Despite the failure to establish the MCPC, the Union Parliament dissolved the PSRD in January 2013.

Plans for the passage of a new media law remain in place. The Union Government submitted a draft Printing and Publication Law to the Union Parliament in February 2013, and was met with immediate criticism by the Burmese press. Critics claim the draft bill would reestablish much of the censorship that has been relaxed over the last two years. One of the outstanding issues is criticism of the Union Government and the Tatmadaw, which is currently illegal. Another issue appears to be the means to supervise and/or discipline media that fail to abide by accountability standards assumed to be specified in the new law.

Since its assumption of power, the Union Government has also demonstrated a willingness to periodically enforce a ban on the coverage of certain events or news stories. For example, coverage of the Arab Spring was blocked in 2011. In September 2011, a journal was apparently punished for printing a photo of Aung San Suu Kyi and an accompanying interview. The publication of the resignation of Vice President Tin Aung Myint Oo in May 2012 was also prohibited. Coverage of the civil unrest in Rakhine State and the ongoing conflict in Kachin State has also been subjected to selective censorship.

## **Forced Labor and Trade Unions**

Burmese law dating back to the turn of the last century contained provisions allowing for forced labor. The Village Act of 1907 and the Town Act of 1908 permitted the requirement of villager or laborers to perform uncompensated work as required by local officials. A 1999 law attempted to ban the use of forced labor, but local officials reportedly continued to require people to work without compensation, and the Tatmadaw allegedly forced people to work as porters and laborers for its troops throughout the country. In addition, when the military seized power in 1962, it prohibited the formation of trade unions and banned the right to strike.

In October 2011, the Union Parliament passed the Labour Organization Law, reinstating the right to belong to a labor union and to right to strike. While the new law was welcomed by the International Labor Organization (ILO), the Federation of Trade Unions-Burma (FTU-B) and other organizations, they also criticized some of the specific provisions of the new law.

In particular, it was noted that the law protected the right to belong to a union, but did not adequately protect the right to organize or form a union.<sup>53</sup> The law also requires that the union inform the government and the employer in advance of any plans to strike, including information on the strike’s intended date, location and size. Strikes are prohibited within 500 yards of

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<sup>53</sup> Simon Roughtneen, “Workers’ Rights Improving, but Problems Remain,” *Irrawaddy*, April 29, 2013.

hospitals, schools, airports, railway and bus stations, ports, embassies and diplomatic facilities, military and police buildings, and religious buildings.

Implementation of the new labor law got off to a rocky start, as a number of newly formed unions said that their applications to register were rejected by the Ministry of Labour. According to some accounts, the Ministry of Labour turned down the applications because they did not have the necessary rules and regulations to administer the law. More recent efforts to register unions have apparently been successful.

Burma's problem with forced labor remains serious. In March 2012, the Union Parliament passed the Wards and Village Tracts Administration Act, which replaced the Village and Town Acts of 1907, and prohibiting forced labor by local officials. However, the Tatmadaw continue to impress civilians in conflict areas to serve as porters and laborers, including accounts of civilians being used as human mine detectors. In addition, the Burmese military and some ethnic militias allegedly continue to recruit child soldiers.

## **Political Prisoners<sup>54</sup>**

According to the Assistance Association for Political Prisoners (Burma), or AAPP(B), a Thailand-based non-profit organization dedicated to identifying and locating political prisoners in Burma, the SPDC held over 2,000 political prisoners in its prisons and labor camps when it transferred power to the quasi-civilian Union Government on March 30, 2011. President Thein Sein and several other Burmese government officials, however, have denied the existence of political prisoners, maintaining that anyone held in detention had committed a crime and were serving a suitable sentence.

Despite his denials, President Thein Sein has granted amnesty to selected prisoners on nine separate occasions, the latest occurring following the EU's decision to remove all its sanctions on Burma except its arms embargo. In total, the Union Government has released 29,449 prisoners, of which 859 were considered to be political prisoners, according to the AAPP(B). However, 183 political prisoners remained in detention as of May 2013, according to the AAPP(B).

Driving the disagreement over the existence and the number of political prisoners in Burma is a lack of agreement over the definition of who should be considered a political prisoner. Some analysts and organizations limit the definition of "political prisoner" to "prisoners of conscience" (people who are detained for peaceful political opposition). The AAPP(B) includes "anyone who is arrested because of his or her perceived or real involvement in or supporting role in opposition movements with peaceful or resistance means."

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

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<sup>54</sup> For a more detailed discussion of Burma's political prisoner situation and its implications for U.S. policy, see CRS Report R42363, *Burma's Political Prisoners and U.S. Sanctions*, by (name redacted).

While President Thein Sein has been granting pardons and amnesties for some political prisoners in Burma, the Union Government reportedly continues to arrest and detain new political prisoners for alleged illegal activities. As previously mentioned, the AAPP(B) reports that over 200 people have been detained since January 2012. Among those detained are participants in the Latpadaung copper mine protests who allegedly “insulted” local police and incited unrest.<sup>55</sup>

The political prisoner issue resurfaced in the Burmese press in November and December 2012, following the detention of a number of people in the wake of civil unrest in different parts of Burma, including the re-arrest of prominent political dissident Ashin Gambira (a.k.a. Nyi Nyi Lwin). The Union Government’s response to popular protests has raised questions about the sincerity of its support of democracy and human rights, and its rejection of Burma’s history of a culture of political repression.

On February 6, 2013, President Thein Sein announced his decision to form a committee to “scrutinize the remaining political prisoners serving their terms in prison throughout the country so as to grant them liberty.”<sup>56</sup> The Union Government invited the AAPP(B), the NLD, and two organizations established by recently released political prisoners to nominate someone to serve on the committee. On February 11, 2013, the U.S. State Department issued a statement welcoming the decision to form the committee. Some of the committee members, however, have said that internal “paralysis” and government indifference has undermined the committee’s effectiveness.<sup>57</sup> Various sources state that President Thein Sein ignored the committee’s recommendations when he announced the latest prisoner amnesty on April 23, 2013. On June 16, 2013, the committee reportedly submitted the names of 155 political prisoners to President Thein Sein, as well as 79 Kachin prisoners, for consideration.<sup>58</sup> The committee’s list supposedly includes the names of the Latpadaung copper mine protesters.<sup>59</sup> President Thein Sein has publicly stated that he intends to release all “prisoners of conscience” in the near future, but will not release prisoners convicted of violent crimes.

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. At the same time, several political parties (including the Chin National Party, the Mon National Democratic Front, the Rakhine National Democratic Party, the Shan Nationalities League for Democracy [SNLD], and the Zomi National Congress) said they would not participate in the by-elections because some of their members remained in detention. While the January 2012 prisoner releases included a significant number of NLD members and a few people associated with the SNLD, neither amnesty included members of political parties boycotting or barred from the April by-election.

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<sup>55</sup> “Copper Mine Activists Face Prison for ‘Insulting’ Police,” *Democratic Voice of Burma*, June 17, 2013.

<sup>56</sup> “Committee to Be Formed to Grant Liberty to Remaining Political Prisoners,” *New Light of Myanmar*, February 7, 2013.

<sup>57</sup> “President Office’s Committee for Political Prisoners Criticized by Its Members,” *Eleven Myanmar*, April 22, 2013.

<sup>58</sup> “Scrutiny Committee Forwards List of Political Prisoners to President’s Office,” *Democratic Voice of Burma*, June 18, 2013.

<sup>59</sup> Nay Myo, “Latpadaung Protesters to be Listed as Political Prisoners,” *Mizzima*, June 12, 2013.

## **Political Reforms**

Underlying Burma's continuing problems with human rights, civil liberties and civil unrest are several fundamental political issues that will eventually have to be resolved if the country is to become a thriving democracy based on the rule of law. Arguably the most critical issue is the status of the 2008 constitution, and by extension, the legitimacy of the Union Government and the Union Parliament. Some of the critical parties in Burmese politics do not accept the validity of the 2008 constitution; others maintain that the constitution must be substantially amended in order for national reconciliation among the various ethnicities to occur. However, it is unclear to what extent President Thein Sein and the Burmese military are willing to accommodate the demands for constitutional reform.

In addition, relations between President Thein Sein's Union Government and the Union Parliament have been strained at times, as both sides seemingly seek to maximize their authority within the new government. A number of actions taken by President Thein Sein appear to be designed to centralize power in the President's Office and among his appointed ministers. For its part, the Union Parliament has periodically challenged the authority of President Thein Sein in an effort to have more say over the governance of the country.

Efforts to resolve the constitutional question and the balance of power between the Union Government and the Union Parliament may have important implications for the upcoming parliamentary elections to be held in 2015. The 2008 constitution must be amended in order for Aung San Suu Kyi to be a presidential candidate in 2015. Other legal changes may be necessary if the 2015 elections are to be considered free and fair by international standards.

Finally, the future role of the Tatmadaw in Burma's government is still to be resolved. Many critical political entities in Burma think the Burmese military must accept civilian oversight if national reconciliation is to be achieved. In addition, political stability in Burma will likely require the Tatmadaw to greatly reduce its role in the governance of the nation. However, it is unclear if the Burmese military leaders are willing to accept such changes.

## **The Status of the 2008 Constitution**

Burma's 2008 Constitution has been controversial since its beginnings. The constitutional convention that drafted the document was boycotted by many of the opposition groups (including the NLD and most of the ethnic organizations with active militias) and dominated by the SPDC, the Burmese military, and their supporters. The May 2008 constitutional referendum was conducted under questionable conditions and the official results showing over 90% support for adopting the constitution were generally viewed as fraudulent.<sup>60</sup> Many of the provisions of the constitution are unacceptable to Burma's opposition parties and ethnic organizations, with some groups calling for the convening of a new constitutional convention. Resolving these issues surrounding the 2008 constitution are fundamental to the achievement of national reconciliation.

As previously mentioned (see "Peace Talks with Ethnic and Other Organizations"), the Union Government's approach to ending the nation's low-grade civil war is to press the various ethnic

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<sup>60</sup> For more about the constitutional referendum, see CRS Report RL34481, *Cyclone Nargis and Burma's Constitutional Referendum*, by (name redacted) and (name redacted).

organizations to accept the validity of the 2008 constitution and participate in the political process established by the constitution. However, several of the ethnic organizations have called for the convening of a new Panglong Conference, modeled after the original gathering that negotiated the terms for establishing a federal Republic of Burma in 1948.<sup>61</sup> So far, President Thein Sein has rejected the convening of a new Panglong Conference, but has agreed to the possibility of amending the 2008 Constitution. The USDP has stated it will support constitutional amendments if they are “for the benefit of the state and the people of Burma.”<sup>62</sup>

The NLD and many of the opposition political parties have chosen to accept the validity of the 2008 constitution, but are calling for substantial amendments to create a more democratic government. Aung San Suu Kyi and several ethnic leaders met on June 18, 2013, to discuss strategy for amending the constitution.<sup>63</sup> Among the key constitution amendments that have been discussed are:

- *Establishing a more federated government by granting the States and Divisions more autonomy*—This could include eliminating presidential authority to dismiss and appoint State and Division officials; granting States and Divisions the authority to approve or disapprove of major development projects; and expanding the powers of the States and Divisions as specified in the constitution.
- *Reducing the role of the military in the government*—These proposals include eliminating or reducing the number of parliamentary seats allocated to appointed military officers; eliminating the requirement that certain cabinet ministers be military officers; making the President (not the Commander-in-Chief) the supreme commander of the military; and bringing the military under the jurisdiction of the Union Parliament and the civilian courts.
- *Changing the requirements to be President or Vice President*—The constitution requires that neither the candidate nor her/his immediate family (parents, spouse, legitimate children, or the spouses of the legitimate children) “owe allegiance to a foreign power, not be subject of a foreign power or citizen of a foreign country.” This provision bars Aung San Suu Kyi, among others, from becoming President or Vice President.<sup>64</sup>

Enacting constitutional amendments may prove to be difficult. Chapter XII of the 2008 constitution stipulated up to four steps to amend the constitution:

1. A bill to amend the Constitution shall be submitted to the Union Parliament;
2. The bill must receive the support of at least 20% of the members of the Union Parliament to be considered;
3. The bill must be approved by more than 75% of the members of the Union Parliament; and

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<sup>61</sup> For one view of the history of the Panglong Conference of 1947, see Matthew J. Walton, “Ethnicity, Conflict, and History in Burma: The Myths of Panglong,” *Asian Survey*, Vol. 48, No. 6 (November/December 2008), pp. 889-910.

<sup>62</sup> Tha Lun Zaung Htet, “We Will Work with Suu Kyi to Amend Constitution to ‘Benefit State,’” *Irrawaddy*, May 16, 2013.

<sup>63</sup> Nyein Nyein, “Suu Kyi, Ethnic Leaders to Work Toward Federal Union,” *Irrawaddy*, June 18, 2013.

<sup>64</sup> Aung San Suu Kyi’s two sons and late husband are/were British nationals.



4. For many of the provisions of the constitution, more than half of the eligible voters must in favor of the amendment.<sup>65</sup>

For most of the constitutional amendments under discussion, a constitutional amendment would have to complete all four steps. Given that the opposition parties hold less than 20% of the seats, they will need some support from the pro-military Union Solidarity and Development Party (USDP) majority or from the military members of the Union Parliament. Also, the 75% supermajority provision gives the military members of the Union Parliament, if they vote as a bloc, the power to prevent the passage of any constitutional amendment. As a result, it is unlikely that the current Union Parliament will approve any major changes in the constitution before the 2015 elections.

## **Union Government and the Union Parliament Relations**

Relations between the Union Government and the Union Parliament have not been without their problems. The 2008 constitution grants the President and his Cabinet broad powers while setting narrow limits on the Union Parliament's authority. The President has the authority to appoint the Chief Ministers of each of the States and Divisions, as well as specify the ministerial organization of the States and Divisions. He also has effective control over the judiciary. Also, Section 215 of the constitution states: "The President shall not be answerable to either any Hluttaw [parliament] or to any Court for the exercise of the powers and functions of his office..." In addition, the types of legislation that the Union Parliament can enact is limited by Section 96 of the constitution to those matters listed in Schedule One of the Union Legislation List.<sup>66</sup>

President Thein Sein has on several occasions removed or replaced Ministers in his Cabinet, as well as Chief Ministers of the States and Divisions. To some observers, these moves were largely designed to remove individuals perceived as anti-reform and replace them with people more supportive of political reform. Other observers, however, see President Thein Sein's episodic reshuffling of senior government officials as an effort to centralize power within the office of the President and his Cabinet.

The Union Parliament has periodically challenged President Thein Sein and his perceived efforts to consolidate power. The leading example of such a challenge involved a controversy in late 2012 over the authority of parliamentary "committees, commissions, and bodies" to compel Union Government officials to appear and testify. The issue was brought before the Constitutional Tribunal, which ruled that the parliamentary entities did not have the power to compel appearances by Union Government officials.<sup>67</sup> The Union Parliament responded by initiating a motion to impeach the nine members of the Constitutional Tribunal. In the end, all nine members

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<sup>65</sup> The provisions subject to the additional national referendum are: Sections 1 to 48 in Chapter I (Basic Principles of the Union), Sections 49 to 56 in Chapter II (State Structure), Sections 59 and 60 in Chapter III (Head of State), Sections 74, 109, 141, and 161 in Chapter IV (Legislature), Sections 200, 201, 248, and 276 in Chapter V (Executive), Sections 293, 294, 305, 314, and 320 in Chapter VI (Judiciary), Sections 410 to 432 in Chapter XI (Provisions on State of Emergency), and Sections 436 in Chapter XII (Amendment of the Constitution).

<sup>66</sup> Schedule One lists 11 topics, including defense and security, foreign affairs, and finance and planning.

<sup>67</sup> "Verdict Handed Down on Submission No. 1/2012 Submitted by Attorney-General of the Union on Behalf of the President of the Union," *New Light of Myanmar*, August 16, 2012.

of the Constitutional Tribunal resigned, and new members were appointed on February 25, 2013.<sup>68</sup>

## **The 2015 Parliamentary Elections**

Many eyes within Burma and around the world are focused on the parliamentary elections to be held in 2015. The 2015 elections may be the first in which all of the elected seats will be contested, if preliminary ceasefire agreements can be reached with all of the ethnic militias.<sup>69</sup> It may also be the first election in which the NLD and some of the opposition parties will be able to run candidates for all of the elected seats. For some opposition parties, this will be the first election in which they will run candidates, having been excluded from past elections by the Union Election Commission (UEC). As a result, the 2015 elections may be a more accurate reflection of the political views of the Burmese public than either the 2010 or 2012 elections.

As previously mentioned, the NLD and others would like to see the constitution amended so Aung San Suu Kyi would be eligible to serve as President. In addition, some of the smaller parties, particularly the ethnic political parties, are pushing for a switch from a “first past the post” voting system to proportional representation.<sup>70</sup> At present, the NLD and the USDP oppose such a change, as they see the current system as favoring their candidates.

Any changes in the election process must be approved by the UEC, which is currently dominated by individuals supportive of the Union Government and the USDP. The election laws promulgated by the UEC before the 2010 elections were generally seen as biased in favor of the USDP.<sup>71</sup> In addition, during the campaigns of 2010 and 2012, the UEC’s decisions were also criticized for favoring the USDP over opposition parties.<sup>72</sup> Whether or not the 2015 elections will be “free and fair” by international standards will hinge on the conduct of the UEC.

## **The Role of the Military**

Underlying nearly every aspect of human rights, civil liberties, civil unrest, and political reform in Burma is the future role of the military. In order to achieve a lasting peace among the nation’s ethnic groups and forge a national reconciliation, many maintain that the Tatmadaw must stop its reported systematic abuse of the human rights of Burmese civilians, abide by the terms of ceasefire agreements, and more than likely have to agree to a substantially diminished role in the governance of the country. The behavior of the Burmese military over the last two years does not indicate a willingness to accede to these conditions. Although Commander-in-Chief Senior General Min Aung Hlaing has stated that the Tatmadaw supports the nation’s reforms, the

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<sup>68</sup> “Appointment of Chairman and Members of Constitutional Tribunal of the Union,” *New Light of Myanmar*, February 26, 2013.

<sup>69</sup> Elections were not held for some of the seats in Kachin State in 2010 and 2012 because conditions were not considered sufficiently safe.

<sup>70</sup> Simon Roughneen, “Ahead of 2015, Voting System Debate Heats Up in Burma,” *Irrawaddy*, April 22, 2013.

<sup>71</sup> For more information, see CRS Report R41218, *Burma’s 2010 Elections: Implications of the New Constitution and Election Laws*, by (name redacted).

<sup>72</sup> For more information, see CRS Report R41447, *Burma’s 2010 Election Campaign: Issues for Congress*, by (name redacted), and CRS Report R42438, *Burma’s April Parliamentary By-Elections*, by (name redacted).

behavior of the troops under his command seems to indicate some resistance to political change among the ranks of the Burmese military.

Under the 2008 constitution, the Burmese military have extensive powers in the central government, including:

- The right of the Commander-in-Chief to appoint one-quarter of the members of each chamber of the bicameral Union Government, as well as in each of the State and Division parliaments;
- Via its military appointees to the Union Parliament, the authority to nominate one of the three candidates for President and the two Vice Presidents of the country;
- The authority to nominate active military officers to serve as Minister of Defence, Minister of Home Affairs, and Minister of Border Affairs;
- Control over at least 5 and possibly 6 of the 11 seats on the powerful National Defence and Security Council,<sup>73</sup> and
- The “right to independently administer and adjudicate all affairs of the armed forces.”

In addition, the Burmese military is a major force in the nation’s formal economy. The Tatmadaw controls two of the nation’s largest conglomerates—the Myanmar Economic Corporation (MEC) and the Union of Myanmar Economic Holdings Limited (UMEHL). The MEC and the UMEHL are active in most of Burma’s most lucrative and important economic sectors, including finance, heavy industry, international trade, and mining. Both companies are currently on the Treasury Department’s Specially Designated Nationals and Blocked Persons (SDN) List, as are some of their known subsidiaries.<sup>74</sup> In addition, prior to the transfer of power in 2011, the SPDC sold many of the government-owned companies to family members and friends who support the Burmese military. As a result, the Tatmadaw have access to funds to finance their operations independent of the budget of the Union Government. In addition, the Tatmadaw could use its economic power to thwart or block economic and political reform.

## Implications for Congress

The laws imposing political and economic sanctions on Burma were passed following serious human rights abuses there, and require that Burma meet certain standards with respect to the protection of human rights and the establishment of a democratic civilian government before the sanctions are terminated or revoked.<sup>75</sup> Providing the proper oversight of the Obama Administration’s conduct of U.S. policy in Burma seemingly would require that Congress conduct an assessment of the human rights situation in Burma, as well as the nation’s progress

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<sup>73</sup> The Commander-in-Chief, the Deputy Commander-in-Chief, the Minister of Defence, the Minister of Border Affairs, the Minister of Home Affairs, and possibly one of the Vice Presidents.

<sup>74</sup> The SDN list is maintained by the Treasury Department’s Office of Foreign Assets Control (OFAC). The list is a compilation of all individuals, groups, and entities whose assets are blocked and with whom U.S. persons are generally prohibited from having financial or commercial dealings. For a complete list of Burmese individuals, groups, and entities currently on the SDN list, see <http://www.treasury.gov/ofac/downloads/ctrylst.txt>.

<sup>75</sup> For details of the termination conditions for the various sanctions on Burma, see CRS Report R42939, *U.S. Sanctions on Burma: Issues for the 113<sup>th</sup> Congress*, by (name redacted).

towards democracy. In addition, if Congress was to consider legislation to amend or alter existing U.S. policy towards Burma, an overview of the status of human rights and democracy in the country would potentially be useful.

The 113<sup>th</sup> Congress may decide to allow the Obama Administration to take the lead in the conduct of U.S. policy towards the country, or it may choose to make its own assessment and, based on its findings, reconfirm or adjust the current U.S. policy. Congress may determine that it should hold hearings or conduct fact-finding missions to evaluate the human rights situation and the status of political reforms in Burma. Such efforts may include seeking the views of senior administration officials, either via formal testimony or in private consultations, on the current situation in the country. Congress may also choose to reach out to other interested parties, including the current Union Government ambassador to the United States, representatives of various Burmese organizations and interest groups, and representatives of international human rights organizations.

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