

# Countries at the Crossroads

## Countries at the Crossroads 2012: Burma

### Introduction

For more than two decades, Burma's politics were defined by a stalemate between Aung San Suu Kyi's prodemocracy forces and an entrenched military government.<sup>1</sup> Aung San Suu Kyi was held up as the paradigm of democratic virtues and peaceful resistance to authoritarianism. She was showered with international awards, including the Nobel Peace Prize, and came to symbolize the countless Burmese who struggled, often at great personal cost, for civil and political rights during the country's tragic recent history. The traumatic events of the past several years have included nationwide protests spearheaded by Buddhist monks in September and October 2007 that ended in a government crackdown, in which hundreds of people were jailed and an unknown number killed. In May 2008, Cyclone Nargis struck the Ayeyarwady River Delta, killing at least 130,000 people.<sup>2</sup> In the aftermath, international assistance, and many foreign aid workers, flowed into Yangon and the Delta, and a major mobilization of domestic civil society emerged. Since the shocks of 2007 and 2008, a confluence of personal, economic, and cultural factors have provided momentum for a shift in Burma's political trajectory.

Elections on November 7, 2010, signaled the consolidation of this new era. Since taking power on April 1, 2011, a quasi-civilian government has sought to implement political reforms. The ruling party, the Union Solidarity and Development Party (USDP), emerged from a mass organization created under the now disbanded military junta, but it has, to the surprise of many observers, opted to deemphasize key elements of the old regime's legacy. The State Peace and Development Council (SPDC), as the junta was known, shifted its resources and talent into the new party, with many senior figures from the former government taking senior positions in the new one. This was possible because the USDP controls a majority of seats in Burma's new legislature and, with the backing of the representatives filling the 25 percent of seats allocated to the military, enjoys comprehensive political authority.<sup>3</sup> Led by President Thein Sein, a former army general, a period of "glasnost" is under way. A major turning point came one week after the 2010 elections, when Aung San Suu Kyi was released from house arrest. She was soon actively campaigning for further democratic reforms, and has met with the president and other senior government figures to discuss political developments. At very few moments in Burma's modern history has there been such a significant opportunity for political and social transformation, and for a government to respond to positive rather than negative international signals. Current indications are that individual reformers in the USDP, such as Thein Sein, are poised to take historic decisions about Burma's internal governance and its place in the wider community of nations. Reforms, whether already implemented or in prospect, have been greeted by applause from around the world.

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<sup>1</sup> The nomenclature of Burma remains contested. For consistency, this uses the forms Burma, Burmese and Burman, although Myanmar is becoming the new international standard. The country is officially known as the Republic of the Union of Myanmar.

<sup>2</sup> The best account of Cyclone Nargis and its aftermath is Emma Larkin, *Everything is Broken: The Untold Story of Disaster Under Burma's Military Regime* (London: Granta Books, 2011).

<sup>3</sup> Donald M. Seekins, "Myanmar in 2009: A New Political Era?" *Asian Survey* 50, no. 1 (January/February 2010): 200.

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The international community was particularly enthusiastic about the results of by-elections held on April 1, 2012. Despite widespread campaign and voter irregularities, 43 of the 45 contested seats were won by Aung San Suu Kyi's National League for Democracy (NLD).<sup>4</sup> There are still many hurdles to overcome, but for the first time in her political career, Aung San Suu Kyi sits as an elected member of parliament.<sup>5</sup> From the NLD's perspective, revision of the constitution promulgated after a flawed 2008 referendum is a key priority for further political reform.

At this stage, changes in Burmese society and politics are unpredictable, especially because the unfolding reform process is so new. Recent events demonstrate an inconsistent pattern of movement toward more liberal and transparent governance. A stark contradiction between political reforms in parts of the ethnic Burman heartland and in the ethnic minority states is being reinforced by lack of opportunities for active political participation in some minority areas.<sup>6</sup> Elections have been suspended and postponed in areas where civil war continues. For example, the by-elections scheduled for April 1, 2012, in three vacant constituencies in Kachin State were postponed on account of the ongoing conflict between government forces and the Kachin Independence Army.<sup>7</sup> In another sign of instability, the government has mobilized substantial security resources to quell widespread sectarian violence and arson in Rakhine State in mid-2012. The entire reform process could also be undermined by elements of the armed forces that find it threatens their interests. And there has been speculation that after the initial phase of liberalization, coercive measures could be reintroduced to guarantee a transfer of power to rising power brokers in the USDP.

Nonetheless, for the first time since 1962, when a military coup obliterated Burma's nascent democratic institutions, it is realistic to hope that Burma's future will be defined by regular elections, with democratic and ethnic political parties offered full opportunities to campaign without obstruction. Such an outcome would allow Burma to vault in front of many of its Southeast Asian neighbors. Various configurations of semidemocratic or undemocratic rule dominate the region.<sup>8</sup> Burma is starting from a very low base, but it has the potential to break the regional pattern in its evolving process of political reform and liberalization.

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<sup>4</sup> The by-elections were held to replace elected representatives who were promoted to ministerial posts, or had died. Details on the results of these by-elections can be found at <http://www.networkmyanmar.org/component/content/article/88/By-Elections>.

<sup>5</sup> An early issue which caused consternation on both sides focussed on the wording of the parliamentary oath of office. This issue is discussed in Dominic J. Nardi, "When not to swear in public," *New Mandala* (blog), April 30, 2012, <http://asiapacific.anu.edu.au/newmandala/2012/04/30/when-not-to-swear-in-public/>.

<sup>6</sup> Desmond Ball and Nicholas Farrelly, "Burma's broken balance," in *CSCAP Regional Security Outlook 2012*, Council for Security Cooperation in the Asia Pacific, November 2011, 18-23.

<sup>7</sup> Voting was "postponed" in three Kachin State constituencies: "By-elections postponed in Kachin State because of security fears," *The Myanmar Times*, March 26, 2012, <http://www.mmmtimes.com/2012/news/620/news62006.html>.

<sup>8</sup> For discussion of the wider regional context, see Craig J. Reynolds, "The social bases of autocratic rule in Thailand", in *Bangkok May 2010: Perspectives on a Divided Thailand*, ed. Michael J. Montesano, Pavin Chachavalpongpan and Aekapol Chongvilaiwan, (Singapore: Institute of Southeast Asian Studies, 2012): 267-273; William Case, *Politics in Southeast Asia: Democracy or less* (Richmond: Curzon, 2002).

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### Accountability and Public Voice

In November 2010 Burma held its first national elections in two decades. This historic occasion, the fifth step in the military's "seven-step road map to democracy," was devalued by the leadership's unwillingness to embrace a free and fair electoral system.<sup>9</sup> The road map aimed to develop a national consensus, supported by elite negotiations, on a new institutional foundation for peace and development as well as law and order. The resulting constitution, promulgated after a referendum in May 2008, is designed to safeguard the long-term rule of military and former military figures. It was steamrolled into law, under conditions that were neither free nor fair, in the immediate aftermath of Cyclone Nargis. The charter called for a bicameral Assembly of the Union (*Pyidaungsu Hluttaw*) with a combined 659 seats, and 14 state and regional legislatures with a total of 881 seats. In 2010 the USDP won 76 percent of the elected seats in these bodies.<sup>10</sup> Taking into account the 25 percent reserved for military appointees, the USDP government commands a significant majority in all of the legislatures.<sup>11</sup> In the aftermath of the 2010 elections, one report claimed that they "did nothing to fulfill the people of Burma's longstanding desire for democracy and freedom."<sup>12</sup>

Notwithstanding the elections' many flaws and the flurry of criticism that followed, the voting established a tentative foundation for more participatory and inclusive government. The process was open to a diverse range of political interests, including democratic and ethnic parties. The NLD opted not to contest the elections, which ensured that the USDP, the only party with the financial and logistical capacity to field candidates in almost all constituencies, was not challenged for dominance. The NLD's hesitation stemmed from a well-founded distrust of the military government; notably, Aung San Suu Kyi was still under house arrest at the time of the polls. For those democratic and ethnic parties that did contest seats, campaigning opportunities were limited, and there were a litany of complaints. Many of the country's smaller parties noted the onerous financial burdens imposed on their candidates.<sup>13</sup> Participating in the 2010 elections was an expensive business, with registration of each candidate costing some \$500, a massive amount for most Burmese.<sup>14</sup>

After the 2010 elections, Burma did not benefit from a genuine rotation of power. Instead, former military officers in the victorious USDP were presented as civilian politicians. In the 30-member cabinet announced on March 30, 2011, two dozen of the ministers previously held senior positions in the military government, and only four were civilians.<sup>15</sup> President Thein

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<sup>9</sup> For a useful discussion of the issues leading up to the polls, see Trevor Wilson, "Burma's elections: Neither free nor fair, but not meaningless," *East Asia Forum*, August 24, 2010, <http://www.eastasiaforum.org/2010/08/24/burmas-elections-neither-free-nor-fair-but-not-meaningless/>.

<sup>10</sup> Trevor Wilson, "The significance of Myanmar's 2010 election," *New Mandala* (blog), December 15, 2010, <http://asiapacific.anu.edu.au/newmandala/2010/12/15/the-significance-of-myanmar%E2%80%99s-2010-election/>.

<sup>11</sup> In Rakhine State the Rakhine Nationalities Development Party is actually the largest party, with 18 seats, but the combined total for the USDP (14 seats) and the military (12 seats) is larger.

<sup>12</sup> ALTSEAN Burma, *The 2010 Generals' Election* (Bangkok: ALTSEAN Burma, 2011), 3.

<sup>13</sup> For a first-hand account of the low-budget campaigning of democratic parties in the 2010 elections, see Aung Si, "Myanmar elections: Notes from the campaign trail," *New Mandala* (blog), November 23, 2010, <http://asiapacific.anu.edu.au/newmandala/2010/11/23/myanmar-elections-notes-from-the-campaign-trail/>.

<sup>14</sup> "Myanmar's Muted Election," *The Wall Street Journal*, November 2, 2010, <http://online.wsj.com/article/SB10001424052702304011604575563862872120370.html>.

<sup>15</sup> The most recent cabinet reshuffle, announced on April 6, 2012, continues this pattern, with almost all of the important positions taken by the same small group of former military officers. Details on the cabinet are available

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Sein had led an important regional military command and was a prominent member of the SPDC. From 2007 to 2010 he was the military government's prime minister, and the fourth most senior officer in the executive hierarchy. Even after an April 2012 reshuffle, the cabinet remained dominated by ministers who had also served at high levels in the SPDC era. At the state and regional level, the heads of all 14 new legislative bodies were either from the USDP or were direct military appointees. This pattern, after 50 years of unbroken military dominance, guaranteed that the new quasi-civilian government would retain the personalities and many of the characteristics of military rule.

Burma's civil service has drawn procedural and cultural influences from many sources, including the precolonial monarchy, the system of British colonial rule, and the period of Japanese occupation during the Second World War. Senior military officers have special influence, even with respect to what might elsewhere be considered basic civilian functions. Within the armed forces, merit of various kinds has been used to determine promotions and assignments.<sup>16</sup> In the civilian components of the bureaucracy there has also been an effort to ensure that the most effective administrators are promoted. Nonetheless, the bureaucracy at all levels remains handicapped by a lack of human and technical resources. Nepotism and other forms of patronage still reportedly help determine promotions to the very highest levels, but the system as a whole cannot be characterized as entirely lacking in merit-based appointments.

The by-elections of April 1, 2012, raised the prospect of greater rotation of power in all parts of Burmese society. Encouraged by 18 months of sustained political reform, the NLD chose to contest these polls. Its success, and especially Aung San Suu Kyi's election to parliament, won new praise for the government's handling of electoral process. Attention is now turning to the 2015 national elections, which may feature a direct contest between the NLD and the USDP.

The space for popular political mobilization and political activity thus far has been constrained, not just by current policies but also by historical precedent. Burma's civil society is unaccustomed to liberalization, and there is an understandable tendency to assume it will not last. Nongovernmental organizations (NGOs) and civic groups were suffocated under military rule. Activist leaders who were considered unduly critical of the government were regularly imprisoned.<sup>17</sup> Even comedians have been targeted for their public statements.<sup>18</sup> In a system that barred the wide distribution of government information, even of the most mundane kind, civil society groups faced endless challenges when commenting on government policies. Speculation about the plans of the military government tended to stand in for analysis supported by transparent, public evidence. Burma's military government also sought to restrict opportunities to campaign, and any links with international organizations and funders drew particular scrutiny.<sup>19</sup>

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from ALTSEAN Burma, "Cabinet," ALTSEAN Burma, April 2012, <http://www.altsean.org/Research/Regime%20Watch/Executive/Cabinet.php>.

<sup>16</sup> The two best accounts of the internal functioning of the armed forces are Andrew Selth, *Burma's Armed Forces: Power Without Glory* (Norwalk: EastBridge, 2002); Maung Aung Myoe, *Building the Tatmadaw: Myanmar Armed Forces since 1948* (Singapore: Institute of Southeast Asian Studies, 2009); see also Andrew Selth, "Burma's Armed Forces: Looking Down the Barrel," in *Regional Outlook* (Brisbane: Griffith Asia Institute, 2009).

<sup>17</sup> See, for instance, discussion of the Free Funeral Service Society in Andrew Marshall, "The Return of Burma's Monks," *TIME*, May 16, 2008.

<sup>18</sup> "Burma comic jailed for 45 years," *BBC News*, November 21, 2008; Hpyo Wai Tha, "The Struggling Comedians," *The Irrawaddy*, April 6, 2012, <http://www.irrawaddy.org/archives/2133>.

<sup>19</sup> See Human Rights Watch, *'I Want to Help My Own People': State Control and Civil Society in Burma after Cyclone Nargis* (New York: Human Rights Watch, 2010).

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The media landscape has experienced rapid change since 2010. The Press Scrutiny and Registration Division retains the formal responsibility of media censorship, and in 2012 the New York-based Committee to Protect Journalists (CPJ) considered Burma the seventh most censored country in the world.<sup>20</sup> However, after decades of tight government control and overt censorship, restrictions are beginning to disappear.<sup>21</sup> Aung San Suu Kyi, the NLD, and a wide array of other once highly sensitive issues are now receiving significant attention from the local media, though there are still certain statements that may be barred from publication. A proliferation of journals and magazines that began in 2008 has led to greater diversity in the local media market. Foreign journalists who previously had to work discreetly or faced blacklisting and surveillance now enjoy regular access to the country, and can generally report without undue interference even if they are traveling on tourist visas.<sup>22</sup> Naturally, freedom of expression is still a new concept, and the government is uncomfortable with coverage that deals too explicitly with the most sensitive political and economic topics.<sup>23</sup> The government also continues to use a wide range of media outlets to promote its own views and interests. News coverage on local television, which is only broadcast for a limited number of hours each day, presents the government's perspective exclusively. However, restrictions on access to satellite television are beginning to fall away.<sup>24</sup>

While government-controlled newspapers—such as the *New Light of Myanmar* and its Burmese-language sister publication, *Myanmar Alin*—continue to provide official news and commentaries, there are now many other widely available sources of printed news. Arguably the most intriguing component of Burma's media landscape is a bilingual weekly newspaper called the *Myanmar Times*. Established over a decade ago as a joint venture between Australian and Burmese partners, including the then leading lights of Burma's military intelligence agency, it has weathered many storms.<sup>25</sup> There are also a significant number of Burmese-language outlets such as *Weekly Eleven* and the *Voice*, which provide a new level of professional reporting. On occasions they have been able to scrutinize government programs.

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<sup>20</sup> For recent analysis of press freedom that provides an alternative narrative, see Committee to Protect Journalists, *10 most censored countries*, May 2, 2012, <http://www.cpj.org/reports/2012/05/10-most-censored-countries.php>; Shawn W. Crispin, "In Burma, transition neglects press freedom," *Committee to Protect Journalists*, September 20, 2011, <http://cpj.org/reports/2011/09/in-burma-transition-neglects-press-freedom.php>.

<sup>21</sup> For details on the changes that occurred around the 2010 elections, see "Burmese media combatting censorship," *Reporters Without Borders*, December 22, 2010 (updated on March 30, 2012), <http://en.rsf.org/birmanie-report-burma-combating-censorship-22-12-2010,39134.html>.

<sup>22</sup> For a useful overview of the new level of access for foreign journalists, see the interview with British Broadcasting Corporation (BBC) correspondent Rachel Harvey in May Sandy, "Myanmar begins opening doors to foreign journalists," *The Myanmar Times*, January 30, 2012, <http://www.mmtimes.com/2012/news/612/news61211.html>.

<sup>23</sup> See Andrew R.C. Marshall, "In a league of their own, Myanmar's 'crony capitalists' cry foul," *Reuters*, <http://blogs.reuters.com/andrew-rc-marshall/2012/04/18/in-a-league-of-their-own-myanmar%E2%80%99s-%E2%80%9Ccrony-capitalists%E2%80%9D-cry-foul/>.

<sup>24</sup> Shwe Aung, "Burma to drop ban on satellite TV," *Democratic Voice of Burma*, October 20, 2011, <http://www.dvb.no/news/burma-to-drop-ban-on-satellite-tv/18297>.

<sup>25</sup> See, for instance, Aung Zaw, "Light fading at Myanmar Times," *The Irrawaddy*, March 2005, [http://www2.irrawaddy.org/article.php?art\\_id=4502](http://www2.irrawaddy.org/article.php?art_id=4502); Hugh Piper and Helen Barrow, "Dancing with Dictators," 2011, <http://www.roninfilms.com.au/feature/6019/dancing-with-dictators.html>; "Court frees relieved MT founder," *The Myanmar Times*, April 4, 2012, <http://www.mmtimes.com/2011/news/569/news56906.html>; Chris Maldon, "Newspaper boss Ross Dunkley to renew push for free media in Burma," *The Australian*, July 2, 2011, <http://www.theaustralian.com.au/news/world/newspaper-boss-ross-dunkley-to-renew-push-for-free-media-in-burma/story-e6frg6so-1226085874701>.

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The internet has developed more slowly in Burma than anywhere else in Southeast Asia. This is due to government anxiety about the subversive potential of networked computing platforms, and the lack of appropriate infrastructure in the impoverished country, including regular supplies of electricity. Until 2011 the internet was heavily censored, and very slow connection speeds deterred all but the most committed users.<sup>26</sup> The number of internet cafés was tightly restricted, and during the popular protests of September–October 2007 internet access was briefly cut off entirely.<sup>27</sup> The new government has become increasingly motivated to liberalize its internet policies.<sup>28</sup> Many websites that were previously banned, such as foreign and exile-based media outlets, are now accessible, and connection speeds are improving as investments in infrastructure continue. Basic web tools that were once blocked—such as certain chat and e-mail programs—are also publicly available. The same is true for applications like Facebook, which is becoming a key medium for citizen journalism and even for the flow of information between citizens and the government. Wireless internet connections, until recently almost impossible to find in Burma, are increasingly used in the wealthy areas of the country’s main urban centers. The recent proliferation of mobile telephony, another area where Burma has lagged far behind its Southeast Asian neighbors, is part of the same liberalization and infrastructure-development effort. As the cost of accessing mobile and internet services continues to plummet, the government appears more comfortable with greater public access to mass communications technologies of all kinds.<sup>29</sup>

### Civil Liberties

Burma’s long record of civil rights abuses still tarnishes its reputation and influence perceptions of its current conditions. The most recent major crackdown on popular dissent occurred in September–October 2007, but even in the years since then, the government has responded harshly to calls for political reform, with dissenters imprisoned or forced into exile. The administration of President Thein Sein has yet to be tested by widespread street-level political mobilization. The careful and peaceful management of such protests would reinforce international acceptance of Burma’s quasi-civilian government and further define its commitment to the rule of law. Political reform is currently considered a government priority rather than a threat, and the interaction between politics and civil liberties is changing. That does not necessarily imply permanent acceptance of human rights norms, especially in the contentious

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<sup>26</sup> Current reporting on Burma’s internet continues to insist that heavy restrictions apply. Based on conversations with associates, and many visits to Burma over the past decade, the author is not convinced that this remains the case. Nonetheless it is very difficult to judge such fast-moving trends, and those analyzing Burma’s internet freedom have been cautious in their assessments.

<sup>27</sup> Bobbie Johnson and Randeep Ramesh, “Bloggers silenced as curbs bring internet blackout,” *The Guardian*, October 1, 2007, <http://www.guardian.co.uk/media/2007/oct/01/burma.digitalmedia>

<sup>28</sup> Nonetheless its approach has been haphazard. There have been episodes in which restrictions have been imposed, as reported in Shwe Aung and Francis Wade, “Internet cafes ban CDs, USB drives,” *Democratic Voice of Burma*, May 16, 2011, <http://www.dvb.no/news/internet-cafes-ban-cds-usb-drives/15659>; Tun Tun, “Internet cafés must reapply for a business license,” *Mizzima*, May 27, 2011, <http://www.mizzima.com/business/5333-internet-cafes-must-reapply-for-a-business-license.html>; Sai Zom Hse, “Burma’s Internet, Newly Opened, Slows to a Crawl,” *The Irrawaddy*, November 3, 2011, [http://www2.irrawaddy.org/article.php?art\\_id=22379](http://www2.irrawaddy.org/article.php?art_id=22379).

<sup>29</sup> Mobile phones once cost thousands of U.S. dollars and were only available with special registration. Recent reports highlight the changes since November 2010. See Hpyo Wai Thai, “Burmese SIM Card Price Slashed by Half,” *The Irrawaddy*, March 6, 2012, [http://www2.irrawaddy.org/article.php?art\\_id=23158](http://www2.irrawaddy.org/article.php?art_id=23158).

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area of civil liberties, but this is one area of Burmese politics in which the pace of change has been described as “astonishing.”<sup>30</sup> Leaders no longer instinctively fear the mobilization that comes with a more free society and a more open political culture.

During the years of military rule, Burma’s law enforcement and security agencies sought to quell popular dissent through highly politicized legal mechanisms. There are still no effective protections against arbitrary arrest, though the number of such incidents has dropped. Previously, around 2,000 people were imprisoned for political crimes, and many were given long sentences to deter others from risking their freedom for political causes. By April 2012, however, the Assistance Association for Political Prisoners–Burma confirmed that there were only 473 remaining political prisoners whose whereabouts could be verified, and 465 whose whereabouts were unknown.<sup>31</sup> According to the group’s figures, 1,151 political prisoners were released between 2007 and the end of 2011. These occasional releases were followed on January 13, 2012, by the release of 302 political prisoners, including many of the most prominent detainees. Such steps towards a more liberal policy on political crimes have been welcomed by democracy advocates, though they have continued to call for full transparency with respect to the remaining political prisoners.<sup>32</sup>

The government’s approach to freedom of association has changed since November 2010. Until the elections, restrictions on collective action and travel were widespread. Independent trade unions were inconceivable. However, in October 2011 Thein Sein announced reforms to the trade union law, and he has signaled that a range of other measures designed to limit opportunities for political organization will be removed.<sup>33</sup>

Even during the years of military government, there were official efforts to criminalize and eradicate human trafficking, though the large volume of people leaving the country, especially to Thailand, made adequate policing of trafficking routes and networks almost impossible.<sup>34</sup> However, the Burmese authorities have been especially motivated in their enforcement of laws aimed at eliminating the trafficking of women and girls. Burmese law attaches higher penalties to the trafficking of women and children, and traffickers have been punished in a number of cases.

Conditions in Burma’s prisons are still bleak, with unreliable and limited access to health care and other services. Long-serving prisoners regularly complain of serious medical problems that are left untreated during years of incarceration. Hunger strikes, motivated by deplorable conditions or uncertainties over amnesty arrangements, have been reported. Many prisoners are physically and mentally devastated by incarceration,<sup>35</sup> and some die soon after release.<sup>36</sup> During

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<sup>30</sup> Judith Evans, “Small triumphs for Asian democracy,” *The Myanmar Times*, December 26, 2011, <http://www.mmmtimes.com/2011/news/607/news3160721.html>.

<sup>31</sup> For current details on the number of political prisoners in Burma, see the thorough lists compiled at Assistance Association for Political Prisoners–Burma, <http://www.aappb.org/>

<sup>32</sup> See David Scott Mathieson and Benjamin Zawacki, “Burma’s reform is still on parole,” *The Wall Street Journal*, May 1, 2012, <http://online.wsj.com/article/SB10001424052702303916904577377452642483334.html>.

<sup>33</sup> Joseph Allchin, “New law gives Burmese right to strike,” *Democratic Voice of Burma*, October 13, 2011, <http://www.dvb.no/news/new-law-gives-burmese-right-to-strike/18174>.

<sup>34</sup> See Nicholas Farrelly, “Exploitation and escape: Journeys across the Burma-Thailand frontier,” in *Labour Migration and Human Trafficking in Southeast Asia: Critical Perspectives*, (eds.) Michelle Forde, Lenore Lyons and Willem van Schendel, (London: Routledge, 2012), 130–148.

<sup>35</sup> Bo Kyi and Hannah Scott, “Torture, political prisoners and the un-rule of law: Challenges to peace, security and human rights in Burma,” in *Breaking the silence*, (eds.) Azmi Sharom, Sriprapha Petcharamesree and Yanuar Sumarlan, (Bangkok: Southeast Asian Human Rights Studies Network, 2011), 122-14; Nyein Nyein, “Ex-Political

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the years of military rule, many antigovernment activists were detained for long periods without trial. Aung San Suu Kyi was for many years the most prominent detainee of this kind, many other NLD members and dissidents were also arbitrarily confined. It is unclear whether the government will allow legal reform on this point.

Burma is home to a Theravada Buddhist majority and many religious minorities. The state actively supports the Buddhist *Sangha* (clergy), and for ethnic Burmans this support gives Buddhism the character of an official religion. The government has funded the construction of countless religious buildings and monuments across the country. However, since Buddhist monks played a leading role in the 2007 protests, those who are considered politically subversive have been subjected to surveillance and harsh treatment.

In most cases, non-Buddhist religious minorities are also ethnic minorities. In Karen and Kachin States, for example, Christianity forms an integral part of the social and political fabric. Complaints about government harassment of Christians often come in the context of counterinsurgency campaigns. Indeed, harassment of religious minorities is most common in contexts where other political and cultural rights are being restricted. Since the beginning of renewed fighting in Kachin State in June 2011, there have been reports of attacks on Christian congregations.<sup>37</sup> By contrast, during the preceding 17-year ceasefire, Kachin Christian churches were allowed in most cases to develop religious, educational, health, and social programs without interference. Separately, since June 2012, violence between Muslim and Buddhist groups in western Burma's Rakhine State has also tested the government's commitment to religious freedom. The uncertain place of the Rohingya, a Muslim minority group, in Burmese society provides fuel for uncompromising politics on both sides.

More generally, ethnic, religious, and other minorities are the groups most often subjected to special restrictions on civil liberties. Discrimination is widespread in ethnic minority areas, as are claims of abuse of power, mistreatment, and lack of respect for human rights by government officials. Educational discrimination is still an issue, especially regarding the use of ethnic minority languages. Under military rule, the top ranks of the political leadership, the armed forces, and the bureaucracy were closed to non-Burmans. The 2008 constitution calls for a multiethnic political community, but this is considered hollow rhetoric by many of Burma's minority peoples.

Homosexuality is still illegal, and some claim that Burma's homosexuals are subjected to systematic abuse and ill-treatment.<sup>38</sup> However, the laws against homosexuality are unevenly enforced, and in many parts of Burma, large homosexual communities are at least partly tolerated by the authorities.<sup>39</sup> There are also significant numbers of transsexual people. People with disabilities are accepted, but the level of support they can expect varies widely. A lack of capacity when it comes to helping the severely disabled is a major constraint.

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Prisoners Call for Post-Release Care," *The Irrawaddy*, March 19, 2012, [http://www2.irrawaddy.org/article.php?art\\_id=23239](http://www2.irrawaddy.org/article.php?art_id=23239).

<sup>36</sup> Ko Htwe, "Tortured activist dies days after jail release," *Democratic Voice of Burma*, January 23, 2012, <http://www.dvb.no/news/tortured-activist-dies-days-after-jail-release/19869>.

<sup>37</sup> See, as one example, Saw Yan Naing, "Govt Army Accused of Planting Landmines around Kachin Church," *The Irrawaddy*, September 5, 2011, [http://www2.irrawaddy.org/article.php?art\\_id=22015](http://www2.irrawaddy.org/article.php?art_id=22015).

<sup>38</sup> Khin Oo Thar, "Burmese Gay Rights Activists Denounce Discrimination," *The Irrawaddy*, May 24, 2011, [http://www2.irrawaddy.org/article.php?art\\_id=21347](http://www2.irrawaddy.org/article.php?art_id=21347).

<sup>39</sup> Foreign and Commonwealth Office, *Burma*, April 30, 2012, <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/asia-oceania/burma>.

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Burma performs fairly well on gender equality.<sup>40</sup> Women are prominent in business, education, health, and cultural activities, though they do not enjoy similar advancement in the bureaucracy, the armed forces, or religious orders. The education of girls has been a consistent social and political priority, and the ongoing civilianization of politics has allowed more women taking leading roles. Discrimination against women usually takes subtle forms, with implicit references to home-making responsibilities. Gender discrimination is built into traditional Buddhist practice, with ingrained anxiety about women's capacity to diminish male spiritual potency. Among ethnic and religious minorities, especially some Muslim and Christian groups, attitudes toward women's roles in society vary widely. There are indications that among certain communities, especially in Muslim-dominated western Burma, women's opportunities are more consistently limited.

### Rule of Law

In the context of the recent political changes, there have been public calls for a reinvigorated notion of the rule of law. Under the SPDC, the law was just another mechanism for increasing government authority, legitimizing political priorities, punishing critics and opponents, and arbitrarily delineating appropriate behavior, speech, and thought. As a result, the legal system in Burma has not enjoyed wide popular acceptance. Law enforcement agencies have been thoroughly politicized and were closely associated with the military government, undermining public confidence in them. It remains unclear whether adherence to the rule of law will be a priority in future reforms. Currently, basic human rights are still often ignored, and the judicial system is overburdened, underresourced, and subject to political control. The presumption of innocence is not consistently upheld, and prosecutors are required to follow political priorities. For many years, defense lawyers have been pressured to distance themselves from political cases, and those who work on behalf of prisoners of conscience risk having their licenses arbitrarily suspended. The law also remains a tool in the government's counterinsurgency efforts in ethnic minority areas.

The close relationship between judicial and executive authorities means that interference in the administration of justice is widespread.<sup>41</sup> According to a recent report from the UN special rapporteur on Burma, “[r]egardless of the efforts made to reform legislation, under the current Constitution, Myanmar lacks an independent, impartial and effective judiciary, which is not only essential for its transition to democracy but also necessary to uphold the rule of law, ensure checks and balances on the executive and the legislative, and safeguard human rights and fundamental freedoms in Myanmar.”<sup>42</sup> Political influences in this system are strong, but economic interests also play a role in determining the outcomes of trials. Some public officials

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<sup>40</sup> The 2009 Social Institutions and Gender Index ranks Burma 41 out of 102 non-OECD [Organisation for Economic Cooperation and Development] countries in the world in its composite gender equity index. For details see <http://genderindex.org/country/myanmar>.

<sup>41</sup> For a thorough overview of the rule of law in Burma, see Nick Cheesman, “Thin Rule of Law or Un-Rule of Law in Myanmar?” *Pacific Affairs* 82, no. 4 (Winter 2009), 597-613; Nick Cheesman, “How an Authoritarian Regime in Burma Used Special Courts to Defeat Judicial Independence,” *Law & Society Review* 45, no. 4 (2011), 801-830.

<sup>42</sup> Tomás Ojea Quintana, *Progress report of the Special Rapporteur on the situation of human rights in Myanmar* (New York: United Nations, March 2012), [http://unic.un.org/imucms/userfiles/yangon/file/A%20HRC%2019%2067\\_English%5B1%5D.pdf](http://unic.un.org/imucms/userfiles/yangon/file/A%20HRC%2019%2067_English%5B1%5D.pdf)

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have been prosecuted for abuse of office, but it remains difficult to determine whether these cases are motivated by political or strictly legal considerations.

The prisoner amnesties associated with the recent reform agenda have illustrated the arbitrary nature of many cases and the power of the executive branch to manipulate the justice system to suit its changing goals. In one case, a leading ethnic Karen political activist was released in early 2012 only six days after receiving a life sentence.

Civilian control over the armed forces has yet to be firmly established. In the short term, the appearance of such control will depend on the close ties between serving military officers and their former colleagues in the new quasi-civilian system. The military continues to play a crucial role in governance and the economy. Accountability for military corruption remains very inconsistent, and is often determined by the interactions of patronage networks.

Human rights abuses by the government are only rarely prosecuted. A National Human Rights Commission was established in September 2011 by presidential decree (Government notification No. 34/2011), but it has yet to prove its effectiveness. Land seizures by the government and government-aligned entities have been reported, and the country's increased openness to independent journalists and monitoring groups will allow them to confirm such reports more consistently. Under prevailing conditions, contracts are difficult to enforce. Some newspapers are filled with notices announcing the efforts of foreign companies to enforce their trademarks in Burma. For individuals and organizations without substantial financial resources, even those token efforts are unrealistic, and any bid to enforce legal rights requires political backing.

### Anticorruption and Transparency

Under the SPDC, Burma was deeply corrupt, with little transparency in the state's practices, policies, and plans. The implementation of the new constitution, and the increase in scrutiny since the current reform process began, has prompted a new effort by senior government figures to present a cleaner image. In March 2012, Khin Aung Myint, the speaker of the upper house of parliament, told a visiting journalist that "fighting rampant corruption is the most important issue facing Burma today."<sup>43</sup> Transparency International ranked Burma 180 out of 183 countries surveyed in its 2011 Corruption Perceptions Index; only North Korea and Somalia fared worse.<sup>44</sup>

Almost all bureaucratic processes are still cumbersome and susceptible to political interference at many levels. Engagement in economic, political, and cultural activities requires skillful navigation of state regulations, and onerous registration requirements provide ample opportunities for graft. Corruption became enmeshed in the functioning of the former military government, and the junta's successors now struggle with inadequate bureaucratic capacity and a range of new administrative priorities. Some recent announcements suggest that there is an appetite for reform of the anticorruption infrastructure, and this is one of the stated priorities of the USDP government.<sup>45</sup> However, liberalization brings its own challenges. The deregulation of

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<sup>43</sup> Hpyo Wai Tha, "Corruption is Burma's Biggest Problem: Upper House Speaker," *The Irrawaddy*, March 26, 2012, [http://www2.irrawaddy.org/article.php?art\\_id=23286](http://www2.irrawaddy.org/article.php?art_id=23286)

<sup>44</sup> Transparency International, *Corruption Perceptions Index 2011*, 2011, <http://cpi.transparency.org/cpi2011/results/>; Christian Caryl, "The thieves of Burma," *Foreign Policy*, March 27, 2012, [http://www.foreignpolicy.com/articles/2012/03/27/tackling\\_corruption\\_in\\_burma](http://www.foreignpolicy.com/articles/2012/03/27/tackling_corruption_in_burma)

<sup>45</sup> Nyein Nyein, "Judicial Corruption Inquiry Approved by Parliament", *The Irrawaddy*, 25 April 2012, <http://www.irrawaddy.org/archives/3068>.

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some sectors of the economy has primarily benefited government-aligned “cronies.” State-owned enterprises are still prominent in many sectors, but moves to privatize these assets are under way.<sup>46</sup>

The legacies of the socialist-era economy (1962–1988), which was followed by more than two additional decades of direct military rule, include a lack of exposure to large-scale private investment and commerce from abroad. Foreign development assistance is still restricted, but there are indications the government is moving to allow much wider access for international humanitarian organizations and development agencies. It was only in 2012 that tentative moves to develop a functioning and unified exchange-rate system began. Burma had long struggled with an incoherent monetary policy that left open many opportunities for corrupt trading. At the same time, taxes are collected only haphazardly, often at the local level. Illicit payment for government services is common and serves to undermine confidence in the state, which in turn leads to tax avoidance. Moreover, there is lack of transparency about the collection and use of large new revenue streams from natural gas projects and other extractive industries. Levies on the transport of goods and people are widespread. In many cases it is unclear whether these have an official basis or are imposed by government personnel to supplement low salaries. Laws designed to deter such corrupt practices are not applied fairly or consistently.

These conditions are compounded by the fact that during the years of military rule there was only limited separation between the public and private interests of key decision makers. The enrichment of senior military leaders was a source of public frustration, and lucrative opportunities flowed down the chain of command. The wide discretion available to regional military commanders is often demonstrated in their direct patronage of local political interests. There has been no effective or public disclosure of government or military officials’ financial interests. Arguably the best summaries of the relationship between public officials and the private economy are those provided in the sanctions “blacklists” of the United States, the European Union, and Australia.<sup>47</sup> However, these lists are largely derivative and based on assumptions about how the economy functioned during the years of military government. Independent scrutiny of such connections has not been possible.

Allegations of corruption are not given wide coverage inside the country. Notionally independent investigative and auditing bodies function only through political influence. Corruption is often invoked when high-level purges occur within the ranks of the executive branch and bureaucracy. In 2004 such charges were leveled against former prime minister Khin Nyunt as the military intelligence network he controlled was dismantled.<sup>48</sup> Many figures in that network were charged with corruption and given lengthy sentences. Khin Nyunt himself was sentenced to 44 years in prison, but was released from house arrest in January 2012. Given the highly politicized atmosphere, protections for whistleblowers are almost nonexistent, and the only support that can be relied upon comes from international actors. During the years of military rule, defectors would cross the border to Thailand in the hope of receiving sanctuary. Many still reside in that country, where their status remains ambiguous.

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<sup>46</sup> While privatization has been a goal for decades, a comprehensive effort began only in 2011. See Mark Gregory, “Burma to privatise 90% of its companies – report,” *BBC News*, January 14, 2011, <http://www.bbc.co.uk/news/world-asia-pacific-12188585>.

<sup>47</sup> See, for example, Department of Foreign Affairs and Trade, “Australia’s autonomous sanctions: Burma” (Canberra: Department of Foreign Affairs and Trade, 2012), [http://www.dfat.gov.au/un/unsc\\_sanctions/burma.html](http://www.dfat.gov.au/un/unsc_sanctions/burma.html).

<sup>48</sup> Morten B. Pedersen, *Promoting Human Rights in Burma: A Critique of Western Sanctions Policy* (Lanham: Rowman and Littlefield, 2008), 261.

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There is no legal right to information in Burma. This means there is still no transparency in procurement contracts and other aspects of state spending.<sup>49</sup> As it begins to accept more foreign advice and influence, the government will need to be more open about its practices and policies. This will help increase confidence among foreign investors, but also among the millions of Burmese who remain distrustful of the government.

### Recommendations

The government of Burma has embarked on a political transition that has been welcomed by the Burmese people.

To reinforce recent positive moves and generate confidence that progress toward democratic governance is irreversible, the government should:

- Implement an immediate release of all remaining prisoners of conscience and disavow any future incarcerations for political crimes.
- Encourage the plurality of public opinion by abolishing the Press Scrutiny and Registration Division and resisting the temptation to create a new body for coercive media regulation.
- Declare a unilateral ceasefire in the civil war with the Kachin Independence Army, demonstrating goodwill and encouraging the Kachin leadership to begin negotiations for a final peace treaty.
- Implement a truth and reconciliation process to account for human rights abuses committed by current and former members of the armed forces, law enforcement agencies, and intelligence services during the years of military rule.

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<sup>49</sup> For reporting on the 2012 budget, the first one debated in a legislative fashion for many decades, see “Myanmar to raise health, education budgets for 2012-13,” *Xinhua*, February 6, 2012, [http://news.xinhuanet.com/english/world/2012-02/06/c\\_131394516.htm](http://news.xinhuanet.com/english/world/2012-02/06/c_131394516.htm); “Burma’s Parliament Back in Session, Budget is Top Priority,” *The Irrawaddy*, January 27, 2012, [http://www2.irrawaddy.org/article.php?art\\_id=22938](http://www2.irrawaddy.org/article.php?art_id=22938).