

# BACKGROUND

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## A Reverse Road Map for Burma Sanctions

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### Abstract

*Burma has undertaken a series of reforms at a pace no one anticipated just a few short years ago. The Obama Administration's policy toward Burma lacks sufficient protections against Burmese backsliding on reforms. Congress should reassert its role in Burma policy by setting precise criteria for Burma's progress and tying failure to achieve these benchmarks to re-imposition of the major U.S. sanctions.*

President Barack Obama's November visit to Burma showcased his Administration's approach to Burma. It is one of gentle persuasion and positive reinforcement, except for sanctions tightly targeted at specific individuals and entities. In the President's words, he seeks to extend a hand to an unclenching fist.

Whether encouraged by Administration outreach or not—and the Administration has presented developments in Burma as both<sup>1</sup>—change is afoot. The Burmese government has undertaken a series of reforms at a pace no one anticipated just a few short years ago. Still, the U.S. needs a policy response that is more than lifting sanctions and setting broad objectives if it is to achieve its long-held, bipartisan goal of liberty for the Burmese people. There must be a clear downside for the regime if it falls short.

The Administration has repeatedly emphasized that reforms in Burma are not “irreversible.” Congress should reinforce this by affirming precise criteria and tying failure of the Burmese regime to achieve them to re-imposition of the major sanctions already lifted. In so doing, Congress will reassert its traditional role in Burma policy.

### KEY POINTS

- The Burmese government has undertaken a series of reforms at a pace no one anticipated just a few short years ago.
- The U.S. needs a policy response that is more than lifting sanctions and setting broad objectives. In one year the U.S. has gone from “maximum pressure” to lifting the principal parts of the sanctions regime.
- Congress should reassert its role in Burma policy and establish specific benchmarks which if not met will trigger re-imposition of the major sanctions that have been lifted.
- Specifically, Burma should release all political prisoners; grant all Rohingya either citizenship or a commensurate protected status; make progress in guaranteeing rights of expression, association, assembly, and religion; hold free and fair elections in 2015; and implement constitutional reform that curbs the military's control over the civilian government.

This paper, in its entirety, can be found at <http://report.heritage.org/bg2749>

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## Congress Backs Administration Approach

As a result of the changes in Burma, alliances that grew in Washington over the past 20 years are breaking apart and reshaping. The side in favor of engagement has grown much stronger, while the pressure camp has weakened. Senator Mitch McConnell (R-KY) and Senator John McCain (R-AZ),<sup>2</sup> former leaders of the pro-sanction camp, now favor engagement. The Administration is consulting with them and other congressional leaders as it moves forward.

The acquiescence of Burmese opposition leader Aung San Suu Kyi has undoubtedly influenced the Hill. This is appropriate given her long sacrifice and leadership. At the same time, however, policymakers should consider how Suu Kyi's role is changing. She likely does not understand the power that her words carry in Washington and how little control she has over them once she speaks them. Washington has overridden her position<sup>3</sup> at least once, when it permitted investment in the oil and gas industry. In the process, the nuance in her support for lifting sanctions was lost.

Suu Kyi is in a precarious political situation in Burma in which she is hard put to support any sanctions on a government of which she

is now part—although she does say the sanctions now being lifted were critical to moving Burma to the point where it is today in the political reform process. She is hardly in a position to refuse a visit to Burma by the American President or Secretary of State. In fact, her concerns about the President's visit were also overridden.<sup>4</sup>

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**BO KYI POINTS OUT THAT "NONE OF THE BENCHMARKS OUTLINED BY THE UNITED STATES, INCLUDING THE RELEASE OF ALL POLITICAL PRISONERS, HAVE BEEN MET... WORSE, THERE ARE NO CONDITIONS FOR THE RE-IMPOSITION OF SANCTIONS."**

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The U.S. is Suu Kyi's principal international supporter. With no credible threat to publicly oppose or dispute the details of U.S. policy and with little independent congressional support, she has no leverage in the relationship.

Suu Kyi undoubtedly supports the change in the nature of U.S. policy. Likely, she also calculates that where she disagrees on the details, it is best to make the most of a situation she cannot control. This makes her public statements—even her private statements to American politicians,

given their propensity to shout from the rooftops her vindication of their own positions—less reliable indicators of what she truly believes.

## Human Rights Camp Deserves a Voice in Congress

With Suu Kyi no longer the final word about the situation in Burma, Congress needs to broaden its vision. Several prominent human rights groups, including Human Rights Watch and U.S. Campaign for Burma, have expressed reservations or outright objections to President Obama's November visit to Burma.<sup>5</sup> They argued that the reforms in Burma are tenuous and that continuing serious abuses indicate underlying power realities. Thus, the President's visit sent the wrong signal. Human rights groups have also consistently argued that sanctions are being lifted too rapidly.

The case against the rapid change in Burma policy—in one year the U.S. has gone from "maximum pressure" to lifting the principal parts of the sanctions regime—was best summarized by Bo Kyi, a founder of the Assistance Association for Political Prisoners, a Thailand-based human rights activist group best known for its accounting of political prisoners in Burma. Bo Kyi points out that "none of the benchmarks outlined by the United States, including the

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1. Kurt M. Campbell, "U.S. Policy Toward Burma," U.S. Department of State, September 28, 2009, <http://www.state.gov/p/eap/rls/rm/2009/09/129698.htm> (accessed December 4, 2012), and Kurt M. Campbell, "The Lady and the General," *Foreign Policy*, December 2012, [http://www.foreignpolicy.com/articles/2012/11/26/the\\_lady\\_and\\_the\\_general](http://www.foreignpolicy.com/articles/2012/11/26/the_lady_and_the_general) (accessed December 4, 2012).
  2. Press release, "Statement by Senators McCain and McConnell on Burma Sanctions," Office of U.S. Senator John McCain, May 17, 2012, [http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord\\_id=5c285cca-a747-3038-a5b7-1b5d18972e86](http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=5c285cca-a747-3038-a5b7-1b5d18972e86) (accessed December 4, 2012).
  3. Michael Green and Daniel Twining, "U.S. Is Moving Too Fast on Burma," *The Washington Post*, July 15, 2012, [http://www.washingtonpost.com/opinions/us-is-moving-too-fast-on-burma/2012/07/15/gJQAcMEBnW\\_story.html](http://www.washingtonpost.com/opinions/us-is-moving-too-fast-on-burma/2012/07/15/gJQAcMEBnW_story.html) (accessed December 4, 2012).
  4. Josh Rogin, "Aung San Suu Kyi Initially Opposed Obama's Burma Trip," *Foreign Policy*, November 9, 2012, [http://thecable.foreignpolicy.com/posts/2012/11/09/aung\\_san\\_suu\\_kyi\\_initially\\_opposed\\_obama\\_s\\_burma\\_trip](http://thecable.foreignpolicy.com/posts/2012/11/09/aung_san_suu_kyi_initially_opposed_obama_s_burma_trip) (accessed December 4, 2012).
  5. David Scott Mathieson, "A Bridge Too Far for Obama, Crossed Too Early, in Myanmar," Human Rights Watch, November 18, 2012, <http://www.hrw.org/news/2012/11/18/bridge-too-far-obama-crossed-too-early-myanmar> (accessed December 4, 2012).

release of all political prisoners, have been met.... Worse, there are no conditions for the re-imposition of sanctions.”<sup>6</sup>

The human rights community has a point. Lifting U.S. import restrictions on November 16 was the last big move. Residual bits of U.S. sanctions against Burma will remain for many years, such as travel and asset bans against particular individuals and organizations, prohibition on certain military-to-military activities and assistance, continued restrictions on the import of jadeite and rubies, restrictions on investments and financial services tied to Burma’s armed forces, and the arms embargo. However, none of these measures serve well as instruments of pressure. They are simple safeguards against U.S. contribution to abuses. As Bo Kyi indicates, there is no specific indication of what would constitute cause to re-impose sanctions.

### Tying Specific Reverses to U.S. Response

A we’ll-know-it-when-we-see-it approach is not acceptable for determining what constitutes cause to re-impose sanctions. Congress should reassert its role in Burma policy and set clear expectations for the Administration. Working back from Burma’s national elections in 2015, Congress should establish three certification periods and pair Administration reports with the re-imposition of specific sanctions unless specific benchmarks are met:

**First Period.** During the first period, Burma should:

- **Grant the International Committee of the Red Cross full access to prisons and follow through on establishment of the effective presence of the U.N. High Commissioner for Human Rights.** In connection with President Obama’s visit, the Burmese government announced commitments in both areas. The Administration should see that it keeps its word.

- **Release all political prisoners.** The Burmese government has thus far released about 800 political prisoners. The 51, including prominent human rights leader Myint Aye, released on the eve of President Obama’s November visit, bring the number remaining to 216.<sup>7</sup> All releases have been conditional, and new political arrests continue even as other prisoners are released. Among the most recent re-arrested and released on bail is U Gambira, organizer of the 2007 Saffron Revolution and a guest of honor at President Obama’s speech at Rangoon University.

- **Negotiate a cease-fire with the Kachin in Northern Burma.** The Kachin remain outside the the network of cease-fires that the regime has reached with other ethnic groups. The Burmese government should reach a cease-fire,

withdraw troops from Kachin areas, and establish a timetable for a real peace process.

- **Make progress in establishing formal dialogues between ethnic groups and the government.** Without such dialogues, cease-fires will not hold, and a broad, just peace is not possible. Maintaining cease-fires demands movement on underlying issues, particularly constitutional reforms that guarantee an acceptable level of autonomy, empowerment, and resource sharing.<sup>8</sup>

If Burma fails to meet these criteria, the U.S. should:

- **Oppose assessment missions, technical assistance, and loans from international financial institutions (IFIs).** In February 2012, the Administration lifted U.S. opposition to assessment missions from institutions such as the IMF, World Bank, and Asian Development Bank. In October, Congress provided additional waiver authority necessary to support new IFI loans.

**Second Period.** During the second period, Burma should:

- **Legalize the Rohingya.** Nothing in Burma—or Southeast Asia for that matter—has offended the conscience in the past several years like the plight of the Rohingya in Burma’s western

6. Bo Kyi, “President Obama: Turn Lip Service on Burma’s Political Prisoners into Action,” *The Irrawaddy* (Thailand), November 16, 2012, <http://www.irrawaddy.org/archives/19032/print> (accessed December 4, 2012).

7. Alternative ASEAN Network on Burma, *Burma Bulletin* No. 71, November 2012, <http://www.altsean.org/Docs/PDF%20Format/Burma%20Bulletin/November%202012%20Burma%20Bulletin.pdf> (accessed December 4, 2012).

8. Burma Campaign UK, “Burma’s New Constitution—Denying Ethnic Rights,” *Burma Briefing* No. 11, March 2011, <http://www.burmacampaign.org.uk/images/uploads/11-Burmas-New-Constitution-Denying-Ethnic-Rights.pdf> (accessed December 4, 2012), and Ernest Bower et al., “CSIS Myanmar Trip Report,” Center for Strategic and International Studies, September 10, 2012, [http://csis.org/files/publication/120911\\_MyanmarTripReport.pdf](http://csis.org/files/publication/120911_MyanmarTripReport.pdf) (accessed December 5, 2012).

border state of Rakhine. In addition to ending attacks on the Rohingya in which security forces and local authorities have been complicit,<sup>9</sup> the government must address the legal issues underlying the Rohingya's suffering. Rohingya who already qualify for citizenship under Burmese law should be given it, and the remainder should be given citizenship or a commensurate protected status.

- **Extend and codify political reforms.** Many of the most widely heralded changes, such as the easing of censorship rules, are tentative. Restrictions on the media and the institutions for enforcing censorship remain. Legal reforms should be carefully examined to ensure that they truly liberalize the Burmese media. Guidelines to the media issued by a government that has effectively unchecked constitutional power to make politically motivated arrests may be a more efficient means of managing opinion, but they will not make the media much freer than pre-publication censorship.
- **Make progress in guaranteeing rights of expression, association, assembly, and religion.** To continue the current open-handed policy, the Administration should be able to certify to Congress at a minimum that there are signs of

continuing "progress" across the range of freedoms necessary to ensure the rights of the Burmese people. New laws should truly liberalize, not simply establish more efficient frameworks for determining and enforcing penalties for political crimes.

- **Demonstrate that it has severed military relations with North Korea.** The Burmese government has given repeated assurances on this score. The U.S. needs to vigilantly follow up on the government's commitment. Recent reports about the seizure of components potentially part of a nuclear weapons program from North Korea to Burma are not encouraging.<sup>10</sup>

If Burma fails to meet these criteria, the U.S. should:

- **Re-impose the ban on investment, retroactive to July 2012, when the restriction was lifted.**
- **Restore the export restrictions on financial services, reverting to the conditions of the general license issued on April 17, 2012.** The license made exceptions for not-for-profit activities in basic human needs, democracy building and good governance, education activities, sporting activities, non-commercial development projects directly benefiting the Burmese people, and religious activities.<sup>11</sup>

**Third Period.** During the third period, Burma should:

- **Hold elections in 2015 that are "free and fair", as determined by international observers.** The Burmese government should allow into the country any reputable international observer group, private or governmental, to certify the elections.
- **Implement constitutional reform that curbs the military's control over the civilian government.** Burma should end the military's guarantee to one-fourth of the seats in the national and local assemblies. This goes directly to the right of the Burmese people to change their government and its ability to carry out further constitutional reform. A democratic victory in 2015 and peace in ethnic areas will be incomplete if the Burmese military retains the power to block government action.

If Burma fails to meet these criteria, the U.S. should:

- **Re-impose the ban on Burmese imports.** Congress renewed the legal basis for the ban on imports in September 2012, and President Obama, in consultation with Congress, waived them in November. This was the last major U.S. sanction on Burma to be lifted.

9. Human Rights Watch, "Burma: Satellite Images Show Widespread Attacks on Rohingya," November 17, 2012, <http://www.hrw.org/news/2012/11/17/burma-satellite-images-show-widespread-attacks-rohingya> (accessed December 4, 2012).

10. Matthew Pennington, "Senator Writes Myanmar Leader over Seized Cargo," Google News, November 29, 2012, <http://www.google.com/hostednews/ap/article/ALeqM5j3JKBDWu6LZZpassV3c1zCBoEOaA?docId=b18607759f9f4e80bdd491bc5b200b14> (accessed December 7, 2012).

11. U.S. Department of the Treasury, Office of Foreign Assets Control, "General License No. 14-C: Authorizing Certain Financial Transactions in Support of Humanitarian, Religious, and Other Not-for-Profit Activities in Burma," April 17, 2012, [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/burmagl14\\_amend\\_c.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/burmagl14_amend_c.pdf) (accessed December 4, 2012).

## Remnants of Engagement and Leverage

Even if Burma fails to meet any of these benchmarks, several changes in U.S. policy will remain: presence of a U.S. ambassador in Burma, availability of financial services for nongovernmental organizations, humanitarian assistance, democracy promotion assistance, counter-narcotics assistance (if Burmese authorities are certified cooperative), and visas for selected pro-reform Burmese officials to visit the U.S. This level of activity is appropriate given the changes that have happened over the past year and a half.

By the same token, even if Burma meets all of the criteria, including an election in 2015 that honors the right of the Burmese to change their government, many sanctions will remain, including the caveats that the Administration has made in its easing of sanctions. Lifting these

residual sanctions will depend on continued progress on rule of law and reforms in other specific areas, including the use of forced labor and child soldiers, repatriation of refugees, treatment of internally displaced people, and withdrawal of government troops from ethnic areas. Even with a legitimate democratic government, the military could conceivably continue to exercise an unacceptable degree of autonomy. Restrictions on military-to-military contact and assistance programs, including I-MET, as well as the arms embargo should be the last sanctions lifted. This will give pro-reform forces appropriate leverage long into a genuine post-election transition to civilian rule.

### Conclusion

The Administration's "action for action" policy first enunciated by Secretary Clinton after her historic

visit to Burma in 2011 has gone by the boards. It is now racing ahead, abandoning necessary caution and leverage. Regrettably, Congress is letting it happen.

The Obama Administration has emphasized that as long as the legal framework for sanctions remains in place, it has insurance against the Burmese backsliding on reforms. Even under the most optimistic of scenarios, this insurance will be useful in guarding against counter-revolution following the 2015 elections. In the meantime, however, Congress needs to step in and add the "stick" back to a policy that has become all "carrot." It can do this by reasserting its historic role in Burma policy, setting concrete objectives, and clarifying the consequences of underperformance.

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