

Conditions in Burma and U.S. Policy Toward Burma for the Period September 28, 2004 - March 27, 2005

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Introduction and Summary

As a result of the Burmese junta's blatant disregard for human rights, its intolerance of dissent, and its ongoing efforts to perpetuate military rule, prospects for meaningful political change and reform continued to decline over the past six months. The October 2004 ouster of Prime Minister and Military Intelligence (MI) chief General Khin Nyunt and his close associates kicked off a struggle for political and economic power. As a result, more hard-line elements of the leadership further consolidated their positions. The Government of Burma (GOB, also referred to as the State Peace and Development Council - SPDC) kept senior democratic opposition leaders Aung San Suu Kyi and U Tin Oo under house arrest and arrested other key democracy activists, including leading ethnic political leader Hkun Htun Oo. Although the National League for Democracy's (NLD) party headquarters in Rangoon was still open, all the party's other offices remained closed.

The GOB continued to arrest people for taking part in peaceful political activities and over a thousand persons remained jailed for their political beliefs. In February 2005, the junta reconvened its National Convention, adjourned since July 2004, to complete the drafting of a new constitution without the participation of the democratic opposition. The junta failed to set a timetable for taking subsequent steps on its "road map," including an oft-promised transition of power to an elected government.

The United States continued to consult with countries in the region, the European Union, and other interested parties to encourage them to maintain pressure on the Burmese junta to make progress toward a genuine political transition. During this reporting period, no other country adopted economic sanctions against the junta.

The government's dismal economic policies have resulted in widespread poverty and the flight of most foreign investors. The latest U.S. economic sanctions, imposed in 2003 and renewed in 2004, contributed to the closure of some garment factories in 2003 that had relied on exports to the United States. In addition, financial sanctions led the Burmese to rely increasingly on Euros, rather than on U.S. dollars, for their foreign exchange transactions. The 33 members of the Financial Action Task Force (FATF) lifted countermeasures on the GOB in October, although Burma remains on the FATF's list of non-cooperative countries and territories. The United States continued its ban on the export of financial services to Burma by U.S. persons.

The SPDC continued to abuse severely the human rights of its citizens. Freedom of speech, press, religion, assembly, and association remained greatly restricted. Egregious abuses of ethnic minority civilians by the Burmese military including rape, torture, execution, and forced relocation continued. Forced labor, trafficking in persons, and religious discrimination remained serious problems. During the reporting period, the SPDC refused requests from UN Special Envoy Razali and UN Commission on Human Rights Special Rapporteur Pinheiro to visit. In February 2005, a high-level delegation representing the International Labor Organization (ILO), mandated to evaluate the attitude of GOB authorities at the highest level toward the elimination of forced labor, curtailed its visit to Burma when the junta's top two leaders declined to meet with its members.

U.S. policy objectives in Burma remain unchanged: the immediate and unconditional release of Aung San Suu Kyi, U Tin Oo, Hkun Htun Oo and all political prisoners; the re-opening of all NLD party offices and the start of a meaningful dialogue leading to genuine national reconciliation and the establishment of democracy. Overall U.S. policy goals include the establishment of constitutional democracy, respect for human rights and religious

freedom, the repatriation of refugees with monitoring by UNHCR, the return home of internally displaced persons (IDPs), cooperation in fighting terrorism, regional stability, a full accounting of missing U.S. servicemen from World War II, combating HIV/AIDS, eliminating trafficking in persons, ending forced labor, and increased cooperation in eradicating the production and trafficking of illicit drugs. During the reporting period, GOB cooperation decreased in some areas.

The United States will continue to urge other nations to use sanctions and diplomacy to press the junta to release all political prisoners and to allow all political parties to operate. The United States also encourages all countries with a major interest in Burma, particularly Burma's immediate neighbors China, India, and Thailand, as well as other ASEAN members and Japan, to use their influence with the government to urge it to take immediate steps on political reform and human rights. We will continue to urge the international community to support the UN Secretary General in his efforts to start meaningful talks on a political transition in Burma and to support UN efforts to improve the dismal human rights situation.

I. Measuring Progress Toward Democratization

Burma's pro-democracy movement continued to face severe repression. The GOB constantly harassed and regularly arrested opposition party members, pro-democracy activists, dissidents, and their supporters. Aung San Suu Kyi, the Nobel Peace Prize Laureate General Secretary of the NLD, and U Tin Oo, the party's Vice Chairman, remained under detention. During the reporting period, the SPDC extended their house arrests for an additional year. Authorities also restricted Aung San Suu Kyi's access to medical care and her contacts with the outside world, leaving her virtually incommunicado. All NLD offices, except the party's Rangoon headquarters, remained closed. In February 2005, authorities arrested and later tried Hkun Htun Oo, the Chairman of the Shan Nationalities League for Democracy (SNLD), Burma's most influential ethnic democracy party. Authorities also detained and harassed several other ethnic pro-democracy party members.

The October 2004 ouster of Prime Minister and Military Intelligence (MI) chief General Khin Nyunt and his close associates in a struggle for political and economic power further consolidated the position of more hard-line members of the leadership. The SPDC claimed it released nearly 20,000 people from prison, many of whom the GOB asserted were "wrongly imprisoned" by MI. Among those released were 96 political prisoners, including pro-democracy student leader Min Ko Naing, detained since 1989. However, most of those released had already completed their original sentences. GOB authorities continued to arrest and imprison NLD members and other democracy supporters for alleged political offenses. Over 1,200 long-term political prisoners remain in prison.

U.S. officials persistently requested meetings with Aung San Suu Kyi and U Tin Oo. The government prohibited U.S. and other diplomats in Burma from visiting either. It also published a series of newspaper articles attempting to intimidate diplomats, including U.S. Embassy personnel, who visited NLD headquarters or met with other pro-democracy leaders. No independent observer has been able to visit Aung San Suu Kyi since UN Secretary General Special Envoy Razali Ismail met with her in March 2004.

Despite the government's refusal to allow Razali and UN Commission on Human Rights Special Rapporteur Paulo Sergio Pinheiro to visit Burma, Razali continued his efforts to encourage a political dialogue between the SPDC and the NLD. These efforts, however, consisted entirely of diplomatic discussions outside of Burma. The GOB has not permitted Razali or Pinheiro to visit since March 2004 and November 2003 respectively.

On February 17, 2005, the junta reconvened its National Convention, adjourned since July 2004, purportedly to complete the drafting of a new constitution to serve as the first step of its "road map to disciplined democracy." As it did in May 2004 (when the Convention originally reconvened after an eight-year hiatus), the SPDC handpicked pro-regime delegates to participate in the Convention, refused to include the NLD or pro-democracy

ethnic groups, and prohibited free and open debate.

In October, Pinheiro noted in his October 2004 report to the UN General Assembly that “a credible process of national reconciliation and political transition is not possible without...the early release of all political prisoners, and the relaxation of restrictions which continue to hamper the ability of political parties and ceasefire partners to operate.” Following the reconvening of the Convention, UN Secretary General Kofi Annan released a statement concluding that “the National Convention, in its present format, does not adhere to the recommendations made by successive resolutions of the General Assembly.” He reiterated his call on the Burmese authorities “even at this late stage, to take the necessary steps to make the roadmap process more inclusive and credible.”

Although the junta has not set a firm timetable for completing its “road map,” it continued to seek support from countries in the region. Several leaders from Southeast Asian countries attended the SPDC’s Buddhist Summit in December 2004, despite a boycott of the event by its original Japanese sponsor. However, they did not publicly press the junta to take steps to make the National Convention credible. After much debate about Burma’s participation at the biannual Asia-Europe Meeting (ASEM), which was held in Hanoi in October, Burma was allowed to become a member, but its participation in Hanoi was limited to a lower level of representation than other countries. New Prime Minister Lt. General Soe Win attended the November ASEAN Summit in Laos. In neither forum was the GOB publicly criticized for its detention of Aung San Suu Kyi or its continuing abuses of human rights, although the ASEM Chairman’s Statement did call for all political parties to be included in the National Convention. GOB senior-level officials visited India, Bangladesh, Thailand, and China during the last six months.

The SPDC and Burma’s largest remaining ethnic insurgent group, the Karen National Union (KNU), entered into a temporary cease-fire in early 2004 after KNU leader General Bo Mya visited Rangoon and held “productive” discussions. However, the junta postponed negotiations when the National Convention convened in May 2004 and the two sides have yet to formalize an end to over five decades of armed conflict. In the meantime, there have been reports of occasional, low-level skirmishes between the KNU and Burmese military.

In mid-November, two small bombs exploded at a Rangoon café and near Rangoon’s central Court. Two other improvised explosive devices went off in Karen and Mon States in October and November. The GOB blamed exile opposition groups for the incidents, as it has done in the past, but provided no convincing evidence to prove its allegations.

II. The Quality of Life in Burma

(Economy)

General Khin Nyunt’s ouster caused significant short-term disruption to the economy. His now-dismantled MI apparatus played a key role in various sectors of the Burmese economy, particularly in the lucrative border trade and in commercial dealings with ethnic cease-fire groups. By the beginning of 2005, the situation began to return to normal with military, customs, immigration, and police units taking over MI’s former economic role. However, an air of uncertainty remains, and with it, a chilling effect on new business investment.

The December 26, 2004 Indian Ocean earthquake and tsunami affected Burma, but to a much smaller degree than other countries in the region. According to UN and NGO sources, 86 people died in Burma and another 15,000 were affected economically. The GOB did not request any international aid, although UN agencies and NGOs are providing assistance.

Despite continuing energy shortages, a lingering crisis in the private banking sector, the loss of its primary export market due to the 2003 U.S. ban on Burmese imports, and the expiration on January 1, 2005 of the WTO Multi-fiber Agreement, Burma’s private garment sector has managed to survive. New orders from importers in

EU member states and Latin America enabled the remaining factories to continue production and avoid new personnel layoffs.

Chronic mismanagement by the junta and a correspondingly poor business and investment climate continued to be the primary reasons for Burma's increasingly dismal economic performance. Despite GOB claims of 13.8 percent economic growth in FY 2004-05 (April-March), most foreign observers saw little evidence of real economic expansion. Little new foreign investment entered the country during this period, though interest by Korean, Indian, and Chinese firms in new offshore and onshore oil and gas exploration increased.

At the request of the FATF, in October 2004 the GOB enacted the "Rules for the Mutual Assistance in Criminal Matters Law," that now provides a framework for Burma to engage in effective international cooperation in the fight against money laundering. Simultaneously, the GOB added fraud to its list of predicate offenses for money laundering and made clear that there was not a threshold amount for money laundering offenses associated with any of the listed predicate crimes. In November 2004, the government further amended its money laundering law to specify a penalty of up to three years imprisonment and/or fine for "tipping off" the filing of a suspicious transaction report against an individual. In response to these actions, amendments to existing legislation, and new legislation issued in 2003 and early 2004, the FATF lifted its request that its 33 members impose countermeasures on Burma. Burma remains, however, on FATF's list of non-cooperative countries and territories, and the U.S. will continue to maintain Burma's designation as a primary money laundering concern.

Serious money laundering problems persist. A GOB committee formed in November 2003 to investigate two banks accused of money laundering – Asia Wealth and Myanmar Mayflower – has taken little action despite direct FATF and U.S. government pressure. In light of the fact that Burma has done little to ensure that criminals do not control or have a significant investment in Burmese financial institutions, the Treasury Department has decided to maintain the application of Section 311 of the USA PATRIOT ACT on both the Jurisdiction and the above-mentioned banks. These designations will remain until Burma fully addresses this issue and adequately implements legal reforms.

(Human rights/forced labor)

The SPDC severely abused the human rights of its citizens. Identified by Secretary of State Rice as one of the world's outposts of tyranny, Burma continued to restrict freedom of speech, press, assembly, religion, and association. Additional abuses in ethnic minority areas included persecution, torture, disappearances, extrajudicial executions, demolition of places of worship, forced relocation, rape, and forced labor. Burmese citizens were not free to criticize their government. Security forces regularly monitored the movements and communications of residents, searched homes without warrants, and relocated persons forcibly without just compensation or legal recourse. In 2004, the United States again designated Burma as a "Country of Particular Concern" for its particularly severe violations of religious freedom, especially among Muslim and Christian populations, and ranked Burma as a Tier 3 country for its unwillingness to make serious and sustained efforts to combat trafficking in persons.

During the reporting period, the GOB released 96 of the country's roughly 1,300 long-term political prisoners, although the majority of these released detainees had already completed their original sentences. Concurrent to these releases, the GOB arrested and sentenced a roughly equal number of additional individuals for their peaceful political activities.

In March 2004, the government admitted that it had sentenced to death three individuals in part for communicating with the ILO and a Thailand-based labor rights group. In response, the ILO continued to postpone implementation of a plan of action to address forced labor practices. After commuting and then reducing these sentences, the government on January 3 released two of the three prisoners as part of an amnesty to recognize Burmese Independence Day. The third person, convicted of high treason, remained imprisoned. In

February 2005, a high-level delegation representing the International Labor Organization (ILO), and charged with evaluating the attitudes of senior-level GOB authorities on the elimination of forced labor, curtailed its visit to Burma when the junta's top two leaders, SPDC Chairman Than Shwe and Vice Chairman Maung Aye, declined to meet with it.

The junta allowed UNHCR to maintain a presence in northern Rakhine State, where it provides humanitarian support and protection services to more than 230,000 Rohingya Muslims who have returned from Bangladesh. Approximately 20,000 Rohingya refugees remained in camps in Bangladesh, although another estimated 200,000 Rohingyas lived illegally in southernmost Bangladesh.

More than 144,000 Burmese ethnic minorities lived in camps along the border in Thailand. The UNHCR continued to monitor the Burmese side of the border region to assess conditions for the eventual repatriation of refugees and for the return home of internally displaced persons. In February, UNHCR concluded that current conditions are still not adequately safe for the repatriation of thousands of refugees from Thailand and the return home of thousands of internally displaced persons.

The GOB's economic mismanagement, political intransigence, and repression remained the primary causes of unemployment, illegal migration, and trafficking in persons. Over one million Burmese, ethnic minorities as well as ethnic Burmans, continued to live illegally in Thailand. Burmese living illegally in neighboring countries were willing to endure an often perilous existence, working in dangerous or exploitative jobs, because they believed it was more dangerous and/or economically difficult to make a living in Burma. This became abundantly clear when the December 26 tsunami hit southern Thailand, where a number of Burmese migrants resided and worked.

There was abundant evidence that the practice of forced labor in Burma continued, although for the first time the penal code was invoked to combat the practice. The use of forced labor met the U.S. and UN definitions of trafficking in persons, and was a key factor in Burma's Tier 3 designation in the Department's 2004 TIP Report. During the year, the ILO Liaison Office in Rangoon reported to the GOB 46 cases of forced labor. As of February 2005, the GOB had responded to only 36 of these cases. In five of them, the GOB upheld the allegations and initiated criminal prosecutions against the officials involved. In 25 cases, the allegations were rejected. Of six cases involving complaints by individuals directly to the courts, three went to trial resulting in four officials sentenced to prison terms, a landmark decision marking the first application of section 374 of the penal code, which addresses the illegal imposition of forced labor. The Burmese government supported or tolerated the use of forced labor for large infrastructure projects and the Burmese Armed Forces used forced conscription to enlist porters. A February report by the UN Security Council noted the continued use of child soldiers in conflict areas both by the government and by some ethnic minority insurgent groups. The report singled out the Burmese army, the Karen National Liberation Army, and the Karenni Army as the main culprits. Some ethnic minority groups that have concluded cease-fire agreements with the government, particularly the United Wa State Army, also continued to conscript child soldiers.

UN Special Rapporteur Pinheiro continued to urge the government to release political prisoners, allow all opposition parties to participate in the National Convention, investigate the May 2003 attack on Aung San Suu Kyi, and allow an independent investigation of allegations of rape and other abuses by the Burmese military in ethnic regions. The government has not responded to any of these requests. In his October 2004 report to the UN General Assembly, Pinheiro concluded: "The situation with regard to the exercise of fundamental human rights and freedoms in Myanmar has not substantially changed, and may have even worsened."

(Environment)

The Ministry of Forestry (MOF) is responsible for overseeing the protection of the environment and the SPDC's

profitable logging operations. Logging is a source of revenue for Burma's army as well as the insurgent groups. The MOF instituted a program to increase the size of protected areas. However, the government committed few resources to support the policy and issued contradictory directives that the MOF increase foreign currency revenue from export of teak and other hardwoods. Consequently, unsustainable legal and illegal logging and illicit trade in wildlife products, much of it in border areas where ethnic minority groups have some autonomy, overwhelmed efforts to protect natural resources. Conservationists are engaged in a battle against encroaching agriculture, logging, and poaching on "protected lands."

The government focused on the commercial possibilities of eco-tourism. During the last several years, the government opened up areas in Chin State, Kachin State, Sagaing Division, and Tanintharyi Division to specially arranged eco-tourism. There were credible reports that in the promotion of some of these tourism activities the government expropriated civilian property and forced others to provide services, including transportation for tourists and their baggage.

III. Development of a Multilateral Strategy

Immediate U.S. policy objectives in Burma remained securing the release of Aung San Suu Kyi, U Tin Oo, Hkun Htun Oo, and all other political prisoners and encouraging a genuine dialogue on democratic political reform, including the re-opening of all NLD offices. The United States continued its efforts to encourage all countries with a major interest in Burma, particularly Burma's immediate neighbors China, India, and Thailand as well as other ASEAN members and Japan, to use their influence to convince the generals to take these steps, noting that future regional stability requires the SPDC to take more constructive positions on political dialogue, economic reform, and the institution of rule of law. Most countries in the region continued to express similar concerns, and agreed the SPDC must work with the democratic opposition in order to effect a smooth political transition.

The ILO has long been concerned with Burma's serious forced labor problem and its violation of its obligations under the ILO's Forced Labour Convention. In 2000, the International Labor Conference concluded the GOB had not taken effective action to deal with the use of forced labor in the country and, for the first time in its history, called on all ILO members to review their relations with Burma to ensure that they did not support forced labor. In February, a senior-level delegation representing the ILO visited Burma, and provided the junta with a list of four steps it considered important for the effective eradication of forced labor. The GOB's response, if any, will be an important indicator of the attitude of the junta and its willingness to continue to cooperate with the ILO. The United States supported the ILO's continuing close scrutiny of Burma, given the country's failure to deal effectively with its pervasive forced labor problems.

Overall U.S. policy goals included the establishment of constitutional democracy, genuine respect for human rights and religious freedom, the repatriation of refugees with monitoring by UNHCR, the return home of internally displaced persons (IDPs), cooperation in fighting terrorism, regional stability, a full accounting for missing U.S. servicemen from World War II, stemming the spread of HIV/AIDS, combating trafficking in persons, ending forced labor, and increased cooperation in eradicating the production and trafficking of illicit narcotics. During the reporting period, however, GOB cooperation with us on WWII remains recovery operations and an annual joint opium yield study decreased from previous years.

We will continue to urge the international community to support the UN Secretary General in his efforts to start genuine talks on a political transition in Burma. The United States co-sponsored the annual human rights resolution on Burma at the 2004 UN General Assembly and the annual Burma resolution at the 2004 UN Commission on Human Rights, both of which were adopted by consensus. The Secretary of State again designated Burma as a "Country of Particular Concern" in September 2004 for its particularly severe violations of religious freedom.

The United States maintained extensive sanctions on Burma. These measures include an arms embargo, bans on new investment and imports, an asset freeze, and a prohibition on the exportation of financial services to Burma and the provision of financial assistance to the GOB. The Department of State maintained visa restrictions on SPDC members; Government ministers and other senior Burmese Government officials; military officers above the rank of Colonel; all officials of the Union Solidarity and Development Association (USDA); civil servants above the rank of Director General; and managers of state-owned enterprises. The visa restrictions covered the immediate family members for all the categories of individuals listed above. Although the EU imposed a number of sanctions that parallel U.S. sanctions, no other country joined the United States in adopting bans on investment and imports, or a prohibition on the exportation of financial services. The EU strengthened its sanctions in October 2004 to include a ban on extending credit to a list of Burmese state-run enterprises and a more restrictive visa ban. The EU also called on its member states to vote against assistance to Burma by international financial institutions, though they were not required to do so. In advance of the October 8-9 ASEM Summit in Hanoi, the U.S. strongly urged the EU to oppose Burmese participation. Under a compromise hammered out between the EU and East Asian participants, Burma was allowed to become a member, but its participation in Hanoi was at a lower level of representation than other countries.

U.S. sanctions will be maintained until there is significant progress toward political transition and genuine respect for human rights or until a democratically elected government in Burma requests that they be lifted. In 2004-2005, we provided \$2 million to address the growing HIV/AIDS epidemic in Burma by funding international non-governmental organizations to undertake prevention and care activities; no assistance is provided to the government through this program. We also seek a greater commitment to more effective prevention, treatment, and care programs, including for pregnant mothers and high-risk groups. In addition, the Global Fund to Fight AIDS, Tuberculosis and Malaria - which receives one-third of its funding from the USG - has made grant commitments totaling \$35 million over two years to fight the three diseases. These funds are intended to be provided to non-governmental organizations.

The Burmese government provided cooperation on counterterrorism issues, ratifying two additional UN conventions in 2004, and the United States noted the GOB's growing cooperation with states of the region on narcotics issues.

Thus far in FY05, we are using funding appropriated by Congress to develop programs in support of democracy and human rights inside Burma, as well as democracy, human rights, social, feeding, health, educational, and governance-related programs outside Burma. None of these funds are disbursed to or through the Burmese government.

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