

Burma's 2015 Parliamentary Elections: Issues for Congress

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Summary

The landslide victory of Aung San Suu Kyi's National League for Democracy (NLD) in Burma's November 2015 parliamentary elections may prove to be a major step in the nation's potential transition to a more democratic government. Having won nearly 80% of the contested seats in the election, the NLD has a majority in both chambers of the Union Parliament, which gave it the ability to select the President-elect, as well as control of most of the nation's Regional and State Parliaments.

Burma's 2008 constitution, however, grants the Burmese military, or Tatmadaw, widespread powers in the governance of the nation, and nearly complete autonomy from civilian control. One quarter of the seats in each chamber of the Union Parliament are reserved for military officers appointed by the Tatmadaw's Commander-in-Chief, giving them the ability to block any constitutional amendments. Military officers constitute a majority of the National Defence and Security Council, an 11-member body with some oversight authority over the President. The constitution also grants the Tatmadaw "the right to independently administer and adjudicate all affairs of the armed services," and designates the Commander-in-Chief of Defence Services as "the 'Supreme Commander' of all armed forces," which could have serious implications for efforts to end the nation's six-decade-long, low-grade civil war.

For Congress and the Obama Administration, the election results and a transition period that will last several months raise a number of questions for U.S. policy toward Burma. To what extent does the election and formation of an NLD-led government constitute the partial achievement of the U.S. goal to see a civilian democratically elected government in Burma? Under what conditions and when should the Obama Administration and/or Congress consider relaxing or revoking existing restrictions on relations with Burma? Should the Obama Administration or Congress undertake any new programs or activities in Burma, and if so, at what stage in the transition process? Congress gave one indication of its answers to these questions in December 2015 when it passed the Consolidated Appropriations Act, 2016 (P.L. 114-113), which continued some restrictions on U.S. relations with Burma, while requiring new forms of engagement.

A new NLD-led government may not be fully in place before summer 2016. The new Union Parliament took office in early February, and on March 15 selected Htin Kyaw as the nation's next President. The President-elect is to be sworn into office on March 30, 2016, and will have to appoint new Ministers for his government, as well as Chief Ministers for the nation's 14 Regions and States.

The NLD government will face great expectations from the Burmese people to address the country's more serious problems. These include a six-decade-long, low-grade civil war; serious ethnic and religious tensions (especially in Rakhine State); poor conditions for hundreds of thousands of internally displaced persons; and an inefficient and distorted economy. The new government faces the issue of cooperation with the Tatmadaw to address some of these problems; it is unclear if the Burmese military will be willing to cooperate.

What measures the Obama Administration or Congress choose to take, if any, to alter current U.S. policy toward Burma will likely depend on several factors. The first factor is how the transition process proceeds and what the new NLD-led government looks like in terms of parliamentary and ministerial leadership. Another factor is timing; a clearer picture of Burma's political situation is likely to emerge just as the United States enters into the height of its election season.

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Overview

The landslide victory of Aung San Suu Kyi's National League for Democracy (NLD) and the stunning defeat of President Thein Sein's Union Solidarity and Development Party (USDP) in Burma's nationwide parliamentary elections held on November 8, 2015, may alter the path of the country's political development. As a consequence, the Obama Administration and/or Congress may seek to adjust U.S. policies and the current approach to U.S. relations with Burma.

The NLD won control over both chambers of Burma's Union Parliament and thereby the ability to select the President and form an NLD-led government. However, Burma's 2008 constitution grants the Burmese military, or Tatmadaw, 25% of the seats in each chamber of the Union Parliament, nearly complete autonomy from civilian control, the ability to appoint key ministers, and the power to block amendments to the constitution. With these tools, the Tatmadaw may restrict the ability of an NLD-led government to enact and implement political and economic reforms. The constitution also establishes a four-month period of transition, during which the outgoing Union Parliament will have the opportunity to pass new laws, President Thein Sein may implement new policies, and the Tatmadaw may undertake new initiatives in the nation's six-decade-long civil war, that could restrict or complicate the plans of the NLD-led government.

For Congress and the Obama Administration, the election results and the length of the transition period (nearly five months) raise a number of questions regarding U.S. policy toward Burma, including:

- To what extent does the election and formation of an NLD-led government constitute the partial fulfilment of U.S. policy as stated in Section 3 of the Burmese Freedom and Democracy Act (P.L. 108-61) and Section 5 of the Tom Lantos Block Burmese JADE (Junta's Anti-democratic Efforts) Act of 2008 (P.L. 110-286) (see "Implications for U.S. Policy and Congress" below)?
- Under what conditions and when should the Obama Administration and/or Congress consider relaxing or revoking remaining restrictions on relations with Burma?
- Should the Obama Administration or Congress undertake any new programs or activities in Burma, and if so, at what stage in the transition process?
- Given Aung San Suu Kyi's anticipated leadership role in the NLD-led government, to what degree and at what stage should she be consulted in regard to U.S. policy toward Burma and U.S. assistance to the country, and should any new initiatives be contingent upon her approval?
- To what degree should the U.S. government provide support for initiatives undertaken by the Thein Sein government during the transition period, and should Aung San Suu Kyi and other NLD leaders be consulted or informed that it may be considering any such support?
- Should the U.S. government expand engagement with the Burmese military given the military's continued presence in the Union Parliament, its nearly complete autonomy from civilian control, its ongoing assaults on various ethnic armed militias, its reportedly continued abuse of the human rights of non-combatants, and its possible opposition to further political reforms?
- Should any sanctions or restrictions on individuals or entities that were waived or suspended because of their official role in the Thein Sein government be reinstated following the formation of a NLD-led government?

Congress will have a number of opportunities to weigh in on U.S. policy toward Burma in the weeks and months ahead. One vehicle used by past Congresses to set policy has been legislation imposing sanctions on Burma, such as the Burmese Freedom and Democracy Act (P.L. 108-61) and the Tom Lantos Block Burmese JADE (Junta's Anti-democratic Efforts) Act of 2008 (JADE Act; P.L. 110-286). Another vehicle has been annual appropriations legislation. The Consolidated Appropriations Act, 2016 (P.L. 114-113) contains specific language pertaining to Burma, continuing or adding restrictions on U.S. relations with the country, while requiring new forms of bilateral engagement (see text box below). At present, no stand-alone legislation on Burma has been introduced in the 114th Congress.¹ In addition, Congress could allow the Obama Administration to determine what adjustments, if any, are warranted in U.S. policies and activities in Burma in light of the 2015 parliamentary elections, without legislative direction from Congress.

Burma Provisions in the Consolidated Appropriations Act, 2016

The Consolidated Appropriations Act, 2016 (P.L. 114-113) stipulates that the executive branch implement any provisions in the act's accompanying explanatory statement, or in H.Rept. 114-154 accompanying H.R. 2772 and S.Rept. 114-79 accompanying S. 1725, "unless specifically directed to the contrary."

Provisions in the act itself:

- Section 7015(f)—Requires "regular notification procedures" to the Committees on Appropriations prior to the obligation or expenditure for Title III (bilateral economic assistance), Title IV (international security assistance), Title V (multilateral assistance), or Title VI (export and investment assistance) for Burma.
- Section 7017—Exempts funds for programs in Burma from the withholding requirement in Section 307(a) of the Foreign Assistance Act of 1961.
- Section 7033(d)—Requires the Secretary of State to provide "not later than 90 days after the enactment of this act [March 17, 2016]" a report to "the appropriate congressional committees" including an evaluation of the persecution of "the Muslim Rohingya people in Burma by violent Buddhist extremists, including whether either situation constitutes mass atrocities or genocide (as defined in section 1091 of title 18, United States Code)," and a detailed description of any proposed atrocities prevention response recommended by the Atrocities Prevention Board (APB).
- Section 7043(b)—Sets conditions on the use of bilateral economic assistance in Burma; prohibits International Military Education and Training (IMET) and Foreign Military Financing (FMF) assistance for Burma; suggests the Secretary of Treasury instruct the U.S. representatives of international financial institutions (IFIs) to support projects in Burma only if the projects meet certain standards on accountability, transparency, environmental conservation, social and cultural protection, and other factors; requires the U.S. Comptroller General to conduct an assessment of "democracy programs in Burma conducted by the Department of State and USAID" not later than 180 days [June 15, 2016] after enactment; requires prior consultation with "the appropriate congressional committees" for "any new program or activity in Burma initiated in fiscal year 2016"; allows the position of Special Representative and Policy Coordinator for Burma to remain vacant for fiscal year 2016; and make the U.S. "Chief of Mission in Burma," in consultation with the State Department's Assistant Secretary for the Bureau of Democracy, Human Rights, and Labor, responsible for democracy programs in Burma.

Provisions in the Explanatory Statement:

- "Assistance for Burma shall be prioritized to underserved and rural areas, and support basic education, civic education, and livelihoods programs. In addition, funds should be made available to counter narcotics abuse among youth throughout the country."

¹ Two Senate resolutions have been introduced—S.Res. 116 and S.Res. 320—specifically about Burma. The former supporting the holding of "free and fair elections in Burma," and the latter "congratulating the people of Burma on their commitment to peaceful elections." S.Res. 320 was passed (as amended) by the Senate on December 16, 2015, by unanimous consent.

- “The Secretary of State is directed to consult with the Committees on Appropriations on additional requirements should a peaceful transfer of power occur in Burma following the election held on November 8, 2015.”
- “The Act prohibits funding to any organization or individual in Burma that the Secretary of State determines and reports to the appropriate congressional committees advocates violence against ethnic or religious groups. When considering such determination, the Secretary should review the actions of Ashin Wirathu.”²

Provisions in H.Rept. 114-154:

- “The Committee recommendation provides the full amount requested for RFA and supports efforts to increase investments in video, mobile, and digital programming for Burma, Cambodia, and Vietnam.”
- “The Committee continues to support assistance for independent media in frontline states such as Afghanistan and Pakistan, countries in or emerging from transition such as Burma and Tunisia, and Ukraine and other countries of the former Soviet Union.”

Provisions in S.Rept. 114-79:

- “The Committee remains concerned with the plight of the Rohingya people in Burma and throughout Southeast Asia, and expects the Secretary of State to take vigorous bilateral and multilateral actions to protect this persecuted and vulnerable population.”
- Provides \$58.7 million for Economic Support Fund (ESF) programs in Burma.
- Provides \$1.5 million for International Narcotics Control and Law Enforcement (INCLE) programs in Burma.

The Election Results

In nationwide elections on November 8, 2015, Burma (Myanmar) elected the members of its bicameral Union Parliament and the country's 14 state and regional parliaments.³ More than 90 political parties and more than 6,000 candidates contested 168 seats in the Union Parliament's National Assembly,⁴ 323 seats in the Union Parliament's People's Assembly,⁵ and 629 seats in the 14 state and regional parliaments. According to Burma's Union Election Commission (UEC), more than 23 million people voted in the election, or about 69% of the registered voters. This was a decline from the turnout for the 2010 parliamentary elections when 77% of registered voters submitted ballots.⁶

When the UEC announced the official results on November 20, 2015, it confirmed that Aung San Suu Kyi's National League for Democracy (NLD) had won a landslide victory, winning nearly 80% of the elected seats in the People's Assembly, more than 80% of the elected seats in the

² Ashin Wirathu is a Buddhist monk who has publicly advocated for the preservation of Burma's Buddhist culture and traditions, and sees the influx of Islam as a threat to that culture and those traditions. He is closely tied to Ma Ba Tha, Burma's anti-Islam movement, and has been accused of promoting violence against Burma's Muslim minority. For more about Wirathu, see Sarah Kaplan, “The Serene-looking Buddhist Monk Accused of Inciting Burma's Sectarial Violence,” *Washington Post*, May 27, 2015.

³ Burma is divided into seven Regions—Ayeyarwady (Irrawaddy), Bago (Pegu), Magway, Mandalay, Sagaing, Tanintharyi (Tenasserim), and Yangon (Rangoon)—and seven States—Chin, Kachin, Kayah (Karenni), Kayin (Karen), Mon, Rakhine (Arakan) and Shan. In general, the ethnic Bamar are the majority of the population in the seven Regions, while the ethnic minority for which the State is named is presumed to be the majority of the population in that State. Burma also has six self-administered zones (Danu, Kokang, Naga, Palaung, Pao and Wa) and the Naypyitaw Union Territory, but these administrative areas do not have elected local parliaments.

⁴ The National Assembly, or *Amyotha Hluttaw* in Burmese, is the upper house of Burma's bicameral parliament, the *Pyidaungsu Hluttaw*. Also referred to as the House of Nationalities.

⁵ The People's Assembly, or *Pyithu Hluttaw* in Burmese, is the lower house of Burma's bicameral parliament, the *Pyidaungsu Hluttaw*. Also referred to as the House of Representatives.

⁶ RJ Vogt, “UEC Puts Election Turnout at 69 Percent,” *Myanmar Times*, December 3, 2015.

National Assembly, and more than 75% of the elected seats in the state and regional parliaments (see **Appendix**). By contrast, President Thein Sein's Union Solidarity and Development Party (USDP), which had won the 2010 parliamentary elections in a similar landslide, secured 11 seats in the National Assembly, 30 in the People's Assembly, and 76 seats in the state and regional parliaments.⁷ In addition, with the exceptions of the Arakan National Party (ANP), which focused its efforts in Rakhine State, and the Shan Nationalities League for Democracy (SNLD), which campaigned primarily in Shan State, few of the ethnic minority-based political parties won seats.

Table 1. Results of Burma's 2015 Parliamentary Elections
by assembly and by political party

	National Assembly	People's Assembly	State and Regional Parliaments
Total Seats	224	440	896
Elected Seats	168	330	673
• National League for Democracy (NLD)	135	255	496
• Union Solidarity and Development Party (USDP)	11	30	76
• Arakan National Party (ANP)	10	12	23
• Shan Nationalities League for Democracy (SNLD)	3	12	25
• Other Political Parties or Independent Candidates	9	14	39
• Vacant Seats	0	7	14
Appointed Military Seats	56	110	225

Source: Alternative ASEAN Network on Burma, *Burma Bulletin*, Issue 107, November 2015; Guy Dinmore and Wade Guyitt, "Final Results Confirm Scale of NLD Election Victory," *Myanmar Times*, November 23, 2015.

Note: For a more detailed breakdown of the election results, see the **Appendix**.

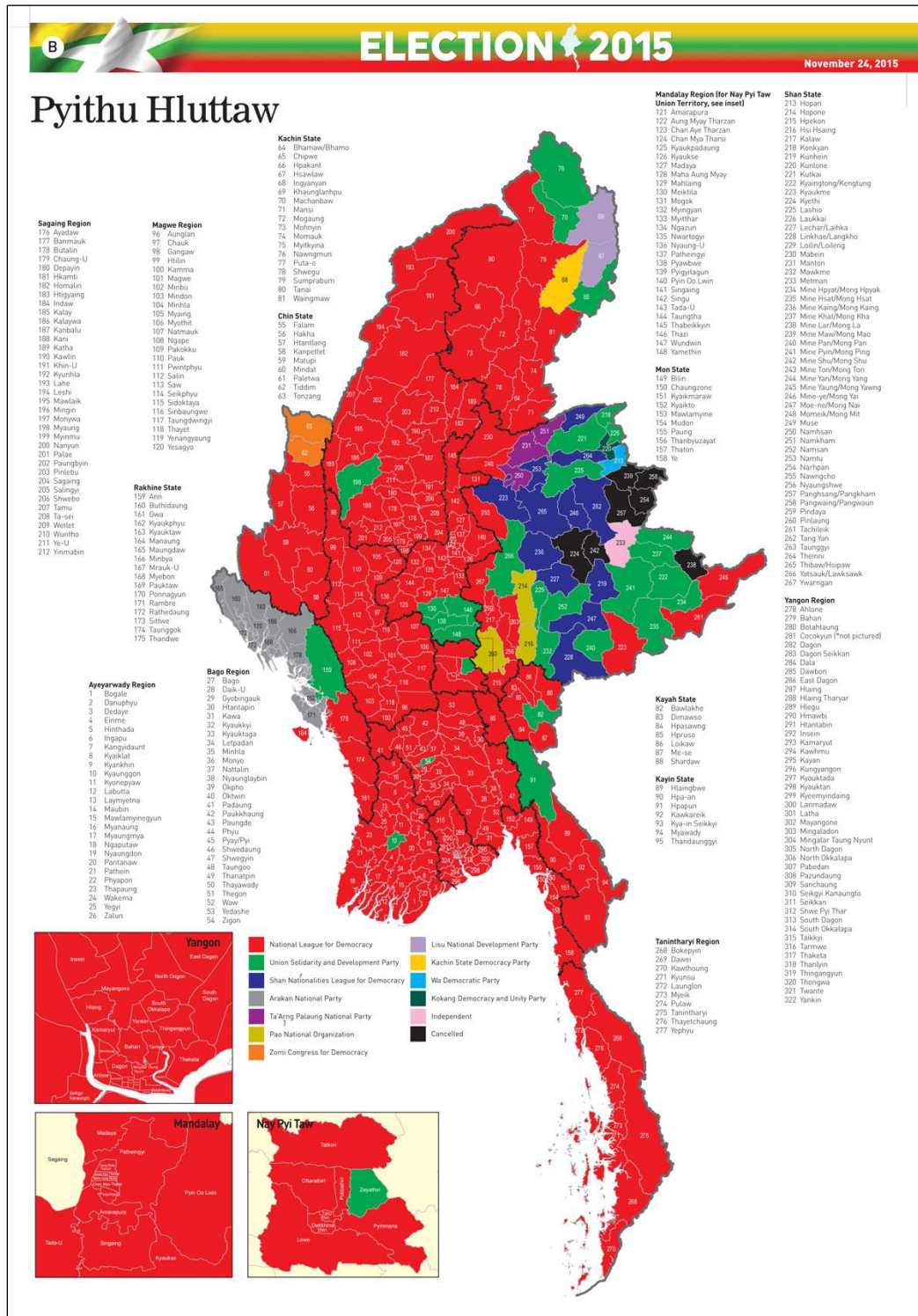
The sweeping nature of the NLD victory is apparent in maps displaying the election results for the two chambers of the Union Parliament (see **Figure 1** and **Figure 2**). With the notable exceptions of northern Rakhine State in the west, most of Shan State in the east, and northern Kachin State in the north, both maps show a nearly solid mass of red, the NLD's traditional color. The USDP's victories, shown in the party's traditional green color, are focused in eastern Shan State with scattered seats in other parts of the nation. The Arakan National Party won seats (shown in gray) in northern Rakhine State and the Shan Nationalities League for Democracy (shown in dark blue) won seats in western Shan State, reflecting their foci on the states in which their ethnic groups are concentrated. The districts shown in black in the Lower House map are the seats left vacant by the UEC reportedly because free and fair elections could not be held due to natural disasters or insufficient security in those areas.

⁷ The NLD did not participate in the 2010 parliamentary elections. For more information, see CRS Report R41447, *Burma's 2010 Election Campaign: Issues for Congress*, by Michael F. Martin.

Source: *Myanmar Times*



Figure 2. Lower House Election Results
Color-coded by Political Party



Source: Myanmar Times

Implications of the Union Parliament Results

The NLD won 60% of the total seats in the National Assembly and 58% of the total seats in the People's Assembly, giving the party an outright majority in both chambers. This gives it the ability to pass legislation without the support of either the military members of the Union Parliament or any other political party. As a consequence, the NLD is likely in a position to implement political and economic reforms, including amending and/or repealing laws that various human rights organizations have identified as restricting human rights or civil liberties.

In addition, by winning a majority of the elected seats in each chamber of the Parliament, the NLD can also nominate two of the three candidates for Burma's next President. Section 60 of Burma's 2008 constitution specifies the manner by which Burma's President is selected. It stipulates that elected members of the National Assembly will nominate one candidate and the elected members of the People's Assembly will nominate another candidate. In addition, the appointed military members of the Union Parliament will nominate a third candidate. The Union Parliament as a whole will then select one of the three candidates as President. Because the NLD has 59% of the seats in the Union Parliament, it is assumed that the NLD will also select Burma's next President.

The NLD's majority in the Union Parliament, however, is insufficient to amend the 2008 constitution without the support of some of the military members. Section 436 of the constitution requires that "more than seventy-five percent of all the representatives" of the Union Parliament must approve any constitutional amendment. The military members hold 25% of the seats, giving them an effective veto over any constitutional amendments. For 95 of the constitution's more than 450 sections, the proposed constitutional amendments will also have to be approved by a majority of all eligible voters.⁸

The election results have other possibly significant implications for Burma's future. The new Union Parliament will reportedly include over 100 ex-political prisoners, 64 women, 26 returning MPs, and no Muslims (due to UEC disqualifications⁹ and the failure of the NLD and USDP to field any Muslim candidates).¹⁰ The large number of ex-political prisoners may create some pressure to resolve the status of alleged political prisoners still in detention, as well as to revise laws that are reportedly being used to arrest and detain new political prisoners. The relative paucity of women and the lack of Muslims may hinder parliamentary efforts to address laws that supposedly discriminate against women and Muslims, such as the four "race and religion

⁸ Section 436 enumerates which provisions of the constitution require a national referendum, including the presence and number of appointed military officers in the Union Parliament, as well as the Regional and State Parliaments; the military's autonomy from civilian control or oversight; the designation of the Commander-in-Chief of the Defence Services as the "Supreme Commander of all armed forces;" the qualifications to serve as President or Vice President; the manner by which the President and Vice Presidents are selected; the members of the National Defence and Security Council; provisions governing a state of emergency; and Section 436 itself.

⁹ On September 1, 2015, the UEC rejected 17 of the 18 candidates from the predominately Muslim Democracy and Human Rights Party (DHRP), after rejecting the reelection bid of USDP candidate Shwe Maung, a Muslim Rohingya the week before reportedly because his parents were not Burmese citizens. By September 24, 2015, the UEC had disqualified 124 potential candidates. Eleven Muslim candidates were subsequently reinstated upon appeal. For more information see "Myanmar Election Body Rejects Muslim Parliamentary Candidates," *Radio Free Asia*, September 1, 2015; Ei Ei Toe Lwin, "More than 100 Scrubbed from Final Candidate List," *Myanmar Times*, September 14, 2015; and "Under Pressure on All Sides, UEC Reinstates 11 Muslim Candidates," *Myanmar Times*, September 25, 2015.

¹⁰ Alternative ASEAN Network on Burma, *Burma Bulletin*, Issue 107, November 2015, <http://www.altsean.org/Reports/Burma%20Bulletin/BBNovember15.php>.

protection laws.”¹¹ The dearth of returning members may hinder the Parliament’s efficiency, but may also provide an opportunity to adopt new and possibly more democratic procedures.

Although most of the ethnic parties failed to win seats in the Union Parliament, the NLD made a concerted effort to field ethnic candidates in the seven States in which ethnic minorities are presumed to be a majority of the population.¹² In addition, Aung San Suu Kyi and the NLD have indicated that they intend to work with like-minded ethnic parties in the Union Parliament and in forming an NLD-led government. It remains to be seen if this will provide adequate representation of ethnic interests and concerns in the future governance of Burma.

Implications of the State and Regional Parliament Results

Although the State and Regional Parliaments have limited power under the 2008 constitution,¹³ they could play an important role in the administration of land and other valuable resources, as well as serve as vehicles for expressing local views on the potential establishment of a federated government in Burma. In addition, the State Parliaments may function as a mechanism for local communication between the NLD government and the various ethnic armed groups operating in many of the States as part of a larger national reconciliation effort.

The NLD won outright majorities in all seven of the Regional Parliaments and four of the State Parliaments (Chin, Kayah, Kayin, and Mon) and almost a majority in the Kachin State Parliament (see the **Appendix**). As in the Union Parliament, in the Regional and State Parliaments where the NLD holds a majority of the seats, the appointed military members constitute the largest opposition party. However, the NLD is the second-largest party in Rakhine State (after the Arakan National Party) and the third-largest party in Shan State (after the USDP and SNLD, respectively). Section 261 of the constitution give Burma’s President the power to appoint the Chief Minister for each of the 14 Regions and States, subject to the approval of the Regional or State Parliament. As a result, while the NLD may be positioned to use Regional and State Parliaments, and the local governments, as instruments of political and economic reform in 11 or 12 regions and states, it is likely to face more challenges in Rakhine State and Shan State.

The NLD government may turn to the Regional and State Parliaments to facilitate communication and cooperation with the ethnic armed groups as part of the national reconciliation effort. As largely local ethnic representatives familiar with the local situation, Members of these Parliaments might be better situated to address the concerns and priorities of the ethnic armed groups operating within the particular Regions or States, and to advise the NLD government in Naypyitaw on possible policy options to consider.

The Regional and State Parliaments may also play an important role in the NLD government’s attempts to address two of its economic priorities—agriculture and land reform. Section 37 of the constitution states that “The Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union.” Schedule One of the constitution grants the Union Parliament authority over land administration

¹¹ For more about the four “race and region protection laws,” see Shameema Rahman and Wendy Zeldin, “Burma: Four ‘Race and Religion Protection Laws’ Adopted,” *Global Legal Monitor*, Library of Congress, September 14, 2015, <http://www.loc.gov/law/foreign-news/article/burma-four-race-and-religion-protection-laws-adopted/>.

¹² In 2014, Burma conducted its first census in 30 years with the assistance of the United Nations Population Fund. While preliminary results were released in May 2015, the ethnic and religious data has not been released. As a result, no official figures for the religious or ethnic composition of Burma were available.

¹³ Schedule Two of the constitution enumerates the powers of the State and Regional Parliaments, which largely deal with the region or state budget, land revenues and taxes, and the administration of regional or state resources.

(including town and village land); reclamation of “vacant, fallow and virgin” lands; and most natural resources. Schedule Two grants the Regional or State Parliaments authority over land revenue and some aspects of agriculture. Most of Burma’s population is involved in agriculture. However, many do not own land and, instead, survive as agricultural workers or sharecroppers for local landlords, agribusiness companies, and foreign investors.¹⁴ In order to improve the standard of living for Burma’s agricultural workers and increase agricultural productivity, the NLD government would likely have to concurrently tackle agricultural and land reform. The Regional and State Parliaments, due in part to their constitutional authority, would almost certainly become involved in this process.

The Transition of Power

Burma’s constitution and laws provide for a transition period of nearly five months. While the parliamentary election was held on November 8, 2015, the new Union Parliament did not take office until early February 2016, and selected candidates for new President and two Vice Presidents on March 10 and 11, 2016. The President-Elect, Htin Kyaw, is to take office on March 30, 2016; he will also appoint new Ministers and a new Union Election Commission, subject to the approval of the Union Parliament. Until that point, Thein Sein remains President and his Ministers remain in office.

Forming a New Government

Most of the legal framework for the transition to a new government is outlined in the 2008 constitution. Certain Burmese laws, particularly the election laws, however, also contain relevant provisions.

Following the election, the next step in the transition process is the confirmation of the election results and the resolution of any appeals submitted by candidates. Section 402 of the constitution states that the “resolutions and functions made by the Union Election Commission ... shall be final and conclusive,” including “appeals and revisions” of election results. Burma’s election law allows candidates up to 45 days after the official results have been announced to appeal. The UEC announced the final results on November 20, 2015, which gave candidates up to January 4, 2016, to officially appeal the results. The UEC reportedly received over 200 complaints about election misconduct, including at least 45 cases against the election winners.¹⁵ The majority of the cases were brought by the losing USDP candidates against NLD winners. Four months after the elections, the UEC continues to hear and render decisions on election cases.

Despite the unresolved status of some of the election cases, the members of the Union Parliament were sworn into office in early February 2016. The People’s Assembly took office on February 1, 2016, and quickly chose NLD member Win Myint as Speaker, and T-Khun Myat, an ethnic Kachin and a USDP member, as Deputy Speaker. On February 3, 2016, the National Assembly was sworn in, and chose Mahn Win Khaing Than, an ethnic Karen (Kayin) and NLD member, as Speaker, and Aye Thar Aung, an ethnic Rakhine and a member of the Arakan National Party (ANP), as Deputy Speaker.

¹⁴ For more about agriculture in Burma, see Michigan State University and Myanmar Development Resource Institute, *Strategic Choices for the Future of Agriculture in Myanmar: A Summary Paper*, July 2013.

¹⁵ Thin Lei Win and Htet Khaung Linn, “After Successful Polls, Myanmar Election Commission Deals with Disputes,” *Myanmar Now*, February 29, 2016.

One of the main orders of business for the new Union Parliament was the selection of the President and the two Vice Presidents. Section 60 of the constitution provides for the selection of the President and the two Vice Presidents by the “Presidential Electoral College,” which consists of three groups: (1) the elected members of the People’s Assembly; (2) the elected members of the National Assembly; and (3) the appointed military members of both chambers of the Union Parliament. Each group is to select one candidate for President or Vice President who meets the qualifications specified in Section 59 of the constitution, which includes Subsection (f) that in its application effectively precludes Aung San Suu Kyi being selected.¹⁶ After the three candidates have been selected, the Union Parliament as a whole then chooses one of the candidates as President by a simple majority vote, and the two other candidates become Vice Presidents.

Because the NLD won a majority of the elected seats in both chambers of the Union Parliament, it was assumed that it would select two of the three candidates, and the Burmese military would select the third candidate. With its supermajority in the Union Parliament, the NLD should also be able to select one of its two candidates to serve as President.

On March 11, 2016, the People’s Assembly chose Htin Kyaw, NLD member and close advisor to Aung San Suu Kyi, as its candidate. On the same day, the National Assembly chose Henry Van Thio, also an NLD member and an ethnic Chin, as its candidate. The military MPs selected retired Lieutenant General Myint Swe.

After the three candidates’ eligibility to serve as President (or Vice President) was confirmed by a parliamentary committee, the combined Union Parliament voted to select Burma’s next President on March 15, 2016. Htin Kyaw received 360 votes, Myint Swe received 213 votes, and Henry Van Thio received 79 votes.¹⁷ Under Burma’s constitution, Myint Swe will serve as First Vice President and Henry Van Thio will serve as Second Vice President in the new government.

Section 61 sets the term of office of the President and Vice Presidents at five years, but also indicates that the current President and Vice Presidents are to “continue their duties until the time the new President is duly elected.” President Thein Sein was selected on February 4, 2011, but

Critical Dates in Burma’s Transition

According to the Democratic Voice of Burma, the political transition in Burma will occur according to the following schedule.

11/20/2015	UEC announces election results
1/4/2016	Final date for candidates to appeal election results
2/1/2016	Members of 2 nd People’s Assembly sworn in
2/3/2016	Members of 2 nd National Assembly sworn in
3/11/2016	Selection of candidates for President and Vice President
3/14/2016	Htin Kyaw selected as President-Elect
3/21/2016	President-Elect proposes new ministerial structure for cabinet
3/24/2016	President-Elect nominates new ministers
3/25/2016	Union Parliament confirms new ministers
3/28-29/2016	New ministers sworn into office
3/30/2016	End of term of President Thein Sein; possible date for swearing in of new President
3/31/2016	President Htin Kyaw addresses Union Parliament

Source: “Three Presidential Candidates Cleared for Final Vote,” *Democratic Voice of Burma*, March 14, 2016.

¹⁶ Section 59(f) requires that the candidate “himself, one of the parents, the spouse, one of the legitimate children or their spouses not owe allegiance to a foreign power, not be subject of a foreign power or citizen of a foreign country. They shall not be persons entitled to enjoy the rights and privileges of a subject of a foreign government or citizen of a foreign country.” Aung San Suu Kyi’s deceased husband was British, and their two sons are also British.

¹⁷ “Htin Kyaw Confirmed as Next President in History-Making Vote,” *Irrawaddy*, March 15, 2016.

was not sworn into office until March 30, 2011. Htin Kyaw reportedly will be sworn into office on March 30, 2016.

As President-Elect, Htin Kyaw nominates the Union Ministers of the executive branch (subject to the approval of the Union Parliament), as well as the Chief Ministers (the chief executive official) for each of the seven regions and seven states (subject to the approval of the Region or State Parliament).

On March 22, 2016, Htin Kyaw submitted the names of 18 people, including that of Aung San Suu Kyi (see “The Role of Aung San Suu Kyi” below), to serve as the 21 Union Ministers; the Union Parliament confirmed all 18 nominees on March 24, 2016. For

Burma's President-Elect Htin Kyaw

Htin Kyaw, 69, is an NLD member and reportedly a trusted childhood friend of Aung San Suu Kyi. His father-in-law, U Lwin, was a co-founder of the NLD; his wife, Su Su Lwin, is a Member of Parliament. He has a Master's degree in economics from Rangoon University and studied computer science at the University of London. Htin Kyaw is reportedly of mixed Bamar-Mon heritage. He also is a senior executive with Aung San Suu Kyi's charity, the Daw Khin Kyi Foundation. He has never served in the Burmese military.

the Ministers of Border Affairs, Defence, and Home Affairs, the President must choose “suitable Defence Services personnel” from a list nominated by the Commander-in-Chief. On March 24, 2016, Commander-in-Chief Min Aung Hlaing announced Lieutenant General Swin Win as his nominee for Defence Minister, Lieutenant General Kyaw Swe as Minister of Home Affairs, and Lieutenant General Ye Aung as Minister of Border Affairs.

On March 3, 2016, NLD central executive committee member Win Htein reportedly said that all 14 Chief Ministers will be NLD members.¹⁸ On March 28, 2016, the NLD announced 13 of the 14 nominees for Chief Ministers, all of which are NLD members.¹⁹ The nominee for Chief Minister for Kachin State was not announced. The selection of NLD member Nyi Pu as Chief Minister for Rakhine State reportedly has upset the Arakan National Party, which had hoped to have one of its members selected as Chief Minister (see “Ethnic and Religious Relations” below).

The Role of Aung San Suu Kyi

During the 2015 campaign, Aung San Suu Kyi repeatedly stated that if the NLD won, she would be “above the President,” and would “run the government.”²⁰ Following the NLD's victory, she remained circumspect about her role in the future NLD-led government. She held meetings with current President Thein Sein, Commander-in-Chief Senior General Min Aung Hlaing, and the head of Burma's last military junta, retired Senior General Than Shwe, following which each official reportedly accepted her future role as leader of the NLD-led government.²¹

Following the election, there was some speculation about finding a process by which Aung San Suu Kyi could be selected as President. Under Chapter XII of the constitution, the Union Parliament would have to amend Section 59(f) and then a majority of Burma's eligible voters would have to approve the amendment in a nationwide referendum. Given the amount of time

¹⁸ San Yamin Aung, “All Chief Ministers to be from NLD: Win Htein,” *Irrawaddy*, March 3, 2016.

¹⁹ “NLD Govt Announces 13 New Chief Ministers; Angers Rakhine Party,” *Myanmar Now*, March 28, 2016.

²⁰ Anthony Kuhn, “Aung San Suu Kyi's Lofty Goal in Myanmar: To Be ‘Above’ the President,” *National Public Radio*, November 7, 2015.

²¹ According to Than Shwe's grandson, the ex-junta leader said following his meeting with Aung San Suu Kyi, “It is the truth that she will become the future leader of the country.” (James Hookway and Myo Myo, “Aung San Suu Kyi Meets With Myanmar's Former Ruler, Than Shwe,” *Wall Street Journal*, December 6, 2015.)

between the election and the formation of the Presidential Electoral College, this was considered unlikely.

Another option reportedly under discussion involved the Union Parliament “suspending” Section 59(f) to allow the selection of Aung San Suu Kyi as President.²² Although the 2008 constitution contains no provision for “suspending” portions of the constitution, past Burmese constitutions did. The idea of a suspension of Section 59(f) reportedly has gained some support in the Burmese military and the USDP, who may prefer to have Aung San Suu Kyi in the formal role as President than to have her in an informal role as “leader of the country.”

Aung San Suu Kyi and Commander-in-Chief Min Aung Hlaing met three times after the elections, but apparently were unable to agree on terms that would allow Aung San Suu Kyi to serve as President. Less than a week after his third meeting with Aung San Suu Kyi, Commander-in-Chief Min Aung Hlaing told reporters that the 2008 constitution should be amended “at an appropriate time,” and as a result, “[W]e can understand that suspension or amending any constitutional provisions can’t be expected at the moment.”²³ On March 1, 2016, the Union Parliament announced that the date for selecting candidates for President and Vice President, previously scheduled for March 17, was being moved up to March 10, seemingly indicating that Aung San Suu Kyi and the NLD had given up their efforts to suspend or amend Section 59(f) of the constitution.²⁴

On March 22, 2016, President-Elect Htin Kyaw included Aung San Suu Kyi among the 18 people nominated to serve as Union Ministers. Although the list of nominees was not directly tied to specific ministries, it was reported in the Burmese press that Aung San Suu Kyi would serve as Foreign Minister, as well as the Education Minister, the Minister for Electric Power and Energy, and the President’s Office Minister.²⁵

Activities of the Lame Duck Parliament and President

The length of the transition period allowed time for the outgoing Union Parliament, which was controlled by the USDP, and President Thein Sein to pass new legislation and implement new policies. After the November elections, the Union Parliament passed several laws, including a supplementary budget and amendments to existing laws on judicial evidence, mining, and tariffs. It also considered a number of other laws that could have given greater powers to the Burmese military.

The Presidential Security Act, a bill introduced by the Ministry of Home Affairs on December 21, 2015, granted outgoing Presidents lifetime immunity from prosecution for any alleged crimes they may have committed while in office. Some observers have compared the bill to Article 445 of the constitution, which grants immunity to the members of Burma’s last two military juntas, the State Law and Order Restoration Council (SLORC, 1988-1997) and the State Peace and Development Council (SPDC, 1997-2011), for “any act done in the execution of their respective duties.” On its penultimate day in office, January 28, 2016, the outgoing Union Parliament passed

²² “Constitutional Suspension Raised As Possible Fix for Daw Suu Kyi Presidency,” *Frontier Myanmar*, December 10, 2015.

²³ Aung Hla Tun, “Myanmar Army Chief Pushes Against Quick Changes to Constitution,” *Reuters*, February 23, 2016.

²⁴ “Filling the Big Chair,” *Global New Light of Myanmar*, March 2, 2016.

²⁵ “Meet Burma’s Next Cabinet,” *Irrawaddy*, March 24, 2016.

the legislation, granting Thein Sein lifetime immunity, as well as protective services for the rest of his life.²⁶

Another bill discussed would have altered the administrative procedures used by Burma's National Defence and Security Council (NDSC) arguably to give more power to the Burmese military. Section 201 of the constitution establishes the NDSC, consisting of 11 members: the President, the two Vice Presidents, the Speakers of each chamber of the Union Parliament, the Commander-in-Chief, the Deputy Commander-in-Chief, the Minister for Border Affairs, the Minister for Defence, the Minister of Foreign Affairs, and the Minister of Home Affairs. The NDSC has a variety of powers under the constitution, including limited oversight of the President, especially during times of emergency. A proposed law reportedly circulating with the Union Parliament would restrict the President's ability to vote on matters before the NDSC to break a tie. Currently, the President has full voting rights. On January 5, 2016, National Assembly Speaker Khin Aung Myint told reporters that consideration of the bill would be delayed until the new Union Parliament took office.²⁷

Critics of the proposed legislation saw it as an attempt to limit the power of the future NLD President and strengthen the authority of the military.²⁸ The membership of the NDSC is tilted in favor of the military, with six members—the Commander-in-Chief, the Deputy Commander-in-Chief, the Minister for Border Affairs, the Minister for Defence, the Minister of Home Affairs, and one of the Vice Presidents—effectively under the control of or selected by the Commander-in-Chief. According to these observers, the proposed law would reduce the chances of a tie vote in the NDSC, and undermine the President's power in NDSC decisions.

A third bill considered by the outgoing Union Parliament would have transferred the Ministry of Immigration into the Ministry of Home Affairs, which is headed by a military officer effectively appointed by the Commander-in-Chief, pursuant of the 2008 constitution. President Thein Sein reportedly supported the bill, indicating that it would make national and border security more effective.²⁹ Facing opposition from the NLD, the bill was not passed before the Union Parliament dissolved on January 29, 2016.

Major Challenges Facing the New Government

Assuming that a new government takes power this spring, it will be facing several major challenges. Among the most prominent will be finding a path to end the nation's decades-long, low-grade civil war. A related challenge will be managing relations with the Burmese military, who will continue to enjoy a high degree of autonomy under the 2008 constitution, and may play the role of opposition party in the Union Parliament. Another challenge will be managing ethnic and religious relations within the country, especially in Rakhine State. Other challenges include resolving the political prisoner problem, addressing the needs of tens of thousands of internally displaced persons (IDPs), and introducing economic reforms, especially for Burma's rural and agricultural population.

²⁶ San Yamin Aung, "Outgoing Parliament Approves Presidential Protection, Immunity Bill," *Irrawaddy*, January 28, 2016.

²⁷ Nay Phyto Win, "Defense Council Bill Delayed until NLD Parliament," *Democratic Voice of Burma*, January 5, 2016.

²⁸ Htoo Thant, "New Bill Would Strengthen Military Hold over Powerful Security Council," *Myanmar Times*, December 24, 2015.

²⁹ Ei Ei Toe Lwin, "NLD Resists Expansion of Military Ministries," *Myanmar Times*, January 27, 2016.

Burma's Civil War and National Reconciliation

Burma has been embroiled in a low-grade civil war almost since it obtained its independence in 1948. The key issue underlying the conflict is the degree of autonomy afforded to the seven predominately ethnic States—Chin, Kachin, Kayin (Karen), Kayah (Karenni), Mon, Rakhine (Arakan), and Shan—in the federated Union of Burma. The 1947 Panglong Agreement (negotiated between various ethnic groups and Aung San, Aung San Suu Kyi's father and Burma's revolutionary leader) provided "full autonomy in internal administration" for the Frontier Areas (the seven ethnic States) in exchange for their agreement to join the Union of Burma. Members of several of the ethnic groups felt that Burma's central government failed to abide by the terms of the Panglong Agreement. They formed ethnic-based militias to protect themselves from what they perceived to be cultural and economic dominance. Fighting soon broke out between the Burmese militia and more than 20 different ethnic militias. One of the principal reasons that the Burmese military stated for seizing power in 1962 was to preserve the integrity of the Union of Burma. Over the next 40-plus years, Burma's military junta alternated between fighting the various ethnic militias and negotiating bilateral ceasefires. As a result, a deep-seated mistrust has developed between the Tatmadaw and many of the ethnic militias.

In the months prior to President Thein Sein's assuming office in April 2011 and soon thereafter, the Burmese military broke several bilateral ceasefires, including a 17-year-old agreement with the Kachin Independence Army (KIA). President Thein Sein, however, established a committee, the Union Peace Working Committee (UPWC), in August 2011 to negotiate new bilateral ceasefire agreements with various ethnic organizations and their militias. By the end of 2012, bilateral ceasefire agreements had been concluded with 14 of the ethnic organizations, but not with some of the larger groups, such as the KIA and the United Wa State Army (UWSA).

In June 2013, the Thein Sein government shifted the UPWC's focus to negotiating a nationwide ceasefire agreement (NCA) with all of the ethnic organizations with active militias. Seventeen of the ethnic organizations formed the National Ceasefire Coordination Team (NCCT) to discuss terms of the NCA. After more than two years of negotiations, the Thein Sein government signed a ceasefire agreement on October 15, 2015, with 8 of 21 ethnic organizations which had expressed interest in the proposed NCA.³⁰ Since then, the Thein Sein government has attempted to move forward with the peace negotiations timeline specified in the so-called NCA. The non-signatory ethnic groups and a number of Burmese civil society organizations have so far boycotted the peace negotiations held since the so-called NCA was signed.

Reports indicate that, since October 15, 2015, the Burmese military has initiated military assaults against several of the non-signatory ethnic militias and at least one signatory militia. Fighting has occurred between Burmese military and non-signatories the Arakan Army (AA), the KIA, Shan State Army-North and the Ta'ang National Liberation Army (TNLA), as well as the signatory Shan State Army-South. Commander-in-Chief Senior General Min Aung Hlaing has reportedly referred to the ongoing fighting as "a just war for our citizens and the Tatmadaw [Burma's military]."³¹ On January 8, 2016, the government-run newspaper, the *Global New Light of Myanmar*, reported that the Tatmadaw had announced that it would continue its offensive attacks against the Arakan Army until "the area is cleared of all insurgents."³²

³⁰ For more about the October 15, 2015 ceasefire agreement, see CRS Insight IN10374, *Less-than-Nationwide Ceasefire Agreement Signed in Burma*, by Michael F. Martin.

³¹ Tin Htet Paing and Saw Yan Naing, "Army Chief Defends Civil War as a 'Just War,'" *Irrawaddy*, January 5, 2016.

³² "Tatmadaw Aims to Remove AA Insurgents from Rakhine State," *Global New Light of Myanmar*, January 8, 2016.

In a speech given on Burma's Independence Day (January 4), Aung San Suu Kyi said the peace process will be the first priority of the new NLD-led government, once it has assumed power.³³ She also indicated that the aim will be for an "all-inclusive ceasefire agreement." In the same speech, Aung San Suu Kyi stated that "there will be a more effective peace conference that will bring all groups to the nationwide ceasefire agreement that is already signed by some groups."³⁴ In previous speeches, she has called for a "second Panglong conference." Sources close to her say that she has a personal commitment to fulfill her father's vision of a unified and peaceful Burma.

Relations with the Burmese Military

Since the NLD won seats in the 2012 parliamentary by-elections,³⁵ Aung San Suu Kyi appears to have made a concerted effort to foster good relations with the Burmese military. She has met with Commander-in-Chief Min Aung Hlaing on three occasions, as well as once with retired Senior General Than Shwe, the SPDC's chairman and supreme leader. According to Than Shwe's grandson, Than Shwe said during his meeting with Aung San Suu Kyi, "It is the truth that she will become the future leader of the country. I will support her with all my efforts."³⁶ The statement led to speculation that the Burmese military and Aung San Suu Kyi may have brokered a deal whereby she could become President.

Despite her meetings with Than Shwe and Min Aung Hlaing, Aung San Suu Kyi and the NLD face serious challenges in managing relations with the Burmese military. Given the election results, the appointed military members of the Union Parliament will effectively be the largest opposition bloc in both the People's Assembly and the National Assembly. While some military members have shown some autonomy on proposed legislation in the past, they have generally voted as a block on bills of particular interest to the Tatmadaw and its leaders. In addition, the military members of the Union Parliament will continue to have an effective veto power over any constitutional amendments, thereby making it difficult for the NLD-led government to alter Burma's governance structure significantly.

Under the constitution, the Burmese military operates with almost complete autonomy from the Union Parliament and the President. Article 6(f) stipulates that one of the objectives of the nation is "enabling the Defence Services [the Tamadaw, or Burmese military] to be able to participate in the National political leadership role of the State." Article 20 grants the Tatmadaw "the right to independently administer and adjudicate all affairs of the armed services," and designates the Commander-in-Chief of Defence Services as the "Supreme Commander" of all armed forces. In addition to appointing 25% of the members to each chamber of the Union Parliament, the Commander-in-Chief recommends to the President persons to serve as Minister for Border Affairs, Defence, and Home Affairs; those three ministries combined control all security forces within the country (including the Myanmar Police Force), and the Ministry of Home Affairs oversees the General Administration Department, which administers the nation's civil servants.

As a consequence, the NLD-led government may experience problems in securing explicit or tacit support from the Burmese military for implementing its policy goals and objectives. The Tatmadaw may choose to continue its military operations against some of the ethnic militias, which could undermine efforts to move forward the peace process. Burma's military leaders may

³³ Hnin Yadana Zaw, "Suu Kyi Says Peace Process Will Be Government's Priority," *Irrawaddy*, January 4, 2016.

³⁴ Lum Min Mang, "NLD Leaders Outlines Plans for Expanded Peace Process," *Myanmar Times*, January 5, 2016.

³⁵ For more about the by-elections see CRS Report R42438, *Burma's April Parliamentary By-Elections*, by Michael F. Martin.

³⁶ "Former Myanmar Dictator Backs Aung San Suu Kyi 'with All of My Efforts'—Report," *The Guardian*, December 5, 2015.

instruct the appointed military Members of Parliament to vote against proposed constitutional amendments, which would prevent governance changes sought by the NLD. In addition, the Ministers of Border Affairs and Home Affairs may instruct their security personnel to arrest and detain individuals for what appears to be political reasons (see “Political Prisoners”). Unless Aung San Suu Kyi and the NLD can negotiate common ground with the Burmese military, they may lack the ability to implement the political and economic reforms they desire.

One early sign of potential tension between the NLD and military Members of Parliament (MPs) occurred on February 26, 2016. An NLD MP tabled a motion in the People’s Assembly questioning the supposedly rapid sale by the previous Union Parliament of state-owned lands for military projects in various parts of Burma, including the controversial Letpadaung copper mine, where local residents protesting the sale of their farm land were violently assaulted by the Myanmar Police Force in November 2012, and again in December 2014.³⁷ After the motion was introduced, all the military MPs stood up in unison, while one of them protested the measure. The measure eventually passed, but was rejected by the military MPs.³⁸

The selection of Myint Swe as the military’s candidate for President, and his subsequent election as First Vice President, may be another signal of future trouble in relations between the NLD-led government and the Tatmadaw. Myint Swe, 65, was a career Army officer who rose to the rank of lieutenant general and is considered a close associate to retired Senior General Than Shwe, the leader of Burma’s last military junta, the State Peace and Development Council (SPDC). Myint Swe reportedly played a central role in the January 2012 ouster of SPDC Prime Minister General Khin Nyunt, the person who announced Burma’s “seven step roadmap to a disciplined democracy” in 2003. Khin Nyunt was succeeded by General Thein Sein as the SPDC’s Prime Minister. Myint Swe is on the U.S. Department of Treasury’s Specially Designated Nationals (SDN) list of persons subject to certain economic sanctions. He also presumably would be on the State Department’s list of Burmese nationals not to be granted a visa to enter the United States; however, the State Department does not make this list publicly available. Many view Myint Swe as an anti-reform hardliner, and he is likely to resist NLD efforts to reduce the military’s role in Burma’s government.

Ethnic and Religious Relations

Since 2011, ethnic and religious tensions inside Burma have increased, periodically flaring into civil unrest and overt violence against certain ethnic and religious minorities. No group has suffered more during this period of ethnic and religious tensions than the Rohingya, a predominately Muslim minority living in Rakhine State.³⁹ According to some observers, Burma’s ethnic and religious tensions have been enflamed by the rhetoric of the Buddhist organization, the Association for the Protection of Race and Religion, or, as it is more commonly known, Ma Ba Tha, an acronym based on the organization’s name in Burmese.

Ma Ba Tha, and its nominal leader, Wirathu, a Buddhist monk, have organized a national campaign to protect and preserve the practice of Theravada Buddhism in Burma from an alleged threat from Islam, which they say is being promoted by various ethnic minorities, including the Rohingya. In 2015, Ma Ba Tha successfully lobbied the Union Parliament and President Thein

³⁷ For more about the Letpadaung protests, see Amnesty International, *Myanmar: Letpadaung Mine Protesters Still Denied Justice*, November 27, 2015.

³⁸ Yen Snaing, “Military MPs Stand Up to Copper Mine Criticism,” *Irrawaddy*, February 26, 2016.

³⁹ For an account of violence against the Rohingya in 2012, see CRS Report R43132, *Human Rights, Civil Unrest, and Political Reform in Burma in 2013*, by Michael F. Martin.

Sein to pass and approve four laws collectively known as the “race and religion protection laws.” Many analysts contend that these laws curtail the rights of Muslims in Burma.⁴⁰ Some observers claim that Ma Ba Tha advocates violence against Burma’s Muslims, and supports the deportation of the Rohingya (which Ma Ba Tha and the Thein Sein government refer to as “Bengalis”) to Bangladesh.⁴¹ Wirathu and Ma Ba Tha deny that they advocate violence.

Ethnic and religious relations are strained across various parts of Burma. As described above (see “Burma’s Civil War and National Reconciliation”), active fighting continues between the Burmese military and ethnic militias in Kachin, Rakhine, and Shan States, and has resulted in the internal displacement of tens of thousands of people.

In Rakhine State, over 100,000 people remain in resettlement camps the government says are temporary, with inadequate access to water, food, medical care, employment, and education.⁴² In summer 2015, thousands of Rohingya attempted to leave Burma by sea, precipitating a regional refugee crisis.⁴³ While the number of people seeking to leave Burma from Rakhine State appears to have declined, some analysts are concerned that the flow may again rise if conditions for the Rohingya in Rakhine State do not improve.

Addressing Burma’s ethnic and religious tensions may be difficult for the NLD-led government. The new Union Parliament will have fewer members from ethnic political parties than the outgoing Union Parliament, and no Muslim members (the outgoing Union Parliament has three self-identified Muslims). Although the NLD members elected in the various ethnic States are largely members of the local ethnic minorities, some observers are concerned that they will favor party interests over ethnic interests.

The situation may be especially serious in Rakhine State, where the Arakan National Party (ANP), an ethnic political party formed to represent the interests of the predominately Buddhist Rakhine (or Arakan), won a majority of the State’s seats in both the National Assembly and the People’s Assembly, as well as a majority of the seats in the Rakhine State Parliament. The ANP has reportedly applied pressure on the NLD to appoint someone from the ANP to serve as Chief Minister for Rakhine State. The lack of Muslim Members of Parliament and the strong presence of the ANP in the Union Parliament is a development of considerable concern to Rohingya. The appointment of an ANP member or a Rakhine as Chief Minister could result in an increase in Rohingya seeking to leave Burma by boat. On March 24, 2016, the NLD chose Nyi Pu, an NLD member, as Chief Minister. Aung San Suu Kyi is reportedly meeting with ANP leaders to discuss the selection of Nyi Pu.

Political Prisoners

When Burma’s military junta, the State Peace and Development Council (SPDC), transferred power to the Thein Sein government in March 2011, an estimated 2,000 Burmese nationals were incarcerated for allegedly political reasons. Over the next five years, President Thein Sein, using authority granted by the 2008 constitution and Burmese laws, pardoned or provided amnesty for

⁴⁰ For more about the four laws, see Shameema Rahman and Wendy Zeldin, “Burma: Four ‘Race and Religion Protection Laws’ Adopted,” Law Library of Congress, September 14, 2015.

⁴¹ For more about Ma Ba Tha, see Jonah Fisher, “Myanmar’s Ma Ba Tha Monks Flex Their Political Muscle,” *BBC*, October 8, 2015.

⁴² For the U.N.’s assessment of conditions for Rohingya IDPs in Rakhine State, see United Nations, *Situation of Human Rights in Myanmar*, A/70/412, October 6, 2015.

⁴³ For more about the Rohingya—and Bangladeshi—exodus of 2015, see CRS Insight IN10283, *Crisis in the Bay of Bengal and the Andaman Sea: Plight of the Rohingyas and Bangladeshis*, by Michael F. Martin and Rhoda Margesson.

nearly 2,000 political prisoners.⁴⁴ In a speech given at Chatham House in London on July 15, 2013, he said:

Thousands of prisoners have been freed. A special committee [the Review Committee for the Release of Remaining Political Prisoners, or RCRRPP], comprised in part of former prisoners, is working diligently to ensure that no one remains in prison due to his or her political beliefs or actions. We are reviewing all cases. I guarantee to you that by the end of this year there will be no prisoners of conscience in Myanmar.

Despite Thein Sein's "guarantee," according to the RCRRPP, 33 political prisoners remained in Burma's prisons as of January 2014.

Since then, the number of political prisoners in Burma reportedly has gradually increased. According to the Assistance Association for Political Prisoners (Burma), or AAPP(B), an independent organization founded in 2000 by ex-political prisoners, 87 were imprisoned and 409 were facing trial as of February 18, 2016.⁴⁵ Most of the prisoners in jail or awaiting trial allegedly have violated Burma's criminal code, parts of which date back to British colonial rule or the time of the military juntas.⁴⁶ Some, however, allegedly violated laws passed by the post-2011 Union Parliament and approved by President Thein Sein, such as the Peaceful Assembly and Peaceful Procession Law.

An NLD spokesperson reportedly told a major Burmese newspaper on January 5, 2016, that once in power, the NLD would set a formal definition for political prisoners, secure the release of any political prisoners, and prevent the arrest and detention of any new political prisoners.⁴⁷ Some observers, however, are unsure if the NLD will be able to prevent the arrest of new political prisoners because the Myanmar Police Force is under the authority of the Ministry of Home Affairs, whose Minister is effectively appointed by the Commander-in-Chief of the Tatmadaw.⁴⁸ In addition, a spokesperson for another independent organization of ex-political prisoners, the Former Political Prisoner Society (FPPS), reportedly expressed concern that the NLD-led government may continue the past practice of arresting people who organize protests against government policies and actions.⁴⁹

Internally Displaced Persons (IDPs)

According to the Internal Displacement Monitoring Centre (IDMC), an independent, non-governmental humanitarian organization, Burma had nearly 670,000 internally displaced persons (IDPs), mostly located in the States of Kachin, Rakhine, and Shan, as of March 2015.⁵⁰ The IDPs are principally the result of the ongoing, low-grade civil war in Kachin and Shan State, and ethnic

⁴⁴ For more information, see CRS Report R42363, *Burma's Political Prisoners and U.S. Sanctions*, by Michael F. Martin.

⁴⁵ Assistance Association for Political Prisoners (Burma), *Political Prisoner Data*, December 18, 2015, <http://aappb.org/political-prisoner-data/>.

⁴⁶ The 2008 constitution stipulates that all laws in place at the time of the transfer of power from the SPDC to the Thein Sein government would remain in effect.

⁴⁷ Ye Mon, "NLD Pledges No More Political Prisoners," *Myanmar Times*, January 6, 2016.

⁴⁸ Section 232 of the constitution stipulates that the Commander-in-Chief nominate "a list of suitable Defence Services personnel" to serve as Minister of Home Affairs (as well as Minister of Border Affairs and Minister of Defence Services), and "co-ordinate with the Commander-in-Chief of the Defence Services if he desires to appoint the Defence Services personnel."

⁴⁹ Ye Mon, "NLD Pledges No More Political Prisoners," *Myanmar Times*, January 6, 2016.

⁵⁰ Internal Displacement Monitoring Centre, *Myanmar*, March 2015, <http://www.internal-displacement.org/south-and-south-east-asia/myanmar/>.

and religious unrest in Rakhine State. In summer 2015, Cyclone Komen and heavy rains added an estimated 40,000 IDPs to the country's total, but many of them have resettled since the flooding ended.

Under the Thein Sein government, access to provide humanitarian assistance to many of Burma's IDPs has been limited for various reasons. In Kachin State and parts of Shan State, the Burmese military says it has blocked access to IDPs in areas controlled by ethnic militias because continuing fighting allegedly makes the areas unsafe for domestic and international relief efforts. As a result, the IDPs are receiving inadequate supplies of food and water, and medical care is limited and poorly equipped.

In Rakhine State, local authorities state they have constrained the provision of humanitarian assistance in order to reduce the risk of another outbreak of ethnic and religious violence. In February 2014, several international relief organizations operating in Rakhine State were attacked by largely Rakhine mobs objecting to what they perceived as preferential treatment and aid being provided to displaced Rohingya. The Thein Sein government responded to the attacks by expelling Doctors Without Borders (also known as Médecins Sans Frontières, or MSF) from Rakhine State. Several other relief agencies closed their operations in Rakhine State after the expulsion of MSF.⁵¹ After extended negotiations, MSF and the other international relief organizations have been allowed to resume their operations in Rakhine State, but access to the Rohingya in IDP camps remains limited.

The NLD-led government will be under pressure from local and international organizations to increase the provision of humanitarian assistance to Burma's IDPs, but conditions in the various States may make it difficult. Until fighting stops in Kachin and Shan States, the Burmese military is unlikely to allow a greater flow of assistance to IDPs in areas controlled by the ethnic militias. In Rakhine State, some members of the Rakhine community continue to object to the provision of assistance to the Rohingya. As previously discussed, the pro-Rakhine Arakan National Party (ANP) is the largest party in the State Parliament and is likely to resist efforts to provide aid to the Rohingya, as well.

Economic Reforms

Six decades of military rule transformed Burma from one of Southeast Asia's richest and most prosperous nations into one of the region's poorest and underdeveloped countries. Prior to March 2011, Burma's military junta transferred the ownership and control of many of the country's more valuable assets to military-owned companies (such as the Myanmar Economic Corporation, or MEC, and the Union of Myanmar Economic Holdings Limited, or UMEHL) or to companies owned by close friends to the military leaders, allegedly as part of its "privatization" effort. Other sectors largely controlled by military-owned companies or their associates are oil and natural gas, mining and natural resources, banking and finance, and port operations. Although many of these companies are reportedly corrupt and inefficient, they remain profitable in part because of the lack of competition from independent private enterprises and/or foreign companies.

Burma also suffers from serious disparities in wealth and income. Most of the nation's 53 million people live in rural areas, working in the agricultural sector.⁵² Approximately half of the

⁵¹ For more about the attacks on the international assistance organizations and their pull out from Rakhine State, see "Mobs Attack Offices of UN, Aid Groups in Myanmar's Rakhine State," *Radio Free Asia*, March 27, 2013.

⁵² According to a 2013 study sponsored by USAID, two-thirds of Burma's population works primarily in agriculture, with an average per capita income of \$200 a year. Michigan State University and Myanmar Development Resource Institute's Center for Economic and Social Development, *A Strategic Agricultural Sector and Food Security Diagnostic*

agricultural workers are landless; land ownership is highly concentrated, with domestic and foreign agribusinesses, often with ties to the Burmese military, controlling much of the nation's better farmland.⁵³ Income and wealth inequality is also comparatively high in urban Burma. In addition, the seven ethnic States are generally poorer than the seven predominately Bamar Regions.

Since the Thein Sein government took power in 2011, Burma has seen an increase in its official gross domestic product (GDP) annual growth rate from about 5% to more than 8%, but the nation's wealth and income inequality has remained high. The Thein Sein government implemented economic reforms that largely focused on promoting growth and attracting foreign investment, rather than poverty reduction or combatting corruption and inefficiency. In some cases, these economic reforms reinforced the control of the military-owned or affiliated companies over Burma's economy.

The NLD has indicated that agricultural reform, land reform, and increasing agricultural productivity will be among economic priorities for the new government.⁵⁴ Other priorities include reducing wasteful government spending, privatizing state-owned enterprises in an open and transparent manner, improving government transparency and accountability, improving the financial system, and building critical infrastructure. An economic advisor to Aung San Suu Kyi has stated that two top objectives for the NLD-led government will be "growth and jobs."⁵⁵

Implications for U.S. Policy and Congress

For more than a decade, U.S. policy toward Burma, as expressed in federal law, has been to promote the establishment of a democratically elected civilian government that respects the human rights of the Burmese people. The Burmese Freedom and Democracy Act (BFDA; P.L. 108-61) imposed numerous political and economic sanctions on Burma's militia junta, the State Peace and Development Council (SPDC) until such time that:

The SPDC has made measurable and substantial progress toward implementing a democratic government including—

- (i) releasing all political prisoners;
- (ii) allowing freedom of speech and the press;
- (iii) allowing freedom of association;
- (iv) permitting the peaceful exercise of religion; and
- (v) bringing to a conclusion an agreement between the SPDC and the democratic forces led by the NLD and Burma's ethnic nationalities on the transfer of power to a civilian government accountable to the Burmese people through democratic elections under the rule of law.⁵⁶

The Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (JADE Act; P.L. 110-286) imposed additional sanctions on Burma's military junta until the President:

for Myanmar, July 2013.

⁵³ Technically, all land in Burma is owned by the central government, according to the 2008 constitution. People and companies, however, can obtain use rights to land from the government.

⁵⁴ Clare Hammond, "Revealed: NLD's Economic Plan," *Myanmar Times*, August 15, 2015.

⁵⁵ Wharton School, University of Pennsylvania, *What Will an NLD Government in Myanmar Mean for Business?*, November 16, 2015.

⁵⁶ P.L. 108-61, Section 3(a)(3)(B).

determines and certifies to the appropriate congressional committees that the SPDC has—

- (1) unconditionally released all political prisoners, including Aung San Suu Kyi and other members of the National League for Democracy;
- (2) entered into a substantive dialogue with democratic forces led by the National League for Democracy and the ethnic minorities of Burma on transitioning to democratic government under the rule of law; and
- (3) allowed humanitarian access to populations affected by armed conflict in all regions of Burma.⁵⁷

Burma's long post-election transition period and the uncertain status of the new NLD-led government's relations with the Burmese military present challenges for the Administration as it formulates U.S. policy toward Burma and for Congress as it considers its role in shaping and conducting oversight of that policy. Perhaps as a reflection of these challenges and uncertainty, the Consolidated Appropriations Act, 2016 (P.L. 114-113) leaves in place many of the provisions in past appropriations legislation (such as the prohibition on IMET and FMF assistance to Burma), while addressing some selected issues (such as the treatment of the Rohingya).

A number of factors are likely to influence what changes, if any, the Obama Administration and/or Congress may make in current U.S. policy toward Burma. These include:

- Whether legislation the outgoing Union Parliament enacted is consistent with U.S. policy objectives, and whether such legislation helps or hinders the ability of the NLD-led government to implement political and economic reforms;
- Whether executive actions outgoing President Thein Sein may undertake before he leaves office bolster the authority of the NLD-led government or of the Burmese military;
- What the relationship between Aung San Suu Kyi and Burma's new President, Htin Kyaw, will be;
- How the Burmese military conducts itself during the transition period and after the NLD-led government takes power, including what military actions it may take against ethnic militias, as well as its position with respect to Burma's peace process;
- How Aung San Suu Kyi and the NLD-led government pursue the peace process, and whether their approach obtains the cooperation of all the ethnic organizations with militias, other political parties, civil society, and the Burmese military;
- What actions the NLD-led government takes to address Burma's ethnic and religious tensions, and in particular, the treatment of the Rohingya in Rakhine State; and
- What economic reforms the NLD-led government identifies as its priorities, and the role it would like to see the United States and other donor nations play in the economic reform process.

U.S. policy toward Burma in the past often regarded U.S. interests as being aligned with certain key individuals. Past legislation on Burma made reference to specific Burmese nationals. The JADE Act, for example, requires the unconditional release of all political prisoners, including Aung San Suu Kyi and other NLD members, as a necessary condition to terminate sanctions.

⁵⁷ P.L. 110-286, Section 5(h).

Following the SPDC's transfer of power to the Thein Sein government, the Obama Administration also appeared to align U.S. policy with specific individuals, such as President Thein Sein, Aung San Suu Kyi, and "reformers both inside and outside of government."⁵⁸

Some critics, however, have taken issue with the notion of President Thein Sein as a "reformer."⁵⁹ These critics point out that the political and economic reforms that took place in Burma between 2011 and 2015 were consistent with the seven-step roadmap to a "disciplined, flourishing democracy" spelled out by General Khin Nyunt on August 30, 2003, and supported by the SPDC.⁶⁰ According to these critics, the reforms undertaken by the Thein Sein government sought to maintain military control over the nation's government while providing limited civilian participation via largely democratic elections, in order to obtain the removal of U.S. sanctions placed on Burma, as well as obtain U.S. assistance to reinforce and maintain the political and economic power of the military.

Looking ahead to the rest of 2016 and beyond, the contours of U.S. policy in Burma, and the actions Congress may take to help shape that policy, may depend in part on whether Members and Administration officials continue to regard U.S. interests as aligned with certain key individuals, who may or may not always take positions on issues that the United States favors. Alternatively, Congress may examine U.S. policy in terms of U.S. objectives and goals, including those expressed in past legislation, and determine by what means to effectively achieve those goals.⁶¹

Another factor that may influence U.S. policy toward Burma in 2016 is time. As discussed previously, the NLD-led government is unlikely to assume power until the end of April, and it will take at least several weeks for the President to appoint and the Union Parliament to confirm ministers and government officials. As such, a fully operational NLD-led government and Union Parliament probably will not be in place until May or June of 2016. Given that it is an election year in the United States and the current Administration is in its final months, how much time and attention Congress or the Obama Administration may devote to developing and implementing changes in U.S. policy toward Burma remains unclear. Congress has only a limited number of days left this year to consider legislation, and the Obama Administration has only its remaining months in office to revisit U.S. policy on Burma if it chooses to do so, and if necessary, to secure congressional support for any proposed changes.

⁵⁸ See, for example, the written testimony of Assistant Secretary of State Kurt M. Campbell to the House Committee on Foreign Affairs Subcommittee on East Asian and Pacific Affairs in April 2012. U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Asia and the Pacific, *Oversight of U.S. Policy Toward Burma*, 112th Cong., 2nd sess., April 25, 2012.

⁵⁹ For example, Burma scholar and journalist, Bertil Lintner, has written several articles criticizing the Obama Administration and others for overstating the commitment of Burma's military and President Thein Sein to genuine political reform. See, for example, Bertil Lintner, "The Ex-Pariah," *Politico*, March/April 2014.

⁶⁰ At the time, General Khin Nyunt was the SPDC's Prime Minister. In October 2004, he was arrested, removed from office, and replaced by General Thein Sein. In July 2005, General Khin Nyunt was tried by a special tribunal for corruption, and sentenced to 44 years in prison.

⁶¹ The written testimony of Assistant Secretary of State Daniel Russel to the House Committee on Foreign Affairs Subcommittee on East Asian and Pacific Affairs in October 2015 may be an example of such an approach. See U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Asia and the Pacific, *Burma's Challenge: Democracy, Human Rights, Peace, and the Plight of the Rohingya*, 114th Cong., 1st sess., October 21, 2015.

Appendix. Detailed Breakdown of Election Results

This appendix provides a more detailed breakdown of the 2015 election results for each chamber of the Union Parliament, as well as each of the 14 Regional and State Parliaments.

Table A-1. National Assembly

Political Party	Seats
National League for Democracy	135
Union Solidarity and Development Party	12
Arakan National Party	10
Shan Nationalities League for Democracy	3
Zomi Congress for Democracy	2
Mon National Party	1
National Unity Party	1
Pao National Organization	1
Ta-arng (Paluang) National Party	1
Independents	2

Source: Alternative ASEAN Network on Burma, *Burma Bulletin*, Issue 107, November 2015; Guy Dinmore and Wade Guyitt, "Final Results Confirm Scale of NLD Election Victory," *Myanmar Times*, November 23, 2015.

Table A-2. People's Assembly

Political Party	Seats
National League for Democracy	255
Union Solidarity and Development Party	30
Arakan National Party	12
Shan Nationalities League for Democracy	12
Pao National Organization	3
Ta'ang (Paluang) National Party	3
Lisu National Development Party	2
Zomi Congress for Democracy	2
Kachin State Democracy Party	1
Kokang Democracy and Unity Party	1
Wa Democratic Party	1
Independent	1

Source: Alternative ASEAN Network on Burma, *Burma Bulletin*, Issue 107, November 2015; Guy Dinmore and Wade Guyitt, "Final Results Confirm Scale of NLD Election Victory," *Myanmar Times*, November 23, 2015.

Notes: Seven seats left vacant.

Table A-3. Regional and State Parliaments

seats by political parties

Regional Parliaments							
Political Party	Ayeyarwady	Bago	Magway	Mandalay	Sagaing	Tanintharyi	Yangon
National League for Democracy	49	54	50	47	68	20	87
Union Solidarity and Development Party	3	2		8	5		3
Democratic Party (Myanmar)				1			
Tai-Leng Nationalities Development Party					1		
Military	18	19	17	19	25	7	31
State Parliaments							
Political Party	Chin	Kachin	Kayah	Kayin	Mon	Rakine	Shan
National League for Democracy	12	26	11	13	19	9	21
Union Solidarity and Development Party	4	7	4	3	1	3	32
Arakan National Party						22	
Shan Nationalities League for Democracy		1					25
All Mon Regions Democracy Party					1		
Kachin State Democracy Party		3					
Kayin People's Party				1			
Kokang Democracy and Unity Party							1
Lahu National Development Party							1
Lisu National Development Party		2					
Mon National Party					2		

State Parliaments							
Political Party	Chin	Kachin	Kayah	Kayin	Mon	Rakine	Shan
Pao National Organization							6
Ta'ang (Palaung) National Party							7
Unity and Democracy Party of Kachin State		1					
Wa Democratic Party							2
Wa National Unity Party							1
Zomi Congress for Democracy	2						
Independent						1	
Military	6	13	5	6	8	12	36

Source: CRS calculations based on results published by the *Global New Light of Myanmar*.

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