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OPERATIONAL GUIDANCE NOTE

BURMA (Myanmar)

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1. Introduction

- 1.1** This document provides UK Border Agency case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Burma, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Case owners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant

has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

- 2.1** Case owners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf>

2.3 Actors of protection.

- 2.3.1** Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

- 2.3.2** In March 2011, Lieutenant General Ko Ko became head of the Ministry of Home Affairs (MHA), which oversees all police units of the Myanmar Police Force (MPF). The MPF is split into headquarters, state and division police forces, specialist forces, training centres, reserved units and police battalions. Other law enforcement agencies under the MHA, but independent of the MPF, consist of the Special Branch which is concerned with political crimes, the Criminal Investigation Department, the Railways Police Department and the City Development Police Department. Reserved units are assigned to highway patrol and oil field security and are attached to state and divisional police forces. The Office of the Central Committee for Drug Abuse Control has 26 anti-narcotic drug suppression units throughout Burma. The body is chaired by the Minister for Home Affairs and the secretary is the Director General of the MPF. Many senior police officers have either been transferred from the army or

have completed military service. The police force has a total strength of approximately 93,000 officers with police stations in all major population centres.¹

- 2.3.3** The MHA oversaw the police force, which was largely responsible in law and practice for law enforcement and maintenance of order within the country, particularly in urban areas and the larger cities. The Ministry of Defence oversaw the Office of the Chief of Military Security Affairs (MSA) and also had a significant role in the maintenance of law and order, particularly in rural and border areas.²
- 2.3.4** Security forces continued to maintain a tight grip on the population, due in large part to the fear imposed by arbitrary arrest and detention and also through threats to livelihood. These forces enjoyed impunity. Effective legal mechanisms did not exist to investigate security force abuses. The police initiated some activities to raise human rights awareness; in August 2011 the authorities conducted a 10-day human rights training course for 140 mid-level managers across all ministries and 100 officers from the police force, Bureau of Special Investigation, Correctional Department, General Administration Department, and Immigration and Population Department. The government also took steps to address the use of child soldiers.³
- 2.3.5** According to a progress report of the Special Rapporteur, Mr Tomás Ojea Quintana, on the situation of human rights in Myanmar, March 2010 the Burmese government had stated in a letter in September 2010 that a total of 35 seminars and workshops for Government officials and staff from the military, police and prisons to raise awareness on human rights had been conducted. The Government also noted the establishment by the Human Rights Body of an investigation team not only to investigate complaints lodged by citizens but also to take disciplinary actions against violators. However, the same source stated that the letter did not provide details of what legislation authorises it to undertake the investigative and punitive functions; what procedure was available for citizens to file complaints and whether there were any protection measures for citizens who might file complaints against officials or others in positions of power who could retaliate against them.⁴
- 2.3.6** According to a report dated 16 September 2011 of the Special Rapporteur, Mr Tomás Ojea Quintana, on the situation of human rights in Myanmar, he repeatedly highlighted the importance of investigations into alleged human rights violations being carried out by an independent and impartial body, in order to establish the facts. In this connection, he was again informed that the Myanmar Human Rights Body, under the chairmanship of the Minister for Home Affairs, had established a team to investigate human rights violations whenever they were lodged by citizens and to take punitive actions against violators. He noted, however, that the Myanmar Human Rights Body did not operate under any legislation but under the terms of Notification 53/2007, which sets out in three paragraphs the body's composition and broad terms of reference. These were to examine and make proposals on work related to the United Nations and international human rights, to examine and make proposals on the establishment of a human rights commission in Myanmar and to set up working

¹ Jane's Sentinel Security Assessment: Myanmar-Security and Foreign Forces – 5 January 2012
<http://articles.janes.com/articles/Janes-Sentinel-Security-Assessment-Southeast-Asia/Security-and-foreign-forces-Myanmar.html>

² U.S. Department of State, 2011 Human Rights Report: Burma, May 2012 Section 1 Role of the Police and Security Apparatus <http://www.state.gov/documents/organization/186475.pdf>

³ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012 Section 1 Role of the Police and Security Apparatus <http://www.state.gov/documents/organization/186475.pdf>

⁴ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraphs 8.49 and 8.50,
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

groups as necessary. No reference was made to any investigative capacity or complaints receiving mechanism.⁵

- 2.3.7** There were reports that the government or its agents committed arbitrary or unlawful killings unrelated to internal conflict⁶. The government rarely punished officials responsible for these deaths. Government soldiers reportedly killed several individuals in Rakhine State and there were reports of killings in connection with conflict in Karen state.⁷
- 2.3.8** The Burmese military continued to violate international humanitarian law through the use of anti-personnel landmines, extrajudicial killings, forced labour, torture, beatings and pillaging of property. Sexual violence against women and girls remained seriously problematic and perpetrators were rarely brought to justice. The army continued to actively recruit and use child soldiers, even though the government co-operated with the International Labour Organisation on demobilizing child soldiers.⁸
- 2.3.9** The government took no action to investigate or punish those responsible for extrajudicial killings of at least 30 persons during the regime's violent suppression of the September 2007 demonstrations. The government did not investigate reports that security forces took large numbers of residents and monks from their homes and monasteries during numerous night-time raids following the protests.⁹
- 2.3.10** The Asian Human Rights Commission (AHRC) noted in its report of December 2011 that the judiciary in Burma remained inert, tied to the executive and incapable of performing even basic functions for the defence of human rights. Since the start of 2011, structural changes to the judiciary under the 2008 Constitution had not occurred in any meaningful way and the Courts continued to be closed and obscured from public view.¹⁰
- 2.3.11** The Special Rapporteur observed that the judiciary's capacity, independence and impartiality remained outstanding issues in Myanmar. The Special Rapporteur noted that there did not appear to be any major structural transformations within the judiciary. The new Chief Justice was formerly one of the justices on the Supreme Court and the new Attorney General was previously a Deputy Attorney General, with no further information on new appointments to the Courts.¹¹ Concerns regarding the functioning of the judiciary also remained. The Special Rapporteur continued to receive information of criminal cases being heard behind closed doors.¹²
- 2.3.12** The Judiciary Law of 2000 called for an independent judiciary; however, in practice the judiciary was characterised by institutionalised corruption and remained under the

⁵ Special Rapporteur Report on the situation of human rights in Myanmar – 16 September 2011

<http://unic.un.org/imucms/yangon/80/384/recent-un-reports-on-myanmar.aspx>

⁶ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012 Section 1 Arbitrary or Unlawful Deprivation of Life <http://www.state.gov/documents/organization/186475.pdf>

⁷ U.S. Department of State, 2010 Human Rights Report: Burma, April 2011 Section 1 Arbitrary or Unlawful Deprivation of Life <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

⁸ Human Rights Watch World Report 2012: Burma, 22/01/2012, Ethnic Conflict and Displacement, <http://www.hrw.org/world-report-2012/world-report-2012-burma>

⁹ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section II, Abuses of Religious Freedom, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

¹⁰ Asian Human Rights Commission – The State of Human Rights in Burma 2011 – 9 December 2011

<http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-004-2011.pdf/view/>

¹¹ UN General Assembly, Situation of human rights in Myanmar: Note by the Secretary-General, 16 September 2011, paragraph 19, <http://unic.un.org/imucms/userfiles/yangon/file/A-66-365.pdf>

¹² UN General Assembly, Situation of human rights in Myanmar: Note by the Secretary-General, 16 September 2011, paragraph 19, <http://unic.un.org/imucms/userfiles/yangon/file/A-66-365.pdf>

de facto control of the military and government. According to studies by civil society organisations, payments were made at all stages in the legal process and to all levels of officials, for routine matters such as access to a detainee in police custody and determining the outcome of a case. The court system and its operation were seriously inconsistent, particularly in the handling of political cases. The use of blanket laws to arbitrarily arrest and detain citizens for peaceful activities, including the Emergency Provisions Act, Unlawful Associations Act, Habitual Offenders Act, Electronic Transactions Law, Television and Video Act, and Law on Safeguarding the State from the Danger of Subversive Elements, as well as the manipulation of the Courts for political ends continued to stifle peaceful dissent and deprive citizens of due process and the right to a fair trial. Lawyers representing political prisoners or political cases faced harassment and have been disbarred and arbitrarily arrested and detained. During 2011 authorities revoked the license of U Tin Aung Tun, a lawyer representing farmers in a land confiscation case. The Asian Legal Resource Centre reported some 32 lawyers remained disbarred and unable to practice law for political reasons.¹³

2.3.13 In March 2012, Human Rights Watch observed that the military still exerted significant political power by law and the emerging national human rights commission lacked independence and was restricted by the same self-censorship that had plagued Burma for decades. An independent judiciary would take years, perhaps decades, to establish.¹⁴ Human Rights Watch furthermore described the human rights situation during 2011 as “dire” in its latest annual report and reported on the ongoing curtailment of freedom of expression, association and assembly and on the many political prisoners that remained in prison despite some releases in May and October 2011.¹⁵

2.3.14 Freedom House further noted in its 2012 annual report that Burma was not an electoral democracy. The military junta ruled by decree and controlled all executive, legislative and judicial powers as well as suppressing nearly all basic rights and committed human rights abuses with impunity. It carefully manipulated the electoral framework surrounding the 2010 national elections, which were not free or fair. The process of drafting the 2008 constitution, which the elections put into effect, had continued intermittently for 15 years, was closely controlled by the military and prohibited key stakeholders. Even though the new charter that was denounced by Burmese political opposition and international human rights groups and approved by an implausibly high margin to ensure military control of the political system even after elections, establishing a parliament and a civilian president, it also entrenched military dominance and allowing the military to dissolve the civilian government if it determined that the “disintegration of the Union or national solidarity” was at stake.¹⁶

2.3.15 In March 2012, the UN Special Rapporteur on the situation of human rights in Myanmar reported that despite the Burmese government’s commitments, which had the potential to improve the human rights situation, ongoing and serious human rights concerns remained and must be addressed, notably regarding prisoners of conscience; detention conditions and treatment of prisoners; advancement of civil

¹³ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 1 Denial of Fair Public Trial, <http://www.state.gov/documents/organization/186475.pdf>

¹⁴ Human Rights Watch, *Where Myanmar Keeps Trampling Rights*, 15/03/2012.

¹⁵ Human Rights Watch, *World Report 2012 – Burma*, 22/01/2012.

¹⁶ Freedom House, *Freedom in the World 2012 - Burma*, 22/03/2012.

and political rights, as well as economic, social and cultural rights; civil society; ethnic minorities and justice.¹⁷

2.3.16 The country information demonstrates that where fear is of ill-treatment/persecution by the state authorities or agents acting on behalf of the state, claimants cannot apply to the Burmese authorities for protection.

2.4 Internal relocation

2.4.1 Case owners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

2.4.2 Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

2.4.3 There were no laws explicitly protecting freedom of movement within the country, foreign travel, emigration and repatriation. The government did not fully cooperate with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organisations in providing protection assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons and other persons of concern. However, the UNHCR reported that the government granted visas to international staff. The UNHCR subsequently established an Emergency Team in Kachin State in October 2011 and conducted two needs assessments in September and December 2011.¹⁸

2.4.4 The government restricted the ability of internally displaced persons, refugees and stateless persons to move. While freedom of movement was primarily related to a person's possession of identification documents, in practice ethnicity and place of origin were sometimes factors for the authorities in enforcing regulations. For example, NGOs reported that a Muslim family from Rangoon with full citizenship was

¹⁷ [UN Human Rights Council, Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 07/03/2012](#), Section III Paragraph 22 and more generally Section III A-E, Section IV and Section V.

¹⁸ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012 Section 2 Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons
<http://www.state.gov/documents/organization/186475.pdf>

arrested at the Sittwe airport and forced to pay a bribe to secure their release. Authorities required the Rohingya, a stateless population, to carry special documents and travel permits for internal movement in five areas in northern Rakhine State: Butheedaung, Mungdawe, Rathedaung, Kyauktaw and Sittwe, along the border with Bangladesh. Officials lifted travel restrictions for Rohingya in Thandwe and Kyaukpku districts in June 2011. Citizens of ethnic states reported that the government restricted the travel of, involuntarily confined, and forcibly relocated IDPs, refugees and stateless persons. In an effort to address the problem of trafficking in persons, officials continued to impede the travel of women under the age of 25.¹⁹

- 2.4.5** It may be practical for applicants in some categories who may have a well-founded fear of persecution in one area to relocate to other parts of Burma where they would not have a well founded fear and, taking into account their personal circumstances, if it would not be unduly harsh to expect them to do so.

2.5 Country Guidance Caselaw

Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

TL and Others (sur place activities - risk) Burma CG [2009] UKAIT 00017

- (1) The country guidance given by the Tribunal in HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012 remains valid. Despite the release of some long term detainees no significant or reliable change has occurred in the approach of the authorities in Burma to be able to say that the human rights situation there is any better than it was at the time the Tribunal in HM promulgated its determination.
- (2) The identities and roles of genuine activists in Burmese pro-democracy organisations based in London are likely to be known to the Burmese authorities.
- (3) Participation in demonstrations outside the Burmese embassy in London by Burmese nationals is likely to be recorded by the Burmese authorities in London and made known to the Burmese authorities in Burma. Those Burmese nationals participating on a regular basis are likely to have been photographed by the Burmese authorities and identified.
- (4) If such a person were returned to Burma and there is an additional factor which would trigger the attention of the Burmese authorities (e.g. lack of a valid Burmese passport; absence of permission to exit Burma; previously having come to the adverse attention of the authorities as an opponent of the

¹⁹ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 2, Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons
<http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

- regime; or having a connection with known political opponents) there is a real risk of persecution and article 3 ill-treatment on return.
- (5) It may be that a pro-democracy demonstrator outside the Burmese embassy known to the authorities to have a real commitment to the cause without an additional risk factor would equally be at risk but each case must be determined on its own facts.
- (6) It is unlikely that the Burmese authorities would persecute someone whom they knew to be a hanger-on with no real commitment to the oppositionist cause who was demonstrating merely in order to enhance a false claim for asylum but each case must be decided on its own facts.
- (7) In granting permission to leave Burma the authorities are not concerned with the places which the passport holder may visit nor the length of time during which they may be absent from Burma. The Burmese authorities are not interested per se in the places visited by a returning Burmese national who had had permission to leave Burma nor how long they stayed away.

HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012

- (1) Burmese citizen who has left Burma illegally is in general at real risk on return to Burma of imprisonment in conditions which are reasonably likely to violate his rights under article 3 of the ECHR. Exit will be illegal when it is done without authorisation from the Burmese authorities, however obtained, and will include travel to a country to which the person concerned was not permitted to go by the terms of an authorised exit. We consider it is proper to infer this conclusion from the effect in the Van Tha case of the employment of Article 5(j) of the Burma Emergency Act 1950, either on the basis of the application of that Article in that case or also as a consequence of a breach of the exit requirements we have set out in paragraph 83.
- (2) A Burmese citizen is in general at real risk of such imprisonment if he is returned to Burma from the United Kingdom without being in possession of a valid Burmese passport.
- (3) It is not reasonably likely that a Burmese citizen in the United Kingdom will be issued with a passport by the Burmese authorities in London, unless he is able to present to the Embassy an expired passport in his name.
- (4) If it comes to the attention of the Burmese authorities that a person falling within (1) and (2) is a failed asylum seeker, that it is reasonably likely to have a significant effect upon the length of the prison sentence imposed for his illegal exit and/or entry. To return such a person from the United Kingdom would accordingly be a breach of Article 33 of the Refugee Convention. Whether that fact of being a failed asylum seeker would come to the attention of the Burmese authorities will need to be determined on the facts of the particular case, bearing in mind that the person is highly likely to be interrogated on return.
- (5) It has not been shown that a person who does not fall within (1) or (2) above faces a real risk of persecution or Article 3 ill-treatment on return to Burma by reason of having claimed asylum in the United Kingdom, even if the Burmese authorities have reason to believe that he has made such a claim, unless the authorities have reason to regard him as a political opponent.

AH (Disputed Nationality, Risk on return, Rohingya Muslim) Burma [2004] UKIAT 00085 (27 April 2004) The IAT found that although Rohingya as a group are marginalised by the Burmese authorities and may be subject to harassment

and discrimination there is no evidence to show that being a Rohingya would lead to a real risk of persecution on return (paragraph 24).

TW (Risk on return, Unauthorised Departure) Myanmar [2004] UKIAT

00285 (12 October 2004) The IAT found that a person wholly lacking in credibility in respect of past experiences, could still be found credible vis-à-vis leaving Burma without authorisation. Adjudicators should make findings on whether a person left with or without authorisation. Even if an adjudicator was to find an individual had left Burma without authorisation, he would need to go on and make findings on the consequences the person would face upon return.

S v Secretary of State for the Home Department (Burma) [2003] UKIAT

00135 (11 November 2003) The IAT found that although Muslims in Arakan province (bordering on Bangladesh) have in the past had, and may continue to have serious problems, and though there have been a number of incidents elsewhere, there is nothing in general to prevent Muslims in Rangoon from practising their religion in peace.

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Burma. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

3.5 Credibility

- 3.5.1** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Involvement with opposition political organisations/parties in Burma

- 3.6.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Burmese authorities due to their involvement with opposition pro-democracy political organisations/parties in Burma.
- 3.6.2 Treatment** Burma gained independence from Britain in 1948. The military has ruled the country since 1962, when General Ne Win led a coup that toppled an elected civilian government. The ruling Revolutionary Council consolidated all legislative, executive, and judicial power and pursued radical socialist and isolationist policies. Burma, once one of the wealthiest countries in Southeast Asia, eventually became one of the most impoverished in the region.²⁰
- 3.6.3** The first general election in 20 years was held in 2010. This was hailed by the military rule as an important step in the transition from military rule to a civilian democracy, though opposition groups alleged widespread fraud and condemned the election as a fake. It was rejected by the main opposition group, Aung San Suu Kyi's National League for Democracy (NLD). Thein Sein was sworn into office in March 2011 as the new President of Burma, officially launching a nominally civilian government to replace almost 50 years of military rule. However, a new constitution brought in by the military rule in 2008 entrenched the primacy of the military. A quarter of the seats in both parliamentary chambers were reserved for the military, and three key ministerial posts - interior, defence and border affairs - must be held by serving generals.²¹
- 3.6.4** Reporters Without Borders stated in March 2012 that, for reforms to take hold, the entire legal framework needs to be revised. It noted that the authorities had promised to adopt a media law that would put an end to censorship, but also observed that individuals were still being arrested under the Unlawful Association

²⁰ Freedom House, Freedom in the World – Burma (Myanmar) – 2011, 12/05/2011

<http://www.unhcr.org/refworld/country,,FREEHOU,,MMR,,4dcbf5202,0.html>

²¹ BBC News Burma country profile – last updated 12/01/2012, Accessed 16 February 2012

http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1300003.stm

Act, or treason charges.²² In 2012, Human Rights Watch reported that whilst media freedom had been relaxed in some cases, the censorship board continued to forbid stories deemed politically sensitive and an estimated 20 media workers were in prison. This incorporated a 21-year-old who received a 16-year sentence in September 2011 for taking video footage after a bomb blast in central Rangoon.²³

- 3.6.5** Amnesty International described the January 2012 release of 130 political prisoners as a significant move, but stressed that more than a thousand political prisoners remained in prison, many of whom were prisoners of conscience.²⁴ Amnesty International, in January 2012, also expressed concern at reports that some prisoners had conditions attached to their release.²⁵
- 3.6.6** Aung San Suu Kyi, leader of the National League for Democracy (NLD) had registered to run in a by-election on 1 April 2012 for a parliamentary seat in Kawhmu.²⁶ However, even if the NLD won all of the 47 seats it was contesting, the legislature would still be overwhelmingly dominated by the military and the ruling pro-military parties and it could be 2015 before the next general election in Burma. Aung San Suu Kyi was sworn in as a member of Burma's parliament on Monday 30 April and along with members of the NLD had initially refused to take part in a swearing-in ceremony due to the wording of an oath but a compromise was agreed. Ms Suu Kyi told reporters after the ceremony that she and her fellow NLD members would carry out their duties within the parliament as they had been carrying out their duties outside the parliament for the last 20 or so years.²⁷
- 3.6.7** In March 2012, the Guardian reported that "the election campaign had not been free of violence. The NLD said its supporters were attacked during a rally in the capital, Naypyidaw, last week. It accused the ruling party, the Union Solidarity and Development party, of vote-buying and using scare tactics to convince the Chinese business community and other minorities that the NLD was the creature of the US and western powers".²⁸ Aung San Suu Kyi also stated the NLD would be filing complaints regarding the "rampant irregularities" that her party said took place at the by-election and that only a proper investigation would ensure the democratic process.²⁹
- 3.6.8** In March 2010 the SPDC formed the Union Electoral Commission (UEC) and released a series of laws governing the conduct of the elections, which consisted of provisions excluding any person serving a prison sentence from party membership. This effectively forced the NLD to decide whether to dismiss Aung San Suu Kyi—who was under house arrest—and more than 430 of its jailed members, in order to re-register with the UEC. The NLD ultimately did not re-register and the UEC declared it illegal. Other provisions tightly regulated the campaigning of parties and candidates, warned against public disturbances, and expressly forbid public criticism of the constitution and the military. The government declared illegal a

²² Reporters Without Borders, [Enemies of the Internet 2012](#), 12/03/2012

²³ Human Rights Watch, [World Report 2012](#), 22/01/2012

²⁴ Amnesty International, Myanmar: [Political prisoner release 'major step' but gates must open 'even wider'](#), 13/01/2012

²⁵ Amnesty International, Myanmar: [Political prisoner release 'major step' but gates must open 'even wider'](#), 13/01/2012

²⁶ BBC, [Aung San Suu Kyi registers for Burma election run](#), 18/01/2012

²⁷ BBC, [Aung San Suu Kyi registers for Burma election run](#), 18/01/2012, Radio Free Asia, [Suu Kyi Speech Leaked](#), 13/03/2012, Burma's Aung San Suu Kyi sworn in to Parliament 02/05/2012

²⁸ Guardian, [It is too soon to celebrate Burma's fragile democracy](#), 22/03/2012

²⁹ The Guardian – Aung San Suu Kyi 'new era' for Burma after landslide victory – 02/04/2012

campaign that some NLD members organised and warned the public that election prohibitors could face one year in prison.³⁰

- 3.6.9** In April 2010 the then Prime Minister Lt. Gen.Thein Sein and 27 SPDC and government cabinet ministers resigned their military commissions and formed the Union Solidarity and Development Party (USDP). In August 2010 the USDP captivated all the assets and infrastructure of the Union Solidarity and Development Association (USDA), a mass-based social welfare movement formed by the military in 1993 with more than 26 million nominal members. The military conducted its biggest reshuffle in years, with scores of senior officers resigning in order to run as USDP candidates. The USDP was the only party that had candidates for virtually all 1,168 seats open for contest in the national bicameral assembly and 14 regional assemblies. The remaining seats were reserved for serving military officers as stipulated in the 2008 constitution. By November 2010 37 parties had registered and were contesting the elections. Many were small, ethnic-based parties only contesting a limited number of regional seats. Voting was not conducted in parts of 32 townships in ethnic border areas where the government suspected there was armed conflict and instability. Widespread irregularities, such as advance majority voting by local officials, were reported in some regional areas.³¹
- 3.6.10** According to the Human Rights Watch World Report 2011, the elections took place in an atmosphere of intimidation, coercion and widespread corruption, with laws and regulations strongly favouring military controlled parties.³² Burma adopted a new constitution through a deeply damaged May 2008 national referendum. The constitution went into effect with the seating of a new Parliament in early 2011.³³
- 3.6.11** The USSD Report in 2010 noted that freedom of assembly was limited by law and in practice it was severely restricted by the government. Freedom of association generally existed only for government-approved organisations, including trade associations, professional bodies and the USDP. There were 47 political parties that applied for permission to form and register under the government's highly restrictive electoral laws issued in March 2010 and the government ultimately granted permission to 37 parties. The government failed to consider the applications of three parties which were all ethnic Kachin and announced the dissolution of 10 parties, including the NLD, which refused on principle to register under the election laws. The NLD maintained its right to exist as a political party because it was registered under previous electoral legislation and filed a suit against the government for illegally applying electoral legislation retroactively to deregister the party. In November 2010 the Supreme Court declined to admit the party's appeal of its deregistration and the NLD stated it would pursue one final level of appeal. The party was re-registered in December 2011 as an official political party. Authorities and the government's election commission ensured strict control over the activities of newly registered political parties.³⁴
- 3.6.12** Prior to the 2010 elections, the last election was held in 1990, which NLD won with an overwhelming majority. However, the military regime refused to recognise the

³⁰ Human Rights Watch World Report 2011, 24/01/2011, The November 2010 Elections, <http://www.hrw.org/world-report-2011/burma>

³¹ Human Rights Watch World Report 2011, 24/01/2011, The November 2010 Elections, <http://www.hrw.org/world-report-2011/burma>

³² Human Rights Watch World Report 2011, 24/01/2011, The November 2010 Elections, <http://www.hrw.org/world-report-2011/burma>

³³ U.S. Department of State Background Note: Burma 3 August 2011 <http://www.state.gov/r/pa/ei/bgn/35910.htm>

³⁴ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012 Paragraph 15.20 and 15.26 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

results claiming a new constitution must be passed before power could be transferred. The NLD's leader, Aung San Suu Kyi, was held under house arrest for much of the period since the election.³⁵ She was released on 13 November 2010 after her latest period of house arrest expired and was not renewed by the military government. Her release came six days after the political party supported by the military won the country's first election in 20 years.³⁶

- 3.6.13** Before the elections in November 2010 the NLD was the most important source of political opposition to the military regime. Besides the NLD there were more than 20 ethnic political parties that were suppressed by the regime. Since rejecting the results of the 1990 elections and preventing the unicameral, 485-seat People's Assembly from convening, the military regime had all but paralysed the victorious NLD party. Authorities had jailed many NLD leaders, pressured thousands of members to resign, closed party offices, harassed members' families and periodically detained supporters to block planned meetings.³⁷ On the 18 April 2010 authorities arrested and reportedly tortured an NLD member to prevent him from organising citizens to abstain the November elections, he was freed later that month.³⁸
- 3.6.14** The referendum in May 2008 for the 2008 Constitution set the stage for what would happen to those who messed with the regime's plans for 'democratisation'. Following the announcement of the Referendum, on 19 February 2008, the SPDC passed Referendum Law 1/2008, criminalizing 'distributing papers, using posters or disturbing voting', punishable by a jail term of up to three years. This law was used as a deterrent to stop people from campaigning for a 'no' vote or a boycott of the referendum. Pro-democracy activists took part in a Vote No campaign, despite intimidation and harassment.³⁹
- 3.6.15** Government employees generally were prohibited from joining or supporting political parties; however, this exclusion was applied selectively. The government defined civil servants as employees at or below the Director General and Managing Director levels and according to government claims, Ministers were not considered civil servants. In April 2010 the government's mass mobilization organisation – the USDA – was transformed into a political party, the USDP, to contest the November elections. Many of the government's top leaders, including the Prime Minister, maintained high-level roles in the USDP. A number of reports in 2010 indicated that the USDP and its predecessor USDA, used coercion to force citizens to join or support the party and state-sector employees were the most susceptible to such pressure. Although students were not prohibited from joining a party, the government reportedly discouraged students from participating in politics.⁴⁰
- 3.6.16** In 2010, Amnesty International noted that the government of Myanmar violated the human rights of ethnic minority political opponents and activists in many ways,

³⁵ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012 Paragraph 15.42-44, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³⁶ BBC News – Burma Release Pro-Democracy Leader Aung San Suu Kyi – 13 November 2010 <http://www.bbc.co.uk/news/world-asia-pacific-11749661>

³⁷ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 23 July 2010, Paragraph 13.19, http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country_reports.html

³⁸ U.S. Department of State 2010 Human Rights Report: Burma, 08/04/2011 Section 1C Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

³⁹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 15.39 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴⁰ U.S. Department of State, 2010 Human Rights Report: Burma, 08/04/2011 Section 1F. Arbitrary Interference with Privacy, Family, Home, or Correspondence, <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

including torture and other ill-treatment; discrimination on the basis of religion and ethnicity; unlawful killings and arbitrary detention for short periods or imprisonment. All of those detained or imprisoned were or remained among Myanmar's large population of political prisoners detained because of their political, religious or other conscientiously held beliefs, ethnic origin, language, national or social origin, birth or other status. Most were prisoners of conscience that had expressed their beliefs peacefully. Many such political opponents and activists told Amnesty International that they faced government repression as part of a larger movement, as in Rakhine State during the 2007 Saffron Revolution, while others said that the authorities pursued them for specific actions, such as organising a small anti-dam signature campaign in Kachin State. Even relatively simple expressions of political dissent faced repression, as when Karenni youths were detained for floating small boats on a river with 'No' to the draft constitution written on them.⁴¹ The 2011 Annual Report by the Assistance Association for Political Prisoners stated that torture was "used systematically not only on political prisoners but also ethnic minorities. Ethnic people were subjected to harsh physical and psychological torture". It further reported that the current U Thein Sein government detained ethnic nationalities on exaggerated charges, such as murder and that "ethnic minorities faced heavy restrictions on their movement and often faced arrest if they left their township without the appropriate paperwork."⁴²

3.6.17 In November 2011, Human Rights Watch reported that basic rights to freedom of expression, association and peaceful assembly remain tightly circumscribed in Burma. The government staged two general amnesties of prisoners in 2011. In May and June 2011, a general amnesty consisted of a one-year reduction of all sentences, releasing an estimated 20,000 prisoners. Of these, 77 were believed to be political prisoners. In October 2011, following months of rumours, another amnesty freed more than 14,000 prisoners. Disappointing widespread expectations of a major release of political prisoners, an estimated 220 political activists, journalists, artists, and other critics of the government were released, including famed comedian Zargana, labour rights activist Su Su Nway, journalist Nay Min, and several members of the NLD. Large numbers of political prisoners remained in Burma's horrid prisons. Officially, the government continued to deny the very existence of political prisoners, although one of President Thein Sein's political advisors, Ko Ko Hlaing, estimated that only 600 prisoners could be deemed political prisoners, and that the October 2011 amnesty released nearly half of them.⁴³

3.6.18 Laws prohibited torture, however, members of the security forces reportedly tortured, beat and otherwise abused prisoners, detainees and other citizens. Security forces routinely subjected detainees to harsh interrogation techniques designed to intimidate and disorient, including severe beatings, electric shocks, burning with lighters, water torture and deprivation of food, water, and sleep. Both male and female political prisoners reported sexual abuse, including harassment and molestation, beating or burning of the genitals, threats of rape and rape. As in previous years, authorities took little or no action to investigate incidents or punish perpetrators. Following a 24 June 2011 bomb blast at the Naypyitaw rail station, rights activists reported authorities detained and tortured an innocent person to

⁴¹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 15.07, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴² Assistance Association for Political Prisoners, AAPP 2011 Annual Report, January 2012, Ethnic Nationalities.

⁴³ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 15.11, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

obtain a confession.⁴⁴ In November 2011, Amnesty International reported that “in Myanmar, political prisoners were regularly charged under vaguely worded laws, mostly relating to security or public order concerns, which allowed excessively broad interpretation by the authorities”. It described the ill-treatment of 15 political prisoners in Yangon’s Insein Prison, where some were reportedly held in “dog” cells. The prisoners started a hunger strike on 26 October 2011 in protest over being denied the reductions in their sentences which were allowed to criminal convicts and the following day, prison authorities began denying the hunger-strikers drinking water, putting them at risk of death from dehydration.⁴⁵ The 2011 Annual Report from Amnesty International stated that “torture and other ill-treatment continued to be reported during pre-trial detention and in prisons”.⁴⁶

- 3.6.19** The penal code allowed the government to render excessive sentences against political activists by allowing government prosecutors to charge detainees with multiple violations of archaic or widely ignored laws, such as violating currency laws, publishing materials likely to cause alarm or spreading rumours. This practice could result in extensive cumulative sentences. The regime often prosecuted political prisoners under such measures as the Emergency Provision Act, Law on Safeguarding the State from the Danger of Subversive Elements, Television and Video Act, Unlawful Associations Act, Electronic Transactions Law and Law Relating to the Forming of Organisations.⁴⁷
- 3.6.20** It was reported that during 2010 the government also continued to detain hundreds of political prisoners. Abuses of prisoners continued, including the alleged transfer of civilian prisoners to military units. These units reportedly were often engaged in armed conflict in the border areas where they were forced to carry supplies, clear mines and serve as human shields. The government usually charged political detainees with criminal offences so denied holding any political prisoners. Despite government assertions, a vast majority of these prisoners were not believed to have engaged in any violence, theft or other common crimes.⁴⁸
- 3.6.21** Unlike in previous years, the government in 2011 began a dialogue with the United States and others in the international community on the issue of political prisoners, whom it termed “security detainees.” NGOs estimated the government released approximately 300 political prisoners over the year; however, at year’s end hundreds of political prisoners remained in detention, although the precise number was unknown. Although some reports in 2011 indicated that political prisoners enjoyed more protections than other prisoners or detainees, many human rights activists and former political prisoners noted that only high-profile political prisoners were given greater protections, while lower-level political prisoners had substantially fewer protections than the general prison population. The government did not permit international humanitarian organisations access to political prisoners.⁴⁹
- 3.6.22** However, according the AAPPB in its report of November 2011 - The recognition of political prisoners: essential to democratic and national reconciliation process, of

⁴⁴ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012 Section 1 c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment <http://www.state.gov/documents/organization/186475.pdf>

⁴⁵ Amnesty International, [Myanmar political prisoners held in dog cells and denied water](#), 04/11/2011

⁴⁶ Amnesty International, [Annual Report 2011](#), 13/05/2011

⁴⁷ U.S. Department of State, 2010 Human Rights Report: Burma 08/04/2011 Section 1E. Denial of Fair Public Trial, Political Prisoners and Detainees, <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

⁴⁸ U.S. Department of State, 2010 Human Rights Report: Burma, 08/04/2011 Section 1E. Denial of Fair Public Trial, Political Prisoners and Detainees, <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

⁴⁹ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012 Section 1E. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment <http://www.state.gov/documents/organization/186475.pdf>

November 2011, the exact number of political prisoners in Burma had been hotly disputed over the past few months. It came as no surprise that members of the U Thein Sein regime, such as the Presidential Advisor and Foreign Minister, disputed the numbers of political prisoners, saying estimates of political prisoners were inflated and erroneous.⁵⁰

- 3.6.23** Despite this inauspicious start to Burma's new post-junta phase, a series of reforms in the months since the new government took up office had led to speculation that decades of international isolation could be coming to an end. This seemed to be confirmed when US Secretary of State Hillary Clinton made a landmark visit to Burma in December 2011. This was the first by a senior US official in 50 years during which she met both President Thein Sein and Aung San Suu Kyi. During her visit, Mrs Clinton said that the US would be willing to consider easing sanctions if further progress was made towards political reform.⁵¹
- 3.6.24** In December 2011 Burmese President Thein Sein signed a law allowing peaceful demonstrations for the first time. The new law requires people to seek approval at least five days in advance. All protests were previously banned. It is one of the latest reforms undertaken by Burma's nominally civilian government since the military junta handed over power earlier this year.⁵²

See also: **Actors of protection** (Section 2.3 above)

Internal relocation (Section 2.4 above)

Caselaw (Section 2.5 above)

- 3.6.25 Conclusion** The Supreme Court held in RT (Zimbabwe) that the rationale of the decision in HJ (Iran) extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution.
- 3.6.26** A series of reforms in the months since the new government took up office has led to speculation that decades of international isolation could be coming to an end. However, in general, basic rights to freedom of expression, association and peaceful assembly remain circumscribed in Burma but are easing, for example, in now allowing peaceful political demonstrations. Given the fluidity of the situation in Burma, case owners should consider each case carefully, on its individual facts, in light of the latest available country of origin information and according to the individual profile of the applicant. Where an individual is able to demonstrate that they are at serious risk of facing persecution on account of their perceived political opinion a grant of asylum will be appropriate.

3.7 Participation in / involvement with pro-democracy demonstrations in the UK

- 3.7.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Burmese authorities due to

⁵⁰ UKBA/COI Service Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012 Paragraph 15.09, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵¹ BBC News Burma country profile – last updated 12/01/2012, Accessed 16 February 2012 http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1300003.stm

⁵² BBC news, Burma leader Thein Sein signs law allowing protests, 3 December 2011 <http://www.bbc.co.uk/news/world-asia-16016137>

their involvement with opposition political parties/organisations in the UK. Their activities in the UK usually centre on their participation in demonstrations outside the Burmese Embassy in London.

3.7.2 Treatment. In a letter dated 4 February 2011, a Foreign and Commonwealth Office (FCO) official at the British Embassy in Rangoon replied to the UK Border Agency's query on Burmese nationals attending demonstrations outside Burma, stating that the Embassy staff were not personally aware of any individuals who had returned to Burma and been arrested for their activism in the UK. Their assessment was that it would be rally leaders or individuals who also had histories inside Burma who would be particularly at risk.⁵³

3.7.3 The FCO letter of 4 February 2011 continued that:

- 1) A national's participation in demonstrations outside the Burmese Embassy was very likely to be recorded and we strongly believe that those records were sent to the Burmese immigration authorities in Burma;
- 2) Burmese nationals who regularly participated in such demonstrations are very likely to have been photographed and identified by the Burmese authorities;
- 3) If such a person was returned and there were additional factors that would trigger the attention of the Burmese authorities, there is a real risk of persecution, imprisonment and possibly ill treatment on return.⁵⁴

3.7.4 In a letter to the Country of Origin Information Service, updated on the 26 June 2010, the FCO stated that it was difficult to judge how the authorities would react in individual circumstances. But an individual would only have a high risk of facing penalties if they had been seen to a) lead/organise the demonstrations or b) be responsible for a particularly extreme act of incitement. Taking part in demonstrations/events by a number of people was unlikely to merit particular attention. On return to Burma, they may be subject to scrutiny (i.e watched, followed and allowed restricted movement) but this is the case for many people in Burma.⁵⁵

3.7.5 In an email to the COI Service dated 21 December 2011, the FCO confirmed that its view concerning Burmese nationals participating in demonstrations in the UK remained the same as in its letter dated 4 February 2011 with the exception that it now judged the risk of arrest and prosecution to have reduced following the Burmese government's invitation welcoming back people from exile.⁵⁶

3.7.6 Reporting on an invitation to Burmese exiles to return to the country, the Irrawaddy News Magazine stated on 18 August 2011 that most Burmese exile groups were skeptical about an announcement by President Thein Sein on 17 August 2011 stating that his government would allow dissidents to return to the country, but at least some appreciated the idea as something worth considering. However in an article on 28 October 2011, The Irrawaddy News Magazine reported on the Burmese government's failure to put in place any policy or procedure that would

⁵³ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, paragraph 15.28.

⁵⁴ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, paragraph 15.30,

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵⁵ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, paragraph 15.29,

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵⁶ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, paragraph 15.31,

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

allow political exiles to feel secure in returning to Burma. The report noted that most Burmese exiles still had doubts about their ability to safely go back home and very few have actually accepted the invitation and returned. The same source also stated the Burmese embassy in Bangkok said that exiles wishing to return home had to sign a five-point statement saying that they would avoid actions and words which could harm the state, avoid writing, talking and petitions which could harm the stability of the state, avoid contact with illegal organisations, prevent actions that were destructive or harassing and be loyal to the state and stay within the law. In addition, the source said that if any exile who had already requested asylum in any foreign country wanted to return home, that person must leave their travel documents and identity card at the embassy, which would provide them with a letter of identity. There was no transparent policy stating whether the exiles who returned home would be allowed to travel abroad once again.⁵⁷

- 3.7.7** Burma Campaign UK reported in September 2011, that the UN Special Rapporteur on Human Rights in Burma warned exiles they could be arrested if they do return, stating that the situation was that those who at the moment may decide to express their opinions against authorities may face the risk of being arrested arbitrarily.⁵⁸
- 3.7.8** According to a country analyst for Asia at the Internal Displacement Monitoring Centre (IDMC) in correspondence dated 27 July 2007 with the Immigration and Refugee Board of Canada, the government of Burma was not in a position to monitor the activities of all of its citizens living in other countries as the number of people who have left Burma is enormous. There were an estimated 3 million people who have fled Burma due to persecution or human rights violations. However, in certain cases the government may monitor the activities of those citizens living overseas who were already engaged in political activities while living in Burma and came to the attention of the government. The likelihood of such people getting permission by authorities to leave the country, however, becomes small. A large part of the politically active Burmese community living overseas fled the country back in late 1980s/early 1990s by crossing the borders illegally with the assistance of Burmese ethnic minority groups that were engaged in armed conflict with the government. Many of them have not been able to return since because of their political opinions.⁵⁹

See also: **Actors of protection** (Section 2.3 above)

Internal relocation (Section 2.4 above)

Caselaw (Section 2.5 above)

- 3.7.9 Conclusion.** The Supreme Court held in *RT (Zimbabwe)* that the rationale of the decision in *HJ (Iran)* extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution.

⁵⁷ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 15.32-4, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵⁸ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 15.35, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵⁹ Immigration and Refugee Board of Canada, Whether the government monitors the activities of its citizens who travel to, or live in, Canada or other countries, especially if those citizens are engaging in political activities abroad in which they criticize the government (2005 - August 2007), 7 August 2007 http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=451430&l=e

- 3.7.10** A series of reforms in the months since the new government took up office has led to speculation that decades of international isolation could be coming to an end. However, in general, basic rights to freedom of expression, association and peaceful assembly remain circumscribed in Burma but are easing, for example, in now allowing peaceful political demonstrations.
- 3.7.11** The risk of arrest and prosecution may have reduced following the Burmese government's invitation welcoming back people from exile. However, given the fluidity of the situation in Burma Case owners should consider each case carefully, on its individual facts, in light of the latest available country of origin information and according to the individual profile of the applicant.
- 3.7.12** The claimant's level of involvement in the pro-democracy movement in the UK will be relevant in considering whether or not a grant of asylum is appropriate. TL *and* Others found that participation in demonstrations outside the Burmese embassy in London by Burmese nationals is likely to be recorded by the Burmese authorities in London and made known to the Burmese authorities in Burma. Those Burmese nationals participating on a regular basis are likely to have been photographed by the Burmese authorities and identified. If such a person were returned to Burma and there is an additional factor which would trigger the attention of the Burmese authorities, there is a real risk of persecution and Article 3 ill-treatment on return. It may be that a pro-democracy demonstrator outside the Burmese embassy known to the authorities to have a real commitment to the cause without an additional risk factor would equally be at risk but each case must be determined on its own facts.
- 3.7.13** Where a claimant is able to demonstrate that they are at serious risk of facing persecution on account of their perceived political opinion a grant of asylum will be appropriate.

3.8 Minority ethnic groups; Rohingya, Shan, Karen and Mon

- 3.8.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Burmese authorities due to their membership of one of the above minority ethnic groups.
- 3.8.2** ***Treatment*** The following ethnic groups make up the population of Burma: Bamar or Burman (69%), Shan (8.5%), Karen (6.2%), Rakhine (4.5%), Mon (2.4%), Chin (2.2%), Kachin (1.4%), Karrenni (0.4%), other indigenous (0.1%) and foreign nationalities including Burmese Indian & Sino Burmese people (5.3%).⁶⁰ The authorities have arrested, imprisoned, and in some cases tortured or even killed ethnic minority activists. Minority groups have also faced extensive surveillance, harassment and discrimination when trying to carry out their legitimate activities.⁶¹
- 3.8.3** Burma has a diverse population with around two-thirds of the people considered to be Burman and the other third belonging to one of the many ethnic groups of Burma. Since independence, the government has promoted a pro-Burman, pro-Buddhist approach in its policies and many ethnic minorities have felt that their culture, language and land were under threat from 'Burmanisation'. There were

⁶⁰ UK Foreign & Commonwealth Office, Country profiles: Burma, Last reviewed: 08 August 2011, People,

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/burma>

⁶¹ Amnesty International, Myanmar Urged to End Repression of Ethnic Minorities Before Elections, 16/02/2010,

<http://www.amnesty.org/en/news-and-updates/report/myanmar-urged-end-repression-ethnic-minorities-elections20100216>

reports of land confiscation, the promotion of education in Burmese rather than local languages, restrictions on religious practices and the authorities' control over cultural practices such as the Kachin New Year. In conflict areas, rape, forced labour, multiple taxation and child military recruitment were carried out by government forces.⁶²

- 3.8.4** Wide-ranging governmental and societal discrimination against minorities persisted. Tension between the government army and ethnic populations remained high; the army stationed forces in some ethnic groups' areas and controlled certain cities, towns, and highways. Abuses incorporated reported killings, beatings, torture, forced labour, forced relocations and rapes of members of ethnic groups by government soldiers. Some armed ethnic groups also committed abuses.⁶³ According to the Human Rights Watch World Report 2011 the Burmese military continued direct attacks on civilians in ethnic areas, particularly in Karen, Karenni and Shan states of eastern Burma, and parts of western Burma in China and Arakan states. Tensions increased with ethnic armed groups that had agreed to ceasefires with the government, such as the Kachin Independence Organisation (KIO) and the United Wa State Army (UWSA) over the government's plans to transform these militias into Border Guard Force units under direct Burmese army control. By the end of 2010 only five militias had agreed, leaving large groups such as the Kachin, Wa, and Mon facing increased military pressure to transform, partly demobilise and surrender territory. There were widespread fears of resumed conflict in 2011 in ethnic areas that had experienced uneasy peace for the past two decades.⁶⁴
- 3.8.5** According the Amnesty International Annual Report 2011 - The state of the world's human rights, published 12 May 2011 and covering 2010 events noted that the Burmese government continued to repress ethnic minorities protesting in relation to the elections as well as those who peacefully opposed the impact of development and infrastructure projects on the environment. Authorities also persecuted ethnic minorities for their real or suspected support of armed groups. The report gave some accounts of individuals from ethnic minority groups who had suffered various forms of repression by the authorities.⁶⁵
- 3.8.6** Ethnic minority groups generally used their own languages at home. However, throughout all parts of the country controlled by the government, including ethnic minority areas, Burmese remained the mandatory language of instruction in state schools, and teaching in local languages was not offered. Even in ethnic minority areas, most primary and secondary state schools did not offer instruction in the local ethnic minority language. There were very few domestic publications in indigenous minority languages. The government tightly controlled the limited number of Buddhist monastery-based schools, Christian seminaries and Muslim madrassahs.⁶⁶

⁶² UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.01, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶³ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 6, National/Racial/Ethnic Minorities, <http://www.state.gov/documents/organization/186475.pdf>

⁶⁴ Human Rights Watch World Report 2011: Burma, 24/01/2011, Ethnic Conflict, Displacement and Refugees, <http://www.hrw.org/en/world-report-2011/burma>

⁶⁵ Amnesty International Annual Report 2011; Myanmar 12/05/ 2011, Repression of ethnic minority activists, <http://www.amnesty.org/en/region/myanmar/report-2011>

⁶⁶ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 6, National/Racial/Ethnic Minorities, <http://www.state.gov/documents/organization/186475.pdf>

- 3.8.7** The US Commission on International Religious Freedom Annual Report 2011 published 28 April 2011 and covering the period 1 April 2010 to 31 March 2011, stated that over the past five years, the Burmese military had prolonged operations against ethnic minority militias in parts of eastern Burma, reportedly destroying schools, hospitals, religious sites and homes and killing civilians. According to the Asian Human Rights Commission and the Shan Women's Human Rights Network, ethnic minority women were particularly vulnerable as the Burmese military encouraged rape by its soldiers as an instrument of war. New refugees had entered India and Thailand, where they faced squalid conditions and possible forced relocation. According to the international media and non-governmental organisation (NGO) reports, an estimated 100,000 Chin Christians fled to India in the hope of escaping persecution. In early January 2010, international NGOs reported that more than 2,000 Karen villagers were forced to flee following attacks by the Burmese Army.⁶⁷
- 3.8.8** The Human Rights Watch World Report 2012, published in January 2012, stated that fighting between government forces and ethnic armed groups spread in Burma during 2011, as many longstanding ceasefire agreements unravelled.⁶⁸ The UN Special Rapporteur's note to the UN General Assembly in September 2011 stated that the ongoing tensions in ethnic border areas and armed conflict with some armed ethnic groups, particularly in Kachin, Shan and Kayin States, continued to engender serious human rights violations, including attacks against civilian populations, extrajudicial killings, sexual violence, arbitrary arrest and detention, internal displacement, land confiscations, the recruitment of child soldiers and forced labour. The Special Rapporteur also continued to receive disturbing reports of landmine use by both the government and non-State armed groups and subsequent casualties throughout the country.⁶⁹
- 3.8.9** The government has negotiated ceasefires with 17 insurgent groups since 1989. In February 2012, the Burmese government signed a ceasefire deal with Karen rebels, the Karen National Union (KNU). In 2011, talks were held near the Thai-Burma border with several ethnic groups, including the Shan and Karen. In December 2011, a deal for a ceasefire was reached between the local government and another major ethnic rebel group, the Shan State Army-South. Efforts to end conflict are part of a larger bid by the military-backed nominally civilian government that came to power in November 2010 after Burma's first elections in 20 years. This is one of the key demands of Western governments before sanctions that have been imposed on Burma can be lifted.⁷⁰
- 3.8.10** In February 2012, The Humanitarian Aid Relief Trust (HART) noted after its visit to Shan State and the Thai Burma Border that, despite some indications of improvements in some ethnic national States, there were still no ceasefire in Karenni State and the population had been massively reduced through forced displacement in the past decade. Elsewhere, as this report showed, there was no improvement for the peoples of Kachin, Shan and northern Arakan States. It further stated despite the positive reports from Rangoon, reflected in the international

⁶⁷ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.11, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁸ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.12, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.14, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁷⁰ BBC news, Burma government signs ceasefire with Karen rebels, 12 January 2012 <http://www.bbc.co.uk/news/world-asia-16523691>

media, HART was deeply concerned for the worsening plight of people in the ethnic national areas. Problems were particularly intractable in the ethnic national rural areas because the government did not pay proper salaries to its military in the rural areas, this allowed outpost military workforce license to exact extortionate taxes; to 'buy' food for very low prices; to impose forced labour; still to use human minesweepers; and to inflict human rights abuses such as rape, where recent cases had been reported in Kachin State.⁷¹

- 3.8.11** In October 2011, the Thailand Burma Border Consortium estimated that at least 112,000 people were forced to leave their homes during 2011 in South East Burma. While some fled into Thailand and others returned to former villages or resettled elsewhere, over 450,000 people currently remained internally displaced in the south eastern region. This was not a cumulative figure of everyone who had been displaced in the past decade, but rather a conservative estimate of the current scale of internal displacement covering the rural areas of 50 townships.⁷² It also highlighted that the "highest rates of displacement during the past year were verified in central Karen State's border areas with Thailand, central Shan State and the northern Karen areas" with the result that "the majority of subsistence livelihoods in South East Burma/Myanmar were not sustainable and disposable income levels were too small to adequately supplement food supplies. A quarter of households reported having no cash income during the previous month while only one in six households had a reliable source of income."⁷³
- 3.8.12** In March 2012, Human Rights Watch noted that the Burmese armed forces launched offensive military operations in June 2011 against the rebel Kachin Independence Army (KIA), leading to a humanitarian crisis affecting tens of thousands of civilians. It further stated that the Burmese army committed serious human rights abuses, including deliberate or indiscriminate attacks on civilians, unlawful killings, torture and ill-treatment, the use of child soldiers and the use of forced labour in conflict zones.⁷⁴ Human Rights Watch deduced that the government "was not only failing to protect their rights, it was actively violating them".⁷⁵
- 3.8.13** The UN Special Rapporteur also stated in March 2012 that he "continued to receive reports of attacks against civilian populations, extrajudicial killings, internal displacement, the use of human shields and forced labour and the confiscation and destruction of property."⁷⁶ Similar concerns were raised in November 2011 by Physicians for Human Rights who stated "that violations of rights of ethnic nationalities in the country by the central government were systematic and widespread".⁷⁷ The report further noted that "this investigation suggested that the incremental political changes in central Burma had not translated into improved

⁷¹ [Humanitarian Aid Relief Trust, 'They All Came to the Spotlight and They Didn't See Us in the Darkness': Report of visit to Shan State, Burma and the Thai Burma Border by Humanitarian Aid Relief Trust \(HART\), February 2012.](#)

⁷² [Thailand Burma Border Consortium, DISPLACEMENT AND POVERTY IN SOUTH EAST BURMA / MYANMAR, 25/10/2011, Executive Summary.](#)

⁷³ [Thailand Burma Border Consortium, DISPLACEMENT AND POVERTY IN SOUTH EAST BURMA / MYANMAR, 25/10/2011, Executive Summary.](#)

⁷⁴ [Human Rights Watch, "Untold Miseries": Wartime Abuses and Forced Displacement in Burma's Kachin State, March 2012, Summary and Key Recommendations.](#)

⁷⁵ [Human Rights Watch, Where Myanmar Keeps Trampling Rights, 15/03/2012.](#)

⁷⁶ [UN Human Rights Council, Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 07/03/2012, Section IV, paragraph 60.](#)

⁷⁷ [Physicians for Human Rights, Under Siege in Kachin State, Burma, November 2011, Executive Summary.](#)

livelihoods or improving the human rights situation of ethnic populations living along Burma's frontiers".⁷⁸

Rohingya

- 3.8.14** Muslims in Rakhine state, on the western coast, and particularly those of the Rohingya minority group, continued to experience the most severest forms of legal, economic, religious, educational, and social discrimination.⁷⁹
- 3.8.15** The government required them to receive approval before travelling outside their village tract or residence, limited their access to higher education and prohibited them from working as civil servants, including doctors, nurses or teachers. Authorities required Rohingya to obtain permission for marriages.⁸⁰ The government denied citizenship status to Rohingyas because their ancestors allegedly did not reside in the country at the start of British colonial rule as the 1982 citizenship law required.⁸¹ Only Rohingya who were able to prove long familial links to the country were eligible to apply for naturalisation.⁸²
- 3.8.16** In November 2008 the U.N Committee on the Elimination of Discrimination against Women urged the government to review its citizenship law. In February 2010 the UN special rapporteur for human rights in the country visited and noted discrimination against Muslims. Many of the approximately 28,500 Rohingya Muslims registered in two refugee camps in Bangladesh and the estimated 200,000 Rohingya Muslims living outside those camps refused to return to the country because they feared human rights abuses, including religious persecution.⁸³
- 3.8.17** According to the FCO Report 2010, the treatment of the Rohingya Muslims in Northern Rakhine state in 2010 remained of particular concern. The Rohingya continued to face restrictions on their freedom of movement and related restrictions on finding employment and the right to marry. The authorities continued to refuse to issue birth certificates to Muslim children, denying them citizenship which has led to further discrimination in access to health services, education and employment. The resulting hardship has caused the migration of thousands of Rohingya refugees across the border to Bangladesh, and from there to other countries in the region.⁸⁴
- 3.8.18** Although essentially treated as illegal foreigners, Rohingya were not issued Foreigner Registration Cards (FRCs). Since they also were not generally eligible for National Registration Cards (NRCs), Rohingya have been commonly referred to as "stateless." The government claimed it continued a program with the United Nations High Commissioner for Refugees that issued Temporary Registration Cards (TRCs) to stateless persons in northern Rakhine State, the majority of whom are Rohingyas. This was primarily done, it appears, to allow Rohingya participation in the elections. UNHCR worked with approximately 750,000 residents of Rakhine

⁷⁸ [Physicians for Human Rights, Under Siege in Kachin State, Burma, November 2011, Executive Summary.](#)

⁷⁹ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section II, Restrictions on Religious Freedom, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

⁸⁰ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 2d, Stateless Persons, <http://www.state.gov/documents/organization/186475.pdf>

⁸¹ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, section II, Restrictions on Religious Freedom, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

⁸² U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 2d, Stateless Persons, <http://www.state.gov/documents/organization/186475.pdf>

⁸³ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, section II, Restrictions on Religious Freedom, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

⁸⁴ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.48, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

State who did not hold citizenship in the country. At the end of the reporting period, UNHCR (quoting government estimates) indicated that 85 percent of eligible residents (637,500 stateless persons) over the age of 10 possessed TRCs. UNHCR also assisted Rohingya with education, health, infrastructure, water and sanitation, and agriculture.⁸⁵

- 3.8.19** In previous years Rohingya without temporary identification cards did not have the right to vote in the constitutional referendum. However, in late July and August 2010 organisers of the pro-government USDP and ward authorities in various parts of the country reportedly offered NRCs to individuals in exchange for joining the USDP. There also were reports that the Deputy Minister for Home Affairs Brigadier (MOHA) General Phone Swe went to Rakhine State in July 2010 to issue citizenship scrutiny cards (CSCs), which served a similar role as NRCs in that they proved citizenship and allowed access to services, to Muslims who agreed to join the USDP. However, after some Muslims joined the USDP, MOHA reportedly reneged, instead issuing a TRC, which does not serve as proof of citizenship.⁸⁶
- 3.8.20** The UNHCR continued to negotiate for permission to work with what the government termed "communities that are affected by displacement." Despite the 2007 expiration of the memorandum of understanding (MOU) between the government and the UNHCR, the government continued to allow the UNHCR to provide humanitarian assistance to Rohingya in northern Rakhine State.⁸⁷
- 3.8.21** Without citizenship status Rohingyas did not have access to secondary education in state-run schools. Those Muslim students from Rakhine state who completed high school were not permitted to travel outside the state to attend college or university. Authorities continued to stop from graduating Muslim university students who did not possess NRCs. These students were permitted to attend classes and sit for examinations, but they could not receive diplomas unless they claimed a "foreign" ethnic minority affiliation. Rohingyas also were unable to obtain employment in any civil service positions. Rohingya couples must also obtain government permission to marry.⁸⁸
- 3.8.22** In January 2012, IRIN news reported that an estimated 40,000 Rohingya children were believed to be unregistered in Myanmar, due to the government's discriminatory policies against the Rohingya, including "the requirement of government authorisation for marriage and a 'two-child policy'". These restrictions had made children 'evidence' of unregistered marriages, an act punishable with up to 10 years in prison, while third and fourth children who were unregistered were essentially 'blacklisted' for life - unable to travel, attend school or marry".⁸⁹ The article, based on a report published by The Arakan Project, further highlighted that "under Myanmar's 1982 citizenship law, Rohingya children - both registered and unregistered - were stateless and consequently, faced limited access to food and healthcare, leaving them susceptible to preventable diseases and malnutrition."⁹⁰

⁸⁵ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.49, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁸⁶ U.S. Department of State, 2010 Human Rights Report: Burma, 08/04/2011, Section 2 d, Stateless Persons, <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

⁸⁷ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 2 d, Protection of Refugees <http://www.state.gov/documents/organization/186475.pdf>

⁸⁸ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section II, Restrictions on Religious Freedom, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

⁸⁹ IRIN, In Brief: 40,000 Rohingya children in Myanmar unregistered, 19/01/2012.

⁹⁰ IRIN, In Brief: 40,000 Rohingya children in Myanmar unregistered, 19/01/2012.

- 3.8.23** A previous news article by IRIN focused on Rohingya refugees in southern Bangladesh and noted their wariness towards Burmese reforms, reporting that “they were sceptical” and “not aware of any real improvement in the conditions which forced them to flee their country”.⁹¹ In December 2011, a Burmese official was reported as saying that “Myanmar will take back some of its refugees from neighbouring Bangladesh adding that hundreds of thousands of ethnic Rohingyas would not be covered by the deal”.⁹²

Shan

- 3.8.24** The Amnesty International Report of February 2010 on ethnic minority activists reported that the Shan lived primarily in Shan State, in the east of the country bordering China, Laos and Thailand. There were smaller groups of Shan living in Mandalay Division in the centre of the country, in Kayin State in eastern Myanmar, and in Kachin State. Most Shan people followed Theravada Buddhism and were part of the pan Tai family, which also included most of the populations of Thailand and Laos. The Shan National League for Democracy (SNLD), which seeks to represent the Shan, was the second most successful party in the 1990 elections after the NLD, winning 23 seats. The Party Chair, Khun Htun Oo, is presently serving a 93-year prison sentence and is in poor health.⁹³
- 3.8.25** The Shan Human Rights Foundation (SHRF) reported in January 2011 on the continuing human rights violations that occurred against the people living in Shan State, including extrajudicial killing, rape, beating and torture, arbitrary arrest and detention and forced disappearance. The SHRF supplied monthly newsletters which kept accounts of human rights abuses allegedly committed by government forces.⁹⁴
- 3.8.26** Numbers of villagers fleeing Burma Army atrocities had soared to over 30,000 during recent intensified attacks against the Shan State Army North (SSA-N), causing a catastrophic humanitarian crisis in northern Shan State. Over 4,000 Burmese troops from 42 battalions were deployed during July 2011 to seize the SSA-N headquarters of Wan Hai in Ke See township, supported by jet fighter planes. Advancing through surrounding villages, troops had been scaling up atrocities against civilians, including killing, rape and mutilation. An estimated 31,700 villagers from nine townships had fled since the Burma Army began its offensive on 13 March 2011, breaking its 22-year-long ceasefire with the SSA-N. Some had fled to towns, to Wa-controlled areas along the China border, or to the Thai border, but most were hiding in the jungle near their villages.⁹⁵
- 3.8.27** The UN General Assembly Situation of human rights in Myanmar Note by the Secretary-General, Report of the Special Rapporteur on the situation of human rights in Myanmar -16 September 2011, stated that according to community-based organisations with whom the Special Rapporteur met in Chiang Mai, in May 2011,

⁹¹ [IRIN news, Rohingyas wary of Burmese reforms, 13/01/2012.](#)

⁹² [Agence France-Presse, Myanmar to take its refugees back from Bangladesh, 20/12/2011.](#)

⁹³ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/22012, Paragraph 20.54, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁹⁴ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/22012, Paragraph 20.55, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁹⁵ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/22012, Paragraph 20.56, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

more than 100,000 civilians had been affected, with increases in forced labour, forced relocation, property confiscation, arbitrary arrest, torture, extrajudicial killings on suspicion of support for the opposition and the gang rape of three women, details of which he found particularly abhorrent.⁹⁶

- 3.8.28** On 2 December 2011 The Irrawaddy News Magazine reported that the Burmese government had reached a ceasefire agreement with the Shan State Army-South. The report noted that the agreement incorporated not only a ceasefire, but government assurances of economic development, a joint-task force working against illegal drugs in Shan State and the opening of liaison offices.⁹⁷
- 3.8.29** In February 2012, Christian Solidarity Worldwide (CSW) reported on a fact finding visit in which they interviewed internally displaced people from Kachin State and northern Shan State and heard first-hand testimonies of killings of civilians, torture, the destruction of homes, churches and villages.⁹⁸ Democratic Voice of Burma (DVB) noted that the Shan State Army had stated that the recently agreed ceasefire would be “meaningless” unless Burmese troops end exploitation and violence against civilians in the eastern state.⁹⁹

Karen

- 3.8.30** The Amnesty International Report of February 2010 on ethnic minority activists reported that the Karenni (also known as the Red Karen or the Kayah) are found in Kayah State in the east of Myanmar bordering Thailand. Christianity and animism were their predominant religions. While there were many languages spoken in Kayah State, the Karenni language was spoken among different communities as a common language. The armed opposition group, the Karenni National Progressive Party (KNPP), had splintered several times since its founding in 1957, but still seeks to be representative of the Karenni.¹⁰⁰
- 3.8.31** The same source continued that the Karen ethnic minority was concentrated in the east of the country primarily in Kayin State, with lesser numbers in Kayah State, the southern part of Shan State, and the Ayerawaddy Division. Buddhists, Christians and followers of animist religions existed amongst the Karen. There were three main Karen languages, all part of the Sino-Tibetan family but not mutually intelligible. The Karen National Union (KNU) has sought to represent the Karen since 1947.¹⁰¹
- 3.8.32** The UN General Assembly’s Situation of human rights in Myanmar: Note by the Secretary-General, Report of the Special Rapporteur on the situation of human rights in Myanmar -16 September 2011, stated that fighting that erupted immediately after the November 2010 elections continued in southern and central Kayin State, in areas controlled by factions of the DKBA that refused to transform

⁹⁶ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.57, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁹⁷ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.58, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁹⁸ [Christian Solidarity Worldwide, Burma: CSW returns from Kachin State with evidence of continuing human rights violations 12/02/2012.](http://www.cswworldwide.org/press-releases/2012/02/12/CSW-returns-from-Kachin-State-with-evidence-of-continuing-human-rights-violations-12/02/2012)

⁹⁹ [Democratic Voice of Burma, Shan army calls for end to state abuse, 08/02/2012.](http://www.dvoburma.org/2012/02/08/shan-army-calls-for-end-to-state-abuse-08/02/2012)

¹⁰⁰ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.36, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁰¹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.37, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

into border guard forces. Recently, former units of the DKBA that had agreed to the border guard forces scheme had defected and joined with the Karen National Liberation Army. An estimated 8,000 people have been displaced in this region, drastically increasing their vulnerability to human rights abuses, such as arbitrary detention and arrest by the military and risks from landmines. In northern Kayin State and eastern Bago Division, internal displacement and severe food shortages continued. Despite fewer reports of targeted attacks on civilians, it appeared that ration re-supply operations had continued as normal, including the use of civilian porters to carry equipment and walk or drive ox-carts in front of military trucks to clear for landmines.¹⁰²

- 3.8.33** In January 2012 the BBC reported that Burma's government signed a ceasefire deal with Karen rebels. The agreement came at talks between officials and the Karen National Union (KNU) in Hpa-an, capital of eastern Karen state. Both sides agreed to a ceasefire, to open communication offices and to allow passage through territories, a government official said. The Karen have fought for greater autonomy for more than 60 years. David Htaw, a KNU leader at the talks welcomed the accord, the first written ceasefire agreement in 63 years. It is not clear what, if any, concessions were made to reach this truce.¹⁰³
- 3.8.34** Karen News stated in March 2012 that "despite a ceasefire agreement being agreed to by Karen National Union and the Burma government in January fighting between both sides continued."¹⁰⁴ In the same month the Karen Human Rights Group (KHRG) published a report accusing the Burmese Army of extortion, forced labour and extorting bribes from villagers in the Toungoo district.¹⁰⁵ In February 2012, the DVB noted that despite a "significant reduction in fighting, the Burmese army had continued to carry out unprovoked attacks on civilians in the Karen state, including the bombardment last week of a camp housing internally displaced persons."¹⁰⁶
- 3.8.35** In December 2011, the KHRG reported that "human rights abuses faced by ethnic communities across rural eastern Burma had continued since November 2010 and were consistent with patterns KHRG has acknowledged since 1992. Developments since the 2010 elections had neither broaden villagers' options for claiming their human rights or addressing the core causes of abuse in rural eastern Burma."¹⁰⁷

Mon

- 3.8.36** The Amnesty International Report of February 2010 on ethnic minority activists reported that the Mon were largely found in Mon State in southeast Myanmar, but smaller populations lived in Ayerawaddy Division and along the Myanmar-Thailand border. They helped spread Theravada Buddhism throughout the region. The Mon language was once widely spoken in the south of the country but was presently spoken by less than one million people. The Mon National Democratic Front, which

¹⁰² UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.38,

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁰³ BBC news, Burma government signs ceasefire with Karen rebels, 12 January 2012 <http://www.bbc.co.uk/news/world-asia-16523691>

¹⁰⁴ Karen News, Karen fighters and Burma Army soldiers killed over ceasefire breach, 16/03/2012.

¹⁰⁵ Karen Human Rights Group, Ongoing forced labour and movement restrictions in Toungoo District, 12/03/2012.

¹⁰⁶ Democratic Voice of Burma, Attacks continue despite Karen ceasefire, 03/02/2012.

¹⁰⁷ Karen Human Rights Group, 'All the information I've given you, I faced it myself': Rural testimony on abuse in eastern Burma since November 2010, 15/12/2011.

won five seats in the 1990 elections, was banned in 1992 but still continued to operate.¹⁰⁸

- 3.8.37** The UN General Assembly's Situation of human rights in Myanmar: Note by the Secretary-General, Report of the Special Rapporteur on the situation of human rights in Myanmar -16 September 2011 stated that in Mon State, authorities under the Southeast Command announced an order by means of loudspeakers and posted notices in public locations in various townships, to members of ceasefire groups, to turn in their weapons to police stations or Military Affairs Security offices by 3 July 2011. However, no weapons were surrendered.¹⁰⁹
- 3.8.38** In October 2011, Christian Solidarity Worldwide reported that since March 2011, the authorities had continued their attacks on civilians, including in Karen and Shan states, and committed "severe violations of human rights in Chin, Arakan and Mon states".¹¹⁰ In June 2011, a news article reported that "one day after two people were killed by masked gunmen in Three Pagoda Pass in Mon State on the Thai-Burmese border, Burmese government troops had reportedly forced villagers to serve as human shields and porters".¹¹¹
- 3.8.39** In 2012, Freedom House reported that "tens of thousands of ethnic minorities in Shan, Karenni, Karen, and Mon states lived in squalid relocation centres set up by the military."¹¹² The U.S. Department of State noted that "there were numerous reports that government troops pillaged and confiscated property and possessions from forcibly relocated persons or persons who were away from their homes. The practice was more prevalent in Shan, Kayah, and Karen states and in areas of Mon State and Bago Division. The government made no efforts to punish offenders or compensate victims for their losses"¹¹³.

See also: **Actors of protection** (Section 2.3 above)

Internal relocation (Section 2.4 above)

Caselaw (Section 2.5 above)

- 3.8.40 Conclusion.** Members of Burma's ethnic groups face government sponsored discrimination in Burma and the Burmese security forces continue to commit serious human rights abuses in ethnic minority areas. Case owners should consider each case carefully, on its individual facts, and in light of the latest available country of origin information. Where an individual is able to demonstrate that they are at serious risk of persecution on account of their ethnic origin a grant of asylum will be appropriate.

3.9 Minority religious groups; Muslims, Christian and Hindu

¹⁰⁸ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.41, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁰⁹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 20.42, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹¹⁰ [Christian Solidarity Worldwide, Burma: CSW urges international community to address impunity and maintain pressure for real change, 17/10/2011.](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

¹¹¹ [Mizzima, Villagers forced to serve as human shields and porters by Burmese soldiers, 08/06/2011.](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

¹¹² [Freedom House, Freedom in the World 2012: Burma, 22/03/2012.](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

¹¹³ U.S. Department of State, Human Rights Report: Burma, 08/04/2011, Section 1F. Arbitrary Interference with Privacy, Family, Home, or Correspondence. <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

- 3.9.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Burmese authorities due to their involvement with minority religious groups.
- 3.9.2** ***Treatment*** The government imposed restrictions on certain religious activities and limited freedom of religion. Most adherents of government-recognised religious groups generally were allowed to worship as they chose but the government imposed restrictions on certain religious activities and frequently limited religious freedom. There was no change in the government's limited degree of respect of religious freedom during 2010.¹¹⁴
- 3.9.3** Religious activities and organisations were subjected to restrictions on freedom of expression, association and assembly. Religious organisations were not required to register with the government but if the religious organisation wanted to engage in certain activities, for example, religious education, it must get government permission. The government continued to monitor meetings and activities of virtually all organisations, including religious organisations and required religious groups to seek permission from authorities before holding any large public event. The government has viewed religious freedom in the context of potential threats to national unity or central authority.¹¹⁵
- 3.9.4** Burma is a predominantly Buddhist country and the government promotes Buddhism over other religions.¹¹⁶ The other main religions were Christianity and Islam.¹¹⁷ The country was ethnically diverse, with some correlation between ethnicity and religion. Theravada Buddhism was the dominant religion among the majority Burman ethnic group and also among the Shan, Arakanese, and Mon ethnic minorities. Christianity was dominant among the Kachin, Chin, and Naga ethnic groups. Protestant Christian groups reported recent rapid growth among animist communities in Chin State. Christianity also was practised widely among the Karen and Karenni ethnic groups, although many Karen and Karenni were Buddhist and some Karen were Muslim. Citizens of Indian origin, who were concentrated in major cities and in the south central region, predominantly practice Hinduism or Islam, although some were Christian. Islam was practiced widely in Rakhine State and in Rangoon, Irrawaddy, Magwe, and Mandalay Divisions, where some Burmese, Indians, and ethnic Bengalis practised the religion. Chinese ethnic minorities generally practised traditional Chinese religions. Traditional indigenous beliefs were practised widely among smaller ethnic groups in the highland regions. Practices drawn from those indigenous beliefs persist in popular Buddhist rituals, especially in rural areas.¹¹⁸
- 3.9.5** Although the country has no official state religion, the government continued to show a preference for Theravada Buddhism in 2010 through official propaganda and state support, including donations to monasteries and pagodas, encouragement of education at Buddhist monastic schools and support for Buddhist missionary activities. In practice promotions to senior positions within the military

¹¹⁴ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

¹¹⁵ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section II, Legal Policy Framework, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

¹¹⁶ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 19.02 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹¹⁷ UK Foreign & Commonwealth Office, Country profiles: Burma, Last reviewed: 08 August 2011, Religion(s), <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/burma>

¹¹⁸ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section I. Religious Demography, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

and civil service were reserved for Buddhists. The government continued to discriminate against minority religious groups, restricting educational activities, proselytising and restoration or construction of churches and mosques destroyed by Cyclone Nargis in 2008.¹¹⁹

- 3.9.6** The US Commission on International Religious Freedom Annual Report 2011 noted that religious freedom violations affected every religious group in Burma. Buddhist monks who participated in the 2007 peaceful demonstrations were killed, beaten, arrested, forced to do hard labour in prison and defrocked. Buddhist monasteries viewed as epicentres of the demonstrations continued to face severe restrictions on religious practice. Monks suspected of anti-government activities have been detained in the past year. Muslims routinely experienced strict controls on a wide range of religious activities, as well as government-sponsored societal violence. The Rohingya minority in particular were subject to pervasive discrimination and a relocation program that had produced thousands of refugees. In ethnic minority areas, where low-intensity conflict had been waged for decades, the Burmese military forcibly promoted Buddhism and sought to control the growth of Protestantism through intimidation and harassment of religious groups. A 2009 law essentially prohibited independent 'house church' religious venues and Protestant religious leaders in Rangoon had been pressured to sign pledges to stop meeting.¹²⁰
- 3.9.7** The US Department of State International Religious Freedom Report stated that there was no change in the government's limited degree of respect for religious freedom during the reporting period (2010). Religious activities and organisations were subject to restrictions on freedom of expression, association, and assembly. The government continued to monitor meetings and activities of virtually all organisations, including religious organisations and required religious groups to seek permission from authorities before holding large public events. The government continued to restrict systematically the efforts of Buddhist clergy to promote human rights and political freedom. Many of the Buddhist monks arrested in the violent crackdown that followed pro-democracy demonstrations in September 2007, including prominent activist monk U Gambira, remained in prison serving long sentences.¹²¹
- 3.9.8** Restrictions on worship for non-Buddhist minority groups continued. Though there were no new reports of forced conversions of non-Buddhists, authorities in some cases influenced the placement of orphans and homeless youth, preferring Buddhist monasteries to Christian orphanages in an apparent effort to prevent Christian groups' or missionaries' influence. Adherence or conversion to Buddhism was an unwritten prerequisite for promotion to senior government and military ranks. Nearly all senior-level officers of the former ruling SPDC and the armed forces were Buddhists.¹²²
- 3.9.9** In January 2012, the Burmese Assistance Association for Political Prisoners reported that "the punishment of monks reached an alarming frequency and level of

¹¹⁹ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section II, Legal/Policy Framework and Restrictions on Religious Freedom, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

¹²⁰ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/22012, Paragraph 19.03 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹²¹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/22012, Paragraph 19.04 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹²² UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/22012, Paragraph 19.04 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

brutality in 2011. Monks who were politically active were held in particular contempt of the U Thein Sein regime. After arrest they were forcibly disrobed and subjected to torture and harsh treatment. This was further evidence by the disturbing pattern of placing monks under “village arrests,” the close surveillance of monks upon their release from prison and the use of degrading terms to insult their religion. Monks were often accused with obscene crimes in an effort to tarnish their reputation and make them appear undeserving of monkhood”.¹²³

- 3.9.10** In March 2012, Freedom House stated that “buddhist temples and monasteries had been kept under close surveillance since the 2007 protests and crackdown”.¹²⁴ Radio Free Asia also reported that Burmese authorities “were bringing fresh charges against prominent dissident monk Shin Gambira” who led a 2007 uprising against Burma’s former military junta, “after releasing him from jail”.¹²⁵ In September 2011, Irrawaddy reported that “nearly 35 villagers and 10 monks” from Shan State were reportedly taken prisoner by government troops “for use as human shields, according to Shan State Army (SSA) spokesperson Maj Sai Hla”.¹²⁶

Muslims

- 3.9.11** Police often restricted the number of Muslims who could gather in one place. In some places, Muslims were only allowed to gather for worship and religious training during major Muslim holidays. Police and border guards also continued inspections of Muslim mosques in the Rakhine state; if a mosque could not show a valid building permit, the venue was ordered closed or destroyed. The government has, in recent years, ordered the destructions of mosques, religious centres and schools. During the reporting period of 1 April 2010 to 31 March 2011, the Burmese government maintained a campaign to create ‘Muslim Free Areas’ in parts of Rakhine state. Military commanders had closed mosques and madrassas, stoked ethnic violence, and built pagodas in areas without a Buddhist presence, often with forced labour. Refugees reported that the military continued to entice conversion to Buddhism by offering charity, bribes, or promises of jobs or schooling for Muslim children.¹²⁷
- 3.9.12** Tensions between the Buddhist and Muslim communities had resulted in outbreaks of societal violence over the past several years, some of it instigated by Burmese security forces. Muslims in Rakhine state, on the western coast, and particularly those of the Rohingya minority group, continued to experience the most severe forms of legal, economic, religious, educational, and social discrimination. There were reports that Buddhist physicians would not provide Muslims the endorsement required by the Ministry of Health that permitted Muslims to travel outside Rakhine State to seek advanced medical treatment. The government denied citizenship status to Rohingyas because their ancestors allegedly did not reside in the country at the start of British colonial rule. Approximately 800,000 Rohingya live in Burma, primarily in Rakhine state.¹²⁸

¹²³ Assistance Association for Political Prisoners, AAPP 2011 Annual Report, January 2012, Monks.

¹²⁴ Freedom House, Freedom in the World 2012: Burma, 22/03/2012.

¹²⁵ Radio Free Asia, Burma: Fresh charges for activist monk, 19/02/2012.

¹²⁶ Irrawaddy, Fighting Continues in Kachin State, 22/09/2011.

¹²⁷ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 19.32 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹²⁸ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 19.26 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 3.9.13** The UN Human Rights Council's Progress report of the Special Rapporteur on the situation of human rights in Myanmar - 10 March 2010, stated that since 1994 the Myanmar authorities had refused to issue birth certificates to many Muslim children. As a consequence of their statelessness, these children faced discrimination with regards to education, health care and employment. Unlike other Burmese nationals, the Rohingya Muslim community must apply for papers from Nasaka, the border and immigration forces in Northern Rakhine State, which checks for citizenship and age of majority, in order to get married. This process is reported to cost 40,000 kyat which many Muslims cannot pay and can take up to several years to complete. As a consequence, many Muslims were arrested and sentenced up to five years in prison for offences relating to these requirements. The majority of the prison population of Buthidaung were Muslim, most of them for charges related to immigration or marriage offences. However, the Supreme Court in 2009 overturned two convictions for illegal marriage.¹²⁹
- 3.9.14** Muslims across the country, as well as ethnic Chinese and Indians, often were required to obtain permission from township authorities to leave their hometowns. Authorities generally did not grant permission to Rohingya or other Muslims living in Rakhine to travel for any purpose; however, permission was sometimes obtained through bribery. Muslims in other regions were granted more freedom to travel, but still faced restrictions. Muslims residing in Rangoon could visit beach resort areas in Thandwe, Rakhine state, but could not return to Rangoon without the signature of the Regional Military Commander. Muslims residing outside Rakhine state often were barred from return travel to their homes if they visited parts of the Rakhine state.¹³⁰ The US Department of State International Religious Freedom report for 2010 stated that the government eased some of its travel restrictions on Muslim groups, particularly in the largely Rohingya areas of Rakhine State and predominantly Muslim areas in Rangoon. However, there were reports the government's actions were a quid pro quo to enlist electoral support for the USDP. The regime continued to monitor Muslim activities closely.¹³¹
- 3.9.15** It remained extremely difficult for Muslims to acquire permission to build new, or repair existing mosques, although internal renovations were allowed in some cases. Historic mosques in Mawlamyine, Mon State and Sittwe, Rakhine State, as well as other areas, continued to deteriorate because authorities would not allow routine maintenance. A number of restrictions were in place on the construction or renovation of mosques and religious schools in northern Rakhine State. In some parts of the Rakhine State, authorities cordoned off mosques and forbade Muslims to worship in them. Border security forces continued to conduct arbitrary "inspections" of mosques in northern Rakhine State, demanding that mosque officials show permits to operate the mosques.¹³²
- 3.9.16** Authorities frequently refused to approve requests for gatherings to celebrate traditional Christian and Islamic holidays and in satellite towns surrounding

¹²⁹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/22012, Paragraph 19.27

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹³⁰ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section II, Restrictions on Religious Freedom, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

¹³¹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/22012, Paragraph 19.04

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹³² U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section II, Restrictions on Religious Freedom, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

Rangoon, Muslims were only allowed to gather for worship and religious training during major Muslim holidays.¹³³

- 3.9.17** Buddhist doctrine remained part of the state-mandated curriculum in all government-run elementary schools. Students at these schools could opt out of instruction in Buddhism and sometimes did, but all were required to recite a Buddhist prayer daily. Some schools or teachers may allow Muslim students to leave the classroom during this recitation, but there did not appear to be a centrally mandated exemption for non-Buddhist students.¹³⁴
- 3.9.18** In October 2011, Christian Solidarity Worldwide stated that “Christians and Muslims in particular have been the target of discrimination and persecution. It appeared that despite changes in rhetoric, there had been no change of attitude, particularly at a local level, on the part of Burmese authorities to religious minorities”.¹³⁵

Christians

- 3.9.19** Christianity was the dominant religion among the Kachin ethnic group of the northern region and also the Chin and Naga ethnic groups of the western region, some of whom also practise traditional indigenous religions. Protestant groups reported a recent rapid growth among animist communities in Chin State. Christianity was also practised widely among the Karen and Karenni ethnic groups of the southern and eastern regions, although many Karen and Karenni were Buddhists and some Karen were Muslim.¹³⁶ Government authorities continued to prohibit Christian clergy from proselytizing in some areas. Christian groups reported that authorities sometimes refused residency permits for Christian ministers attempting to move to new townships. They indicated this was not a widespread practice, but was dependent on the individual community and local authority. Nonetheless, Christian groups reported that church membership increased, even in predominantly Buddhist regions. Christian groups continued to have trouble obtaining permission to buy land or build new churches in most regions. In some cases authorities refused because they claimed the churches did not possess property deeds, but access to land title were extremely difficult due to the complex land law and because the government held the title to most of the land. In some areas permission to repair existing places of worship were easier to acquire. In Chin State authorities had not granted permission to build a new church since 2003. The Chin Human Rights Organisation reported that authorities ordered the destruction of nine large public crosses in Chin State in 2010.¹³⁷
- 3.9.20** According to the US Department of State International Religious Freedom Report 2011, Christian groups in ethnic minority regions, where low-intensity conflicts have been waged for decades, face particularly severe and ongoing religious freedom abuses. The Burmese military has destroyed religious venues, actively promoted conversion to Buddhism, confiscated land, and mandated forced labour. The Chin,

¹³³ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section II, Restrictions on Religious Freedom, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

¹³⁴ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section II, Legal/Policy Framework, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

¹³⁵ Christian Solidarity Worldwide, Burma: local authorities in Kachin State issue new order regulating bible study, Sunday school, fasting and prayer, 31/10/2011.

¹³⁶ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section I. Religious Demography, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

¹³⁷ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/22012, Paragraph 19.20 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Naga, Kachin, Shan, Karen, and Karenni peoples, each with sizable Christian populations, had been the primary targets of these abuses. In the past year, for instance, authorities in Kachin state halted attempts by the Shatapru Baptist Church to build a Christian orphanage. In some ethnic minority areas, Christians were required to obtain a permit for any gathering of more than five people outside of a Sunday service. Permission was often denied or secured through bribes. In Chin areas, permission for ceremonies on religious holidays must be submitted months in advance, though Protestants reported that they are often granted permission for these events.¹³⁸

- 3.9.21** Government censors continued to enforce restrictions on local publications of the Bible, Qur'an and other Christian and Islamic texts. Authorities restricted the quantity of imported Bibles and Qur'ans, although individuals continued to bring them into the country in small quantities for personal use. There were no reports that authorities confiscated Bibles or Qur'ans at border entry points. Some Christian theological seminaries and Bible schools continued to operate, along with several Islamic madrassahs. Some of these institutions did not register with the Myanmar Council of Churches, an alliance of some major churches in the country, but were able to conduct affairs without government interference. The government allowed some members of foreign religious groups to enter the country to provide humanitarian assistance, as it had done after Cyclone Nargis in May 2008.¹³⁹
- 3.9.22** Fighting in Kachin State between Kachin rebels and government troops had displaced "more than 50,000 people who had fled to the south western Chinese border", with a member of the China Christian Journalists' Association reportedly stating that "the numbers of ethnic minority Christian Burmese refugees arriving from across the border had greatly increased following a new upsurge in fighting since 1 January".¹⁴⁰ In December, the DVB reported on an attack on a church in Kachin state which "would also fuel accusations that the Burmese army was waging religious persecution against the predominantly Christian Kachin minority. During the Aungja assault, troops attacked a local pastor and his pregnant wife, who was hospitalised".¹⁴¹
- 3.9.23** In October 2011, Christian Solidarity Worldwide (CSW) reported that Burmese authorities were "imposing new restrictions on religious activities in Kachin State" requiring Christians to "submit a request at least 15 days in advance" for permission to conduct "short-term Bible study, Bible study, Sunday school, reading the Bible, fasting prayer, Seasonal Bible study and Rosary of the Virgin Mary Prayer".¹⁴² In the same month, CSW also expressed concern over "reports that the Burma Army were directly attacking churches in Kachin State, beating pastors and church members, setting homes alight and raping, torturing and killing civilians".¹⁴³

See also: Actors of protection (Section 2.3 above)

¹³⁸ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 19.19

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹³⁹ U.S. Department of State, International Religious Freedom Report 2010: Burma, 17/11/2010, Section II, Restrictions on Religious Freedom, <http://www.state.gov/g/drl/rls/irf/2010/148859.htm>

¹⁴⁰ [Radio Free Asia, Burma: Official denies refugee crisis, 10/02/2012.](http://www.radiofreeasia.org/burma/20120210/Burma-Official-denies-refugee-crisis-10-02-2012)

¹⁴¹ [Democratic Voice of Burma, Images show scorched earth in Kachin war, 19/12/2011.](http://www.democraticvoice.org/burma/20111219/Burma-Images-show-scorched-earth-in-Kachin-war-19-12-2011)

¹⁴² [Christian Solidarity Worldwide, Burma: local authorities in Kachin State issue new order regulating bible study, Sunday school, fasting and prayer, 31/10/2011.](http://www.cswworldwide.org/burma/20111031/Burma-local-authorities-in-Kachin-State-issue-new-order-regulating-bible-study-Sunday-school-fasting-and-prayer-31-10-2011)

¹⁴³ [Christian Solidarity Worldwide, Burma: Kachin churches attacked, women raped and civilians killed by military while regime talks of reform, 21/10/2011.](http://www.cswworldwide.org/burma/20111021/Burma-Kachin-churches-attacked-women-raped-and-civilians-killed-by-military-while-regime-talks-of-reform-21-10-2011)

Internal relocation (Section 2.4 above)**Caselaw (Section 2.5 above)**

3.9.24 Conclusion Members of minority religious groups do face discrimination and the Burmese authorities restrict religious activities in a way which amounts to persecution in some areas, particularly for minority ethnic groups. Case owners should consider each case carefully, on its individual facts, and in light of the latest available country of origin information. The grant of asylum will be appropriate where the individual is able to establish that he or she will be persecuted for his or her faith.

3.10 Departure and return

- 3.10.1** As part of their asylum or human rights, some claimants will express a fear of return to Burma due to having left Burma illegally or in breach of the terms of their exit conditions from Burma. Some claimants will also claim that they cannot return to Burma as they do not have the correct documentation and will therefore be entering Burma illegally and will face imprisonment. Some claimants will further claim that the very fact of making an asylum application in the United Kingdom has increased their risk of persecution or ill-treatment.
- 3.10.2 Treatment** An ordinary citizen required a passport from the Ministry of Home Affairs and a departure form from the Ministry of Immigration and Population to travel outside the country. To address the problem of trafficking in persons, the government continued to hinder or restrict international travel for women, particularly those less than 25 years of age.¹⁴⁴
- 3.10.3** There was no law explicitly restricting the foreign travel of citizens but the government carefully scrutinised prospective travel abroad for all passport holders. Rigorous control of passport and exit visa issuance perpetuated rampant corruption, as applicants were forced to pay bribes of up to 400,000 kyat, which was roughly equivalent to the average annual salary of a skilled worker. The government regularly declined to issue passports to former political prisoners, activists, and some local staff of foreign embassies. College graduates who obtained a passport (except for certain government employees) were required to reimburse the government for the cost of their education. It frequently took several months to receive a passport, particularly if the applicant was unwilling to offer a bribe as incentive for speedier service. In general citizens who emigrated legally generally were allowed to return to visit relatives, and some who lived abroad illegally and acquired foreign citizenship were also able to return. The government often revoked passports for political reasons.¹⁴⁵
- 3.10.4** The country's borders with China, Thailand, Bangladesh, and India remained very porous with significant undocumented migration and commercial travel occurring.¹⁴⁶

¹⁴⁴ U.S. State Department, 2010 Human Rights Report: Burma, 08/04/2011 Section 2D. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons
<http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

¹⁴⁵ U.S. State Department, 2010 Human Rights Report: Burma, 08/04/2011 Section 2D. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons
<http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

¹⁴⁶ U.S. State Department, 2010 Human Rights Report: Burma, 08/04/2011 Section 2D. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons
<http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

- 3.10.5** Reporting on an invitation to Burmese exiles to return to the country, *The Irrawaddy* stated on 18 August 2011 that most Burmese exile groups were skeptical about an announcement by President Thein Sein on Wednesday 17 August 2011 that his government would allow dissidents to return to the country, but at least some welcomed the idea as something worth considering. In a speech to local businessmen in Napyidaw, Thein Sein said the government would take a 'benevolent attitude' toward exiles who chose to return. Thein Sein said "We will make reviews to make sure that Myanmar [Burmese] citizens living abroad for some reasons can return home if they have not committed any crimes. And if a Myanmar citizen in a foreign country who committed crimes applies for returning home to serve terms, we will show our benevolent attitude in dealing with his case".¹⁴⁷
- 3.10.6** In an article dated 28 October 2011, *The Irrawaddy* reported on the Burmese government's failure to put in place any policy or procedure that would allow political exiles to feel secure in returning. The report noted, "...most Burmese exiles still have doubts about their ability to safely go back home and very few have actually accepted the invitation and returned." A source close to the Burmese embassy in Bangkok said that exiles wishing to return home have to sign a five-point statement saying that they will: avoid actions and words which can harm the state; avoid writing, talking and lobbying which can harm the stability of the state; avoid contact with illegal organizations; avoid actions that are destructive or harassing; and be loyal to the state and stay within the law. In addition, the source said that if any exile who has already requested asylum in any foreign country wants to return home, that person must leave their travel documents and identity card at the embassy, which will provide them with a letter of identity. There is no transparent policy stating whether the exiles who return home will be allowed to travel abroad once again."¹⁴⁸
- 3.10.7** Burma Campaign UK reported in its Burma Briefing No.15, dated September 2011, that "Asked about this possible offer [of inviting exiles to return] in an interview with Radio Australia on 30th August, the UN Special Rapporteur on Human Rights in Burma warned exiles they could be arrested if they do return, stating; 'The situation is that those who at this moment may decide to express their opinions against authorities may face the risk to be arrested arbitrarily'."¹⁴⁹
- 3.10.8** However, in an email to the COI Service of 21 December 2011, the FCO commented that in recent months a number of NLD members had been able to travel overseas and return to Burma without interference from the authorities. Following the re-registration of the NLD as an official political party in December 2011 and their likely entry into parliament following by-elections in early 2012, it was likely that NLD members, whether active or inactive, would be able to leave and re-enter the country without significant difficulty. It was unlikely, though not impossible, that inactive NLD members would be questioned on re-entering the country. Examples of prominent NLD members travelling abroad were NLD members attending the Global Forum on Civil Society Law in Sweden from 21-23

¹⁴⁷ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012 Paragraph 33.31

¹⁴⁸ <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁴⁹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012 Paragraphs 15.33 and 15.34

¹⁴⁹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012 Paragraph 15.35

August 2011 and the NLD vice-chairman, Tin Oo, received travel documents for a trip to Singapore for eye surgery.¹⁵⁰

See also: **Actors of protection** (Section 2.3 above)

Internal relocation (Section 2.4 above)

Caselaw (Section 2.5 above)

3.10.9 Conclusion The situation in Burma has shown some signs of improvement and President Thein Sein announced in August 2011 that his government would allow dissidents to return to the country. However Burmese exile groups remained sceptical about the announcement and UN Special Rapporteur on Human Rights in Burma warned exiles they could be arrested if they do return, stating; 'The situation is that those who at this moment may decide to express their opinions against authorities may face the risk to be arrested arbitrarily'. Given the fluidity of the situation in Burma and that detention conditions are likely to breach the Article 3 threshold, case owners should consider each case carefully, on its individual facts, and in light of the latest available country of origin information.

Illegal exit from Burma

3.10.10 The Foreign and Commonwealth Office has confirmed two ways in which a Burmese citizen can legally exit Burma:

- a) holding a valid passport and valid departure papers (known as 'D-forms')
- b) at legal border crossing points, either with a passport and D-form or with a border crossing card (which you can receive at the border and requires the return of the citizen within 24 hours).¹⁵¹
- c) We have heard that the Burmese authorities have recently started issuing 3-year temporary passports at particular crossing points (Myawaddy and Kawthoung), as part of their policy to manage the flow of economic migrants crossing the border. We are still trying to confirm this information."

3.10.11 All Burmese citizens exiting Burma legally must receive an exit stamp. If travelling by air, the exit stamp will mark the date of departure and the flight number. If they are crossing at legal border immigration points, the exit stamp will mark the date of departure and the name of the border crossing. The exit stamp does not include information about the date required to return. Neither does it include information about the authorised destination, although if travelling by air, the flight number effectively states the initial destination of travel and D forms state the authorised destination.¹⁵²

3.10.12 According to a representative of the US Committee for Refugees (speaking in 2001), travel to unauthorised destinations, e.g. obtaining a passport for travel to Singapore or Bangkok and then going to several other places, does not generally raise scrutiny upon one's return to Burma. On the other hand, those who seek to

¹⁵⁰ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012 Paragraph 33.07, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁵¹ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 33.03, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁵² UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 33.04, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

emigrate illegally to the U.S. (or other western countries) will likely be jailed upon return to Burma. Also, those who return to Burma with an expired passport, and those who have 'caused embarrassment' to the government, e.g. applied for asylum abroad, could be immediately jailed upon return to Burma.¹⁵³

3.10.13 The provisions of the Burma Immigration (Emergency Provisions) Act 1947, Section 13 state that:

Whoever enters or attempts to enter the Union of Burma or whoever after legal entry remains or attempts to remain in the Union of Burma in contravention of the provisions of this Act or the rules made thereafter or any of the conditions set out in any permit or visa shall be punished with imprisonment for a term not exceeding two years, or with fine, or with both.

It seems that this paragraph was amended in 1990, when the expression 'not exceeding two years, or with fine, or with both' was replaced by the expression 'which may extend from a minimum of six months to a maximum of five years or with fine of a minimum of K.1500 or with both.'¹⁵⁴

See also: **Actors of protection** (Section 2.3 above)

Internal relocation (Section 2.4 above)

Caselaw (Section 2.5 above)

3.10.14 Conclusion It is a criminal offence to leave Burma illegally punishable by a substantial prison sentence. The Burmese authorities keep detailed records of those who leave Burma legally on properly acquired exit stamps and are therefore likely to know if a claimant has left without the required authorisation or has failed to comply with the terms of their exit authorisation. Any Burmese citizen who leaves Burma illegally is likely to be detained and imprisoned if returned to Burma. According to HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012 HM an illegal exit can be defined as 'leaving Burma without authorisation from the Burmese authorities **which includes travel to a country to which the person concerned was not permitted to go by the terms of an authorised exit.**' This definition includes claimants who have left Burma legally to travel to a third country such as Thailand but who then travel to a western country (note illegal travel to Asian countries may not always cause the same difficulties as illegal travel to western countries see para 3.10.6) without authorisation from the Burmese authorities. These people will not have the correct exit stamps in their passport (or D forms) and will be deemed to have left Burma illegally. While illegally exiting Burma is a criminal offence and not a political act and would not in itself engage the UK's obligations under the 1951 Refugee Convention a grant of Humanitarian Protection will usually be appropriate as prison conditions in Burma are generally considered to breach Article 3 of the ECHR.

People who return to Burma without a valid passport

¹⁵³ United States Bureau of Citizenship and Immigration Services, Burma [Myanmar]: Information on exit and return, 12 July 2001 http://www.unhcr.org/refworld/country_USCIS_MMR_3decce614_0.html

¹⁵⁴ Burma Immigration (Emergency Provisions) Act, 1947 [Myanmar], Burma Act XXXI of 1947, 13 June 1947, <http://www.unhcr.org/refworld/docid/3ae6b4fa18.html> and The State Law and Order Restoration Council, Law Amending the Myanmar Immigration (Emergency Provisions) Act, 1947 (The State Law and Order Restoration Council Law No. 2/90) (22 January 1990) <http://www.unhcr.org/refworld/pdfid/3edbb3a94.pdf>

- 3.10.15** Under the terms of the Burma Immigration (Emergency Provisions) Act of 1947, section 3 sub section 2, 'no citizen of the Union of Burma shall enter the Union without a valid Union of Burma passport, or a certificate in lieu thereof, issued by a competent authority'¹⁵⁵ and, if a citizen violates this provision, he is automatically liable to 'be punished with imprisonment for a term which may extend from a minimum of six months to a maximum of five years or with fine of a maximum of K.1500 or with both' under the terms of section 13 sub section 1 of the same Act.¹⁵⁶
- 3.10.16** A Foreign and Commonwealth Official (FCO) official at the British Embassy in Burma stated, with regards to a certificate of identity, in a letter dated 2 February 2011, that: A person holding a certificate of identity will be able to travel (e.g. buy plane tickets etc) to Burma. On arrival they are likely to be subjected to questioning from immigration authorities over the lack of passport. This could include being taken to an interrogation centre, where practices such as sleep and food deprivation are known to have occurred, although not necessarily. If no evidence of past crimes or political activity is found, then no action will be taken. A person with only a Myanmar ID card would not be able to buy plane tickets etc. If they arrived at Yangon airport they would certainly be held for questioning, as above, and, even if no charges were held against him/her, they would not be permitted to hold a passport again in the future (unless they have connections/give sufficient bribes etc). Questions would be asked about how they had left Burma in the first place, if found to have exited illegally they could be charged under the illegal immigration law and subject to a prison sentence.¹⁵⁷

See also: **Actors of protection** (Section 2.3 above)
 Internal relocation (Section 2.4 above)
 Caselaw (Section 2.5 above)

- 3.10.17 Conclusion** HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012 found that a Burmese citizen is in general at real risk of imprisonment if he is returned to Burma from the United Kingdom without being in possession of a valid Burmese passport and that it is not reasonably likely that a Burmese citizen in the United Kingdom will be issued with a passport by the Burmese authorities in London, unless he is able to present to the Embassy an expired passport in his name.
- 3.10.18** If the claimant returns to Burma without a valid passport then he/she is likely to be detained and imprisoned under the provisions of the Burma Immigration (Emergency Provisions) Act 1947 section 13(1). Therefore claimants who do not have a valid passport or are unable to acquire a replacement passport are likely to face imprisonment on return to Burma. While this is a criminal and not a political act and would not in itself engage the UK's obligations under the 1951 Refugee convention a grant of Humanitarian Protection will usually be appropriate as prison conditions in Burma are generally considered to breach Article 3 of the ECHR.

¹⁵⁵ Burma Immigration (Emergency Provisions) Act, 1947 [Myanmar], Burma Act XXXI of 1947, 13 June 1947, <http://www.unhcr.org/refworld/country..NATLEGBOD..MMR..3ae6b4fa18.0.html>

¹⁵⁶ The State Law and Order Restoration Council, Law Amending the Myanmar Immigration (Emergency Provisions) Act, 1947, (The State Law and Order Restoration Council Law No. 2/90) (22 January 1990) <http://www.unhcr.org/refworld/pdfid/3edbb3a94.pdf>

¹⁵⁷ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 33.28, <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Risk on return to failed asylum seekers

3.10.19 As outlined above, claimants who have left Burma illegally or who cannot be returned on a valid passport will be imprisoned if returned to Burma. HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012 found that if it comes to the attention of the Burmese authorities that the person who has left or attempts to enter Burma illegally is also a failed asylum seeker that is reasonably likely to have a significant effect upon the length of the prison sentence imposed for his illegal exit and/or entry. To return such a person from the United Kingdom would accordingly be a breach of Article 33 of the Refugee Convention. Therefore, if it appears from the individual facts and circumstances of a case that if returned the Burmese authorities will be aware that the claimant is a failed asylum seeker then a grant of asylum will be appropriate.

3.10.20 However, HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012 also found that it has not been shown that a person who left Burma legally in possession of a valid passport and will return to Burma legally faces a real risk of persecution or Article 3 ill-treatment on return to Burma by reason of having claimed asylum in the United Kingdom, even if the Burmese authorities have reason to believe that he has made such a claim, unless the authorities have reason to regard him as a political opponent. In this case a grant of asylum or Humanitarian Protection will not be appropriate.

Legal exit and return

3.10.21 Claimants who have left Burma legally, complied with the terms of their exit authorisation and whose passport has simply expired may be able to obtain a valid passport from the Burmese Embassy in London. Information indicates that the Burmese authorities keep records of those who leave Burma legally on properly acquired exit stamps, therefore it should be possible for the Burmese Embassy to check the details of those who have left Burma legally and issue a replacement passport if required. Although, HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012 found that it is 'not reasonably likely' that a passport will be issued unless an expired passport is provided, our view is that a claimant who has left Burma legally, complied with the terms of their exit visas but who does not have an expired passport may be able to obtain a valid replacement passport from the Burmese Embassy in London.

3.10.22 Claimants who are not perceived as political dissidents, who have left Burma legally, complied with the terms of their exit authorisations and who can be returned on the same passport they left with or on a correctly issued passport from the Burmese Embassy in London will not face imprisonment if returned to Burma and will not qualify for asylum or Humanitarian Protection.

3.11 Prison conditions

3.11.1 Applicants may claim that they cannot return to Burma due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Burma are so poor as to amount to torture or inhuman treatment or punishment.

- 3.11.2** The U.S. Department of State noted in 2011 that “members of the security forces reportedly tortured, beat, and otherwise abused prisoners, detainees, and other citizens. Security forces routinely subjected detainees to harsh interrogation techniques designed to intimidate and disorient. As in previous years, authorities took little or no action to investigate the incidents or punish the perpetrators”.¹⁵⁸
- 3.11.3** In October 2010, the Burmese Assistance Association for Political Prisoners (BAAPP) stated that “it was important to note that ordinary civilians with no political or ethnic affiliations were also subjected to torture in normal criminal investigations. Torture and cruel and degrading treatment was administered out to all of the prison population, without differentiation to age, health and the special needs of women, children and those with disabilities.”¹⁵⁹ More recently, in 2012, the BAAPP noted that “the new nominally civilian administration had done nothing to eradicate or minimize the use of torture. Torture continues to be prevalent in Burma’s secretive prison and detention network. It was widespread, systematic and carried out in an organised manner arguably as a matter of state policy. Torture was most often used as a form of punishment for not following prison regulations, as a way to extract false confessions, to discourage future political activities and to subjugate ethnic and religious minorities”.¹⁶⁰
- 3.11.4** In its 2012 World Report, Human Rights Watch stated that the Burmese army forced convicts “to work as porters in ongoing operations in combat zones. This longstanding practice saw hundreds of prisoners drawn from prisons and labour camps transported to frontline units, and forced to carry military supplies and material to the frontline, often being used as “human shields” to prevent attacks or clear anti-personnel landmines.”¹⁶¹
- 3.11.5** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to reconsider whether prison conditions breach Article 3 if the asylum claim is refused.
- 3.11.6 Consideration** . Prison conditions, and particularly labour camp conditions, continued to be harsh and life threatening. Prison food, clothing, and medical supplies were scarce and of poor quality. Bedding often was inadequate, sometimes consisting of a single mat or wooden platform on the floor. Prisoners did not have access to potable water. In many cases family members, who generally were allowed one or two visits per month, supplemented prisoners’ official rations of medicine and basic necessities. Authorities continued to send political prisoners to remote prisons located hundreds of miles from their families to make family visits difficult or impossible.¹⁶²
- 3.11.7** The AAPPB report noted prison authorities routinely and deliberately aggravated prison conditions and denied medical care to political prisoners, causing a level of

¹⁵⁸ [U.S. Department of State, 2010 Human Rights Report: Burma, 08/04/2011](#), Section 1C Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

¹⁵⁹ [Assistance Association for Political Prisoners, TORTURE, POLITICAL PRISONERS AND THE UN-RULE OF LAW: CHALLENGES TO PEACE, SECURITY AND HUMAN RIGHTS IN BURMA October 2010](#), The victims.

¹⁶⁰ [Assistance Association for Political Prisoners, AAPP 2011 Annual Report, January 2012](#), Torture.

¹⁶¹ [Human Rights Watch, World Report 2012 - Burma, 22/01/2012](#), Ethnic Conflict and Displacement.

¹⁶² U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 1C, Prison and Detention Centre Conditions, <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

suffering, amounting to torture. Malnutrition, poor sanitation and unclean water were serious problems throughout the prison system, posing a major health risk. According to testimonies, political prisoners continued to receive very low quality food from prison authorities which was often rotten and half cooked, with stones and insects, resulting in food poisoning and gastric ailments. Many prisoners face starvation.¹⁶³

- 3.11.8** Tuberculosis, malaria and HIV were a constant and serious threat in Burma's prisons, due to overcrowding, lack of hygiene, lack of adequate medical care and exposure to extreme climates. Insein Prison housed about 9,000 to 10,000 inmates but its capacity was about 6,000. Sick and healthy prisoners were routinely put together and inmates relied on shared razor blades, which promoted the transmission of Hepatitis and HIV. Re-using needles was commonplace, with medical staff using the same needle on a number of different prisoners.¹⁶⁴
- 3.11.9** The UN General Assembly's Situation of human rights in Myanmar: Note by the Secretary-General, of 28 August 2009, noted that the Special Rapporteur had received alarming reports on the health conditions of some 136 prisoners who did not receive proper medical treatment or medication. Most prisoners of conscience relied on their families for medication and food supplies. More than 600 prisoners had been reported to have been transferred to remote prisons far from their family houses. This made it more difficult, sometimes impossible, for the families to ensure frequent visits. This not only affected the morale of the prisoners and their families, but it also had physical consequences for the prisoners not receiving their regular medication. The Special Rapporteur had received information that even the medicine prescribed by prison doctors was sold to the inmates and those who did not have the financial capacity to pay for the medicine were, of course, at risk of never recovering from their health problems.¹⁶⁵
- 3.11.10** Some 12 prisons in the country were reported to have no prison doctors, and some did not have a health-care service. The capacity of prison dispensaries or hospitals, wherever they existed, was said to be insufficient compared to the number of detainees. According to information received, Insein prison, with more than 10,000 detainees, had only three medical doctors.¹⁶⁶
- 3.11.11** .The government continued to deny prisoners adequate medical care, although these inadequate medical services in part reflected the poor health-care services available to the general population. Prisoners suffered from health problems including malaria, heart disease, high blood pressure, tuberculosis, and stomach problems--the result of unhygienic conditions and spoiled food. HIV/AIDS infection rates in prisons reportedly were high due to communal use of syringes for medical injections and sexual abuse by infected prisoners.¹⁶⁷

- 3.11.12** The Correctional Department operated an estimated 42 prisons and more than 100

¹⁶³ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 13.08
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁶⁴ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 13.09
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁶⁵ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 13.09
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁶⁶ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 13.11
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁶⁷ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 1C, Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186475.pdf>

labour camps. According to a human rights activist, there were approximately 66,000 prisoners, of which 58,000 were male and 8,000 were female. The number of juvenile detainees was estimated to be a few hundred. Prison overcrowding reportedly was minimal, as authorities were said to transfer prisoners to labour camps as a space-saving measure. Pretrial detainees were held together with convicted prisoners, and political prisoners were sometimes held together with common criminals.¹⁶⁸

3.11.13 There were reports that many prisoners and detainees had access to visitors and could sometimes submit complaints to judicial authorities without censorship or negative repercussion, not all prisoners were allowed to worship freely. Monks imprisoned during the 2007 prodemocracy movement known as the Saffron Revolution reported that they were denied permission to keep Buddhist Sabbath (Upasatha), wear robes and shave their heads and were not allowed to eat food compatible with the monastic code. Authorities generally did not investigate credible allegations of inhumane conditions. The National Human Rights Commission, formed in August 2011, accepted an unknown number of complaints regarding prison conditions. There were reportedly no measures to improve prison record keeping. There were some alternatives to incarceration for nonviolent offenders, including fines and “community arrests” requiring the convicted person to stay within their community and report regularly to authorities. There were no rehabilitation programs.¹⁶⁹

3.11.14 The government generally did not permit media or other independent groups to monitor prison conditions. However, for the first time in nearly six years, on 1-2 July the government allowed officials from the International Committee of the Red Cross (ICRC) to survey the water and sanitation structure of three prisons for future improvements. At year’s end the government continued to prevent the ICRC from meeting directly with prisoners.¹⁷⁰

3.11.15 Conclusion. Prison conditions in Burma are severe and taking into account the ill-treatment and torture of detainees by prison officials, the lack of adequate food and medical care coupled with overcrowding and poor sanitation, conditions are likely to reach the Article 3 threshold. Where individual claimants are able to demonstrate a real risk of imprisonment on return to Burma a grant of HP will be appropriate, unless they fall to be excluded by virtue of Article 1F of the Refugee Convention.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instruction on Article 8 ECHR.

¹⁶⁸ U.S. Department of State, 2011, Human Rights Report: Burma, May 2012, Section 1C, Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186475.pdf>

¹⁶⁹ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 1C, Prison and Detention Centre Conditions <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

¹⁷⁰ U.S. Department of State, 2011 Human Rights Report: Burma, May 2012, Section 1C, Prison and Detention Centre Conditions <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154380.htm>

4.2 With particular reference to Burma the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instruction on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Burma. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Burma due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 The Ministry of Health is the focal point for provision of health care for the entire population and is responsible for the planning, organising, coordinating, financing, regulation in delivery of health care. Medical services are provided through various institutions ranging from teaching hospitals, specialist hospitals, state/division hospitals, district hospitals and township hospitals at the urban areas to station hospitals and traditional clinics at the rural areas.¹⁷¹

4.4.3 Health expenditures in Burma were considerably low and the country also suffered from a paucity of healthcare professionals available to attend to the urgent needs of its widely malnourished and ailing population.¹⁷² There were few functioning hospitals and clinics to provide vaccinations making children dangerously susceptible to the diseases plaguing Burma. Overall, Burmese citizens struggled to cope with medical costs, even at public facilities, and those who could afford government medical services complained of poor service and a lack of equipment and medicine.¹⁷³

4.4.4 The SPDC claimed improved healthcare facilities throughout the country however, the reality was somewhat different. Though new clinics had been built in various different ethnic and rural areas, for instance in parts of Karen State, they were often the result of the forced and uncompensated labour of the local population. Moreover, once built, many village clinics stood unused and were often left unstaffed with no

¹⁷¹ WHO Myanmar National Health System Profile

http://www.searo.who.int/LinkFiles/Myanmar_Myanmar_Country_Health_System_Profile.pdf

¹⁷² UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012 Paragraph 25.40

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁷³ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012 Paragraph 27.02 and 27.04

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

supplies. Meanwhile in urban areas, public hospitals were underfunded, fraught by corruption and were often unable to treat the most seriously ill. Many of the private clinics that could treat these patients were not only expensive but also often turned away patients they feared may die in the interest of protecting their reputations, even if these patients were able to pay.¹⁷⁴

- 4.4.5** Traditional medicine also played an important role in the public health system and was currently accorded a high profile and considerable support by the government. Services and drugs were made available free of charge. While the private sector has expanded rapidly and was currently estimated to provide 75%-80% of ambulatory care, private service providers have had limited involvement in public health programmes.¹⁷⁵
- 4.4.6** More than 240,000 people were living with HIV in Myanmar and an estimated 120,000 were in need of lifesaving antiretroviral treatment (ART). However, treatment was currently available to only 21,000 people and Medecins Sans Frontieres (MSF) were treating 18,300 of these people in 2010. In Yangon, MSF operated four HIV clinics. In addition to treatment, staff offered health education, especially to high-risk groups such as intravenous drug users, men who had sex with men and sex workers and helped prevent the transmission of HIV through voluntary testing and counselling and mother-to-child transmission prevention services. MSF continued to work in close collaboration with the Ministry of Health and other agencies in building up the technical capacities and resources of the various HIV/AIDS care programmes in the country. The SPDC supplied care to only 1,800 and spent only US\$200,000 to combat the HIV/AIDS crisis, despite the need to spend an estimated US\$18 million just to treat those currently in need of ART. As a result of this extreme lack of funding, many patients must wait for a significant amount of time before receiving any form of treatment, while others die tragically still waiting. In October 2008, it was reported that at one clinic in Rangoon, as many as 50 patients were seen queuing each morning in the hope of getting access to free ART. However, according to one doctor working at the clinic, only ten percent of patients ever receive ART with the remaining 90 percent dying before they got the chance.¹⁷⁶
- 4.4.7** Mental health was a part of the primary health care system. Actual treatment of severe mental disorders were not available at the primary level. Consultant psychiatrists were posted in different states and divisions and patients were referred to them. Regular training of primary care professionals was carried out in the field of mental health. In the last two years, about 2000 personnel were provided training. Consultants trained medical officers and primary care workers about mental health illnesses and a means of treating them. There were community care facilities for patients with mental disorders.¹⁷⁷
- 4.4.8** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal

¹⁷⁴ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012 Paragraph 27.05

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁷⁵ WHO Country Cooperation Strategy 2008- 2011 Myanmar, February 2008, Executive Summary

http://www.who.int/countryfocus/cooperation_strategy/ccs_mmr_en.pdf

¹⁷⁶ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 27.07

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁷⁷ UKBA/COI Service, Burma (Myanmar: Country of Origin (COI) Report, 02/02/2012, Paragraph 27.12,

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** There is no policy which precludes the enforced return to Burma of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 5.3** Burmese nationals may return voluntarily to any region of Burma at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Border Agency, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Burma. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Burmese nationals wishing to avail themselves of this opportunity for assisted return to Burma should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

Country Specific Litigation Team
Immigration Group
UK Border Agency
September 2012