

# OPERATIONAL GUIDANCE NOTE

## Burma

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### 1. Introduction

1.1 This document evaluates the general, political and human rights situation in Burma and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 This guidance must also be read in conjunction with any COI Service Burma Country of Origin Information at:

[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

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, caseowners 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.

## Source documents

1.4 A full list of source documents cited in footnotes is at the end of this note.

## 2. Country assessment

2.1 As regards the name of the country Britain's policy is to refer to Burma rather than Myanmar.<sup>1</sup>

2.2 Since 1962, Burma has been ruled by a succession of highly authoritarian military regimes dominated by the majority Burman ethnic group. The current controlling military regime, the State Peace and Development Council (SPDC), led by Senior General Than Shwe, is the country's de facto government, with subordinate Peace and Development Councils ruling by decree at the division, state, city, township, ward, and village levels.<sup>2</sup> On 30 August 2003 the government announced a 7-step road map to build a 'modern, democratic, prosperous state'. The National Convention, the first step of the road map, was reconvened in 2004, after a recess of 8 years, to draw up the basic principles for a new constitution for Burma. The National League for Democracy (NLD) decided not to participate because the SPDC refused to meet their conditions. There have been four sessions of the Convention, and it completed its final session on 3 September 2007. The roadmap has come under criticism for being un-inclusive and lacking credibility.<sup>3</sup>

2.3 The government's human rights record worsened during 2006 and the government continued to commit numerous serious abuses including extrajudicial killings, deaths in custody, disappearances, rape, torture, abuse of prisoners and detainees, arbitrary arrest without appeal, politically motivated arrests and detentions, restriction of freedom of speech, press, assembly, association and movement, restriction of freedom of religion and forced labour (including against children). The military government totally controlled the country's armed forces, excluding a few active insurgent groups.<sup>4</sup>

2.4 The Foreign and Commonwealth Office corroborate reports of a deterioration in Burma's human rights record in 2006.<sup>5</sup> They state that Burma's human rights record remains a cause of grave concern. Respect for the basic rights of freedom of speech, the press, assembly and association are severely limited. Successive resolutions co-sponsored by the UK at the United Nations General Assembly (UNGA) and United Nations Commission on Human Rights (UNCHR) have drawn attention to arbitrary detentions, extra-judicial killings, rape, torture, the large number of political prisoners, abuse of women's and children's rights and the complete absence of democracy. The FCO expresses particular concern about consistent reports indicating wide, systematic and forced recruitment and training of children for use in combat<sup>6</sup>

2.5 Despite laws prohibiting torture, members of the security forces reportedly tortured, beat, and otherwise abused prisoners, detainees, and other citizens including routinely subjecting detainees to harsh interrogation techniques designed to intimidate and disorient.<sup>7</sup> The Foreign and Commonwealth Office continued to receive credible reports of torture, particularly during interrogation in police or military custody. Since early 2005, at least 10 democracy activists have died in detention as a result of torture, mistreatment or in circumstances where poor conditions were probably a contributory factor.<sup>8</sup>

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<sup>1</sup> FCO Country Profile 16 June 2007

<sup>2</sup> USSD 2006 (introduction)

<sup>3</sup> FCO Country Profile 16 June 2007

<sup>4</sup> USSD 2006 (Introduction)

<sup>5</sup> FCO Human Rights Annual Report October 2006 p.38

<sup>6</sup> FCO Country Profile 16 June 2007

<sup>7</sup> USSD 2006 (Section 1(c))

<sup>8</sup> FCO Human Rights Annual Report October 2006 p.39 - 40

- 2.6** On 12 January 2007, a US drafted UNSC resolution that would have urged Burma's military government to release all political prisoners, speed up progress toward democracy and to stop attacks against ethnic minorities, was vetoed by China and Russia who believe that Burma does not pose a threat to regional security. China and Russia have since benefited from multiple gas sales with the Burmese government.<sup>9</sup>
- 2.7** The International Committee of the Red Cross (ICRC) has faced increasing difficulties in conducting detention visits: some of the standard working methods that the ICRC applies to its operations around the world had been challenged by the authorities since mid-2005. As a result, the ICRC has been unable to visit detention facilities since the end of 2005.<sup>10</sup> On 29 June 2007, the ICRC took the radical step of publicly denouncing the government of Burma/Myanmar for violations of international humanitarian law affecting civilians and detainees and for imposing increasingly severe restrictions on ICRC's work.<sup>11</sup>
- 2.8** The judiciary is not independent of the government. The SPDC appoints justices to the Supreme Court who, in turn, appoint lower court judges with the approval of the SPDC. These courts then adjudicate cases under decrees promulgated by the SPDC that effectively have the force of law. The court system includes courts at the township, district, state, and national levels.<sup>12</sup>
- 2.9** Amnesty International has frequently expressed concerns to the SPDC that articles of Burma's legislation excessively restrict the right to freedom of expression, association and assembly. The authorities continue to use these laws to detain peaceful government critics. Since July 2005, the authorities have penalised senior political figures with extraordinarily long prison sentences in secret trials; held individuals incommunicado, and prosecuted persons attempting to report on human rights violations.<sup>13</sup>
- 2.10** The International Labour Organization (ILO) noted with concern the number of people taken into forced labour, particularly by the military. The Burmese government reached a Memorandum of Understanding (MOU) with the ILO on 26 February 2007 designed to provide a mechanism to enable victims of forced labour to seek redress. The Understanding provides that alleged victims of forced labour in Burma will have full freedom to submit complaints to the ILO Liaison Officer in Rangoon. The Liaison Officer will then make a confidential preliminary assessment as to whether the case involves forced labour in order that such cases can be investigated by the Burmese authorities and appropriate action taken against perpetrators. The Understanding incorporates guarantees that no retaliatory action will be taken against complainants. It also provides that the ILO Liaison officer shall be accorded timely freedom to travel within Burma for the purpose of meeting complainants or other relevant persons. The mechanism would be implemented on a trial basis over 12 months and extended by mutual agreement.<sup>14</sup>
- 2.11** On 15 August 2007, the Burmese authorities doubled the price of petrol and diesel fuel. The cost of compressed gas used to power buses increased five fold, followed by a rise in bus fares and commodity prices. The price increases triggered unrest, which began with small-scale demonstrations but gathered momentum over the following weeks as Buddhist monks joined the protests. The military junta accused the National League for Democracy (NLD) and the 88 Students' Generation Group of masterminding the protests. Tens of thousands of monks and civilians around Burma held the biggest protest marches against the military government yet. It was reported on 27 September that 9 people were killed in the protests, including a Japanese video journalist. The deaths followed overnight raids on 6 monasteries, where witnesses claimed that monks were beaten as they slept and that hundreds were taken away in military trucks. On 28 September Reuters reported that it appeared the military

<sup>9</sup> FCO Country Profile 16 June 2007

<sup>10</sup> ICRC press release 13.03.06

<sup>11</sup> Europa press release IP/07/1012 4.07.07

<sup>12</sup> USSD 2006 (Section 1)

<sup>13</sup> AI Travesties of Justice 2005

<sup>14</sup> ILO website 'ILO concludes Memorandum of Understanding with Myanmar'

regime had cut public internet access in an attempt to prevent information, photographs and videos reaching the outside world; at least 3 journalists were reported as having disappeared or been arrested.<sup>15</sup>

- 2.12** On 1 October it was reported that about 4,000 monks detained by the government would be dispersed to prisons in the far north of Burma. After the detention of the monks, demonstrations died down and soldiers remained prominent in Rangoon. Small groups of protestors continued to demonstrate across Burma although their movements were restricted by a tight security presence. Scores of monks attempted to leave Rangoon. On 7 October the Sunday Times reported that secret cremations had taken place with the Burmese army burning an undetermined number of bodies. The Democratic Voice of Burma (DVB) reported on 9 October that arrests and raids had continued despite the regime's claims that the situation had now returned to normal. The DVB stated that opposition groups had claimed that around 6,000 people had been detained by the authorities and up to 200 killed following the protests. Detainees had been put into categories from A to D according to their level of involvement. The Burmese government stated that it had recently released 104 monks and 188 civilians from detention leaving 109 monks and 9 civilians still detained.<sup>16</sup>
- 2.13** Amnesty International reported on 13 October that 4 prominent activists from the '88 Generation Students group had been detained. They had been detained as part of a continuing crackdown by the military authorities. It was reported that few, if any, of this group remained at large.<sup>17</sup>

### **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 Instruction 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 Claimant 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 API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant 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** This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instruction on Assessing the Claim)

<sup>15</sup> COI Key Documents 14.10.07: Latest developments

<sup>16</sup> COI Key Documents 14.10.07: Latest developments

<sup>17</sup> COI Key Documents 14.10.07: Latest developments

**3.5** All Asylum Instructions can be accessed via the IND website at:  
<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

### **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* Military governments have ruled Burma since 1962. In 1988 pro-democracy protests were brutally crushed by the military. In 1990 national elections were held in Burma for the first time in 30 years. The National League for Democracy (NLD) the main opposition party in Burma, led by Aung San Suu Kyi (ASSK), won the elections with an overwhelming majority. The military regime refused to recognise the results claiming a new constitution must be passed before power could be handed over.<sup>18</sup>

**3.6.3** There was no progress in 2006 on national reconciliation or the 2003 'road map' for a transition to democracy. The SPDC continued to restrict basic rights and freedoms and the democratic movement inside the country remained suppressed. Aung San Suu Kyi continued to be detained, marking her eleventh year under house arrest, and other political activists also continued to be detained or imprisoned. Most political party offices, including all but one of the NLD, remained closed or under strict surveillance and political activities were generally curtailed. In November 2005 the SPDC moved its headquarters 300 kilometres north of Rangoon to Nay Pyi Taw. Key ministries and thousands of civil servants were relocated. No official reason was given for the move, although key factors appear to include concerns over possible civilian protests in Rangoon, foreign criticism of the SPDC, a fear of foreign military intervention, and the need to locate the SPDC more centrally to direct its military campaigns against ethnic insurgencies along the eastern border.<sup>19</sup>

**3.6.4** Amnesty International has expressed long-standing concerns at the deprivation of basic rights in detention. It has stated that people are frequently arrested without warrant and held incommunicado; torture and other forms of cruel, inhuman and degrading treatment are common in pre-trial detention; proceedings against political detainees have failed to meet international standards for fair trial and prosecutors have relied on confessions extracted through torture.<sup>20</sup> Criminal suspects, political prisoners, ethnic minority farmers and former members of the government have been subjected to brutal treatment by both the army and police to extract information or to punish them. Unknown numbers of people have died as a result of their torture. In areas where armed groups opposing the government operate, dead bodies have been found showing marks of torture.<sup>21</sup> Six political prisoners died while in custody during 2006.<sup>22</sup>

**3.6.5** Following the recent protests in 2007, The Assistance Association for Political Prisoners (AAPP) reported that more than a hundred activists, including members of the NLD and the pro-democracy group known as the '88 Generation Students Group were detained in August 2007.<sup>23</sup> In September it expressed concern over the treatment in detention of '88 Generation student leaders. In October 2007 it reported on the conditions of detention and risk of torture for over 2,000 monks, activists and members of the public who have been arrested since demonstrations began in August.<sup>24</sup> Those arrested are held in detention centres throughout the country. Many of the detainees sustained injuries during the demonstrations, yet are not being provided proper medical attention. Detainees with pre-existing health conditions are

<sup>18</sup> FCO Country Profile June 2007

<sup>19</sup> HRW 2007

<sup>20</sup> AI 29.09.06

<sup>21</sup> Amnesty International 1.03.07

<sup>22</sup> USSD 2006 (Section 1)

<sup>23</sup> AAPPB press release: August 2007

<sup>24</sup> AAPPB press release: September 2007

denied access to necessary medications. Those being held are not given enough food or water, and many are kept in crowded facilities where the spread of disease is likely. The AAPP has learned that detainees are being subjected to physical torture such as beatings and being forced to stand in various positions for long periods of time.<sup>25</sup>

**3.6.6 Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

**3.6.7 Internal relocation.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

**3.6.8 Conclusion** The Burmese authorities do not tolerate political opposition and it is clear that they may take serious action against those expressing opposition political views and that this treatment may amount to persecution. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities 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 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.** The Foreign and Commonwealth Office report that a variety of sources believe that the Burmese Embassy in London takes photos of protestors. However the FCO has no evidence to confirm this.<sup>26</sup>

**3.7.3** The FCO is not aware of any case where photographs have been used to persecute individuals. However, the regime's military intelligence and Special Branch in the Police Force inside Burma regularly take photographs of individuals, ranging from activists and their families to teachers, diplomats and NGO employees. Photographs have been used as evidence against individuals. On this basis, the FCO believes that any photographs of individuals they are targeting who have protested abroad could be used as part of a case against them. However, the FCO has not heard of specific cases where this has happened.<sup>27</sup>

**3.7.5 Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

**3.7.6 Internal Relocation.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

**3.7.7 Conclusion.** The claimant's level of involvement in the pro-democracy movement in the UK will be relevant to whether or not a grant of asylum is appropriate. Where it has been established that the claimant is a high profile activist and has close links to the opposition movement either in Burma or the UK they are likely to face difficulties if returned to Burma. Therefore prominent activists are likely to qualify for a grant of asylum.

**3.7.8** However, simply protesting outside the Burmese Embassy and the mere existence of photographic evidence to this effect does not necessarily indicate a high level of political involvement in anti-government activities or that the claimant will face persecution or ill-treatment if returned to Burma. Therefore those who are involved in low level opposition politics in the UK are unlikely to qualify for asylum or Humanitarian Protection.

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<sup>25</sup> AAPPB press release: October 2007

<sup>26</sup> FCO letter 11 September 2007

<sup>27</sup> FCO letter 11 September 2007

### 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%).<sup>28</sup>
- 3.8.3** Wide-ranging governmental and societal discrimination against minorities persisted during 2006. Animosities between the country's many ethnic minorities and the Burman majority, which has dominated the government and the armed forces since independence, continued to fuel active conflict that resulted in serious abuses during 2006.<sup>29</sup> The abuses included reported killings, beatings, torture, forced labour, forced relocations and rapes of Chin, Karen, Karenni, Rohingya, Shan, Mon and other ethnic groups by SPDC soldiers..<sup>30</sup>
- 3.8.5** A few ethnic insurgent groups continued to battle the government for autonomy or independence, including the Shan State Army-South (SSAS), the Karenni National Progressive Party (KNPP) and the Karen National Union (KNU), through its armed wing, the Karen National Liberation Army (KNLA). Despite a 2003 cease fire between the KNU and the government, during 2006 fighting that began in September 2005 in Bago Division spread to many other areas of northern Karen State.<sup>31</sup>
- 3.8.6** Karen NGO sources reported that military operations increased from January through July 2006, with a major influx of government forces near Nyaunglebin in Bago Division, Thandaung and Hpapun in northern Karen State, and around Mawchi in Kayah State. An estimated 25,000 Karen villagers were forced to abandon their villages and hide in the jungle as [Internally Displaced Persons \(IDPs\)](#). Approximately 3,000 found food and shelter in refugee camps in Thailand, while another 2,000 camped at an IDP settlement near the Salween River. Others reportedly sought shelter with relatives in government controlled towns. [The villagers](#) stated that after they fled, they learned that the soldiers burned their houses and granaries and confiscated their farm animals. [They also](#) reported that after burning and pillaging the villages, the soldiers often planted landmines to prevent the villagers from returning. The soldiers sometimes shot and killed Karen villagers who attempted to return to their villages to retrieve personal property.<sup>32</sup>
- 3.8.7** Karen NGO sources indicated that human rights abuses increased in Karen State during 2006, despite intermittent peace talks. There were reports of fighting between government soldiers and KNLA forces west of Taungoo Township and in Nyaunglebin Township, Bago Division. The highway east of Taungoo was closed past Mile 13 for several weeks in September 2006. Numerous Karen villages were attacked and burned and hundreds of villagers fled into the jungle with limited supplies. At the end of 2006 the army continued to embargo food supplies moving beyond Mile 13.<sup>33</sup>
- 3.8.6** Ethnic armed insurgent groups allegedly committed human rights abuses, including forced labour, although reportedly to a much lesser extent than the government. Some of the ethnic rebel armies which had signed ceasefire agreements with the military regime (ceasefire groups) also reportedly committed abuses, including forced relocation of villagers in their

<sup>28</sup> FCO Country Profile December 2006

<sup>29</sup> USSD 2006 (Section 5)

<sup>30</sup> AI Report 2006

<sup>31</sup> USSD 2006 (Section 1)

<sup>32</sup> USSD Country Report 2006

<sup>33</sup> USSD Country Report 2006

home regions. Armed insurgent groups and cease fire groups also practised forced conscription of child soldiers.<sup>34</sup>

- 3.8.7** In October 2007 the leader of the ethnic Shan State Army (SSA) urged all opponents of the military regime to unite in the aftermath of the recent uprising. The SSA stated that it had already begun preliminary talks with the NLD and also with representatives from the Karen National Union to try to seek a common negotiating position. However, most ethnic forces have signed ceasefire deals with the military regime and may not be willing to join any new alliance.<sup>35</sup>

### **Rohingya**

- 3.8.7** Though the Rohingya have been living in Burma for hundreds of years, they are denied citizenship, are forbidden from marrying or travelling without permission and have no legal right to own land or property. In 1992, 250,000 Rohingyas, which is a third of their population, fled over Burma's border into Bangladesh to escape the persecution. Fourteen years later more than 20,000 of them are still in the same refugee camps and around 100,000 more are living illegally in the surrounding area.<sup>36</sup>
- 3.8.7** The US State Department reported in 2006 that only persons who were able to prove long familial links to the country were accorded full citizenship. Native-born but non-indigenous ethnic populations (such as Chinese, Indians, Bengalis, and Rohingyas) were denied full citizenship and were excluded from government positions. Members of the Rohingya Muslim minority in Rakhine State continued to experience severe legal, economic, and social discrimination. The government denied citizenship to most Rohingyas on the grounds that their ancestors did not reside in the country for one year prior to the start of British colonial rule in 1824, as required by the country's highly restrictive citizenship law.<sup>37</sup> Rohingya Muslims did not have access to state run schools beyond primary education because the Government reserved secondary state schools for citizens.<sup>38</sup>
- 3.8.8** There has been a minor improvement in the situation for Rohinghas. The FCO reports that, after 5 years of negotiation, in July 2007, the Burmese government agreed to issue temporary registration certificates to 200,000 Rohinghas (the rest of the 800,000 strong population either already have some kind of ID card or are too young to apply for one). 35,000 cards were issued by the end of August. The card does not give Rohinghas citizenship, only residence rights. They will continue to face severe restrictions, such as marriage control and restricted travel even between townships. But it is an important first step in terms of recognition by the Burmese authorities and gives hope that some may achieve citizenship at a later stage.<sup>39</sup>

### **Freedom of movement for ethnic minorities**

- 3.8.8** Ethnic minorities from the large Karen areas of Ayeyarwady Division and Muslim Rohingya from Buthidaung, Kyauktaw, Maungdaw and Rathedaung townships along the border between Rakhine State and Bangladesh continue to experience tight controls on personal movement including frequent military checkpoints. Moreover, Muslim Rohingya and other non citizens primarily South Asians and Chinese are required to seek prior permission from the government to travel internally.<sup>40</sup>
- 3.8.9** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

<sup>34</sup> USSD Country Report 2006 (Introduction)

<sup>35</sup> BBC News 'Resistance in the Burmese jungle' 26.10.07

<sup>36</sup> BBC News

<sup>37</sup> USSD 2006 (Section 5)

<sup>38</sup> USSD 2006 (Section 5)

<sup>39</sup> FCO letter 30.08.07

<sup>40</sup> USSD 2006



**3.8.10 Internal relocation.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

### 3.8.11 Caselaw

**[2004] UKIAT 00085 AH (Burma)** 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. In general, claimants will not qualify for asylum or Humanitarian Protection simply for being a member of a minority ethnic group.

**3.8.12 Conclusion.** Members of Burma's ethnic groups do face societal and government sponsored discrimination in Burma and the Burmese security forces continue to commit serious human rights abuses in ethnic minority areas. Where an individual is able to demonstrate that they are at serious risk of facing such persecution on account of their activities a grant of asylum will be appropriate. However, the level of ill-treatment experienced by individuals varies and may not necessarily amount to persecution or reach the threshold for a breach of Article 3.

### 3.9 Minority religious groups; Muslims, Christian and Hindu

**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 predominant religion in Burma is Buddhism. The other main religions are Christianity, Islam and Animism.<sup>41</sup> Burma is ethnically diverse, and there is some correlation between ethnicity and religion. Theravada Buddhism is the dominant religion among the majority Burman ethnic group and among the Shan, Arakanese, and Mon ethnic minorities of the eastern, western, and southern regions.<sup>42</sup>

**3.9.3** Christianity is 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. Christianity is also practised widely among the Karen and Karenni ethnic groups of the southern and eastern regions, although many Karen and Karenni are Theravada Buddhists.<sup>43</sup>

**3.9.4** Hinduism is practised chiefly by the Indian population, who are concentrated in major cities and in the south-central region, although some Indians are Catholic. Islam is practised widely in Arakan State, where it is the dominant religion of the Rohingya minority, and in Irrawaddy Division, as well as among some Burmans, Indians, and ethnic Bengalis. The Chinese ethnic minorities generally practise traditional Chinese religions. Traditional indigenous religions are practised widely among smaller ethnic groups in the northern regions, and practices drawn from those indigenous religions persist widely in popular Buddhist rituals, especially in rural areas.<sup>44</sup>

**3.9.5** Most adherents of religions that are registered with the authorities generally enjoy the right to worship as they choose; however, the Government has imposed restrictions on certain religious activities and has frequently abused the right to religious freedom.<sup>45</sup>

**3.9.6** In 2006 the government continued to infiltrate and covertly and overtly monitor meetings and activities of all organisations, including religious organisations. The government actively promoted Theravada Buddhism over other religions, particularly among members of minority

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<sup>41</sup> FCO Country Profile December 2006

<sup>42</sup> USIRF 2006 (Introduction)

<sup>43</sup> USIRF 2006 (Introduction)

<sup>44</sup> USIRF 2006 (Introduction)

<sup>45</sup> USIRF 2006 (Introduction)

ethnic groups. There were no reports of forced conversions of non-Buddhists although adherence or conversion to Buddhism is generally a prerequisite for promotion to senior government and military ranks.<sup>46</sup> There were no reported incidents of violence carried out by the government or its agents against religious groups.<sup>47</sup>

**3.9.7** During 2006 Christian and Islamic groups continued to experience difficulties in obtaining permission to repair existing churches or build new ones in most regions. Minority religions were discouraged and prohibited from constructing new places of worship.<sup>48</sup>

**3.9.8** Violent clashes between Muslims and Buddhists were reported in February 2006 in Magway Division. Local security forces imposed strict curfews to prevent the spread of violence and arrested seventeen people in Sinbyukyun and another fifty-five persons in Chauk, mostly Muslims. Persistent social tensions remained between the Buddhist majority and the Christian and Muslim minorities. Preferential treatment for Buddhists and widespread prejudice against ethnic Indians, particularly ethnic Rohingya Muslims were key sources of social tensions between the Buddhist majority and Christian and Muslim minorities.<sup>49</sup> Muslims in Rakhine State (Arakan) continued to experience the severest forms of discrimination.<sup>50</sup>

**3.9.9** *Sufficiency of protection.* As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

**3.9.10** *Internal relocation.* As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

### **3.9.11 Caselaw**

**[2003] UKIAT 00135 S (Burma) Heard: 13 October 2003 promulgated 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, in the light of this, no point based on religion could succeed.

The Tribunal were also very critical of Mr Win Soe as a country expert. The IAT found that Mr Win Soe's evidence should be treated with the very greatest caution, in this or any other case where it may be relied on.

**3.9.12** *Conclusion* Although members of minority religious groups do face discrimination and the Burmese authorities do restrict religious freedom this does not necessarily amount to persecution and most adherents of religions that are registered with the authorities generally enjoy the right to worship as they choose. Therefore it is unlikely that claimants whose claim is based solely on persecution due to belonging to a minority religious group will qualify for asylum or Humanitarian Protection.

### **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

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<sup>46</sup> USIRF 2006 (Introduction)

<sup>47</sup> USSD 2006 (Section 2)

<sup>48</sup> USIRF 2006

<sup>49</sup> USIRF 2006

<sup>50</sup> USIRF 2006

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 needs three documents to travel outside the country: a passport from the Ministry of Home Affairs; a revenue clearance from the Ministry of Finance and Revenue; and a departure form from the Ministry of Immigration and Population. To address the problem of trafficking in persons, the government continued to hinder or restrict international travel for women, particularly those under 25 years of age. New passport procedures went into effect in August 2004 allowing citizens to retain their passports after completing trips abroad through their validity dates, namely: one year for incidental travel; three years for dependents; four years for employment; and 18 months for those travelling on business. In January 2005 the government announced that new passports would be issued within a week. However, it still frequently took several months to receive a passport, particularly if the applicant was unwilling to offer a bribe as incentive for speedier service.<sup>51</sup>
- 3.10.3** 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 \$230 (300,000 kyat), the equivalent of a yearly salary. The board that reviews passport applications denied passports on political grounds. 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.<sup>52</sup>
- 3.10.4** The country's borders with China, Thailand, Bangladesh, and India remained very porous with significant undocumented migration and commercial travel occurring.<sup>53</sup> The Foreign and Commonwealth Office reported that Burmese citizens who have worked illegally in other Asian countries, but who have passports, have been able to return to Burma without difficulty.<sup>54</sup>
- 3.10.5** In October 2004 Swiss parliamentarians tabled a motion in the Swiss National Council requesting that it order the Federal Refugees Office to refrain from any refoulement to Burma. They also called upon it to intercede with the authorities of Burma to obtain the release, or at least the reduction of the sentence, of Mr. Stanley Van Tha, who had been handed over to the Burmese authorities after his request for asylum in Switzerland was rejected, and was subsequently sentenced to 19 years in prison.<sup>55</sup>
- 3.10.6** The 19 year sentence given to Mr. Stanley Van Tha consisted of 7 years under article 5(J) of the Burma Emergency Act 1950 as the court ruled that Mr. Van Tha had acted to undermine the security of the Union of Burma and the restoration of law and order. Another 7 years under the Penal Code Article 468 for having forged stamps in his passport and 5 years under the Burma Immigration Act 1947 section 13(1) for illegal entry into Burma.<sup>56</sup>

#### **Illegal exit from Burma**

- 3.10.7** The Foreign and Commonwealth Office has confirmed two ways in which a Burmese citizens can legally exit Burma:
- Holding a valid passport and valid departure papers (known as 'D-forms')
  - At legal border crossing points, either with a passport and D-form or with a border crossing card (which can be obtained at the border and requires the return of the citizen within 24 hours)<sup>57</sup>
- 3.10.8** 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 crossing at legal border

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<sup>51</sup> USSD 2006 (Section 2)

<sup>52</sup> USSD 2006 (Section 2)

<sup>53</sup> USSD 2006 (Section 2)

<sup>54</sup> FCO letter 27 August 2004

<sup>55</sup> Inter-Parliamentary Union June 2005

<sup>56</sup> AIT determination [2006] UKAIT 00012 HM (Risk factors for Burmese citizens) Burma CG - paragraph 36

<sup>57</sup> FCO letter 15.08.07

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. Nor 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.<sup>58</sup>

- 3.10.9** Burmese citizens do cross the border illegally i.e. without the relevant documents, without an exit stamp or for longer than the 24 hours time limit permitted with a border pass. There are border areas that are porous and not well-patrolled by immigration officials. The FCO understanding is that if individuals exceed the 24 hour time limit of the border pass, the consequences are not serious. In most instances, a bribe or small fine would be sufficient but the FCO is unaware of any cases where official penalties were imposed. Exceeding this limit is not treated as seriously as other non-compliance matters, for example, trying to leave without the correct D form which could lead to confiscation of a citizen's passport.<sup>59</sup>
- 3.10.10** 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 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.<sup>60</sup>
- 3.10.11** The provisions of the Burma Immigration (Emergency Provisions) Act 1947, Section 13 state that:

- (1) 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 thereunder 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.'<sup>61</sup>

- 3.10.12** The FCO states that, in practice, the authorities are not consistent in their approach to issuing penalties, which can vary between officials and from week to week. Political profile can affect the attention a Burmese citizen receives from the immigration authorities. This can include a wide range of elements, from being the daughter of a political prisoner, to being involved in protests in Burma or abroad, to having links with trade unions and/or exile activist groups. To what extent this might affect an individual's case partly depends on how much of a threat the individual is seen to be to the authorities and how stable/unstable the general situation in Burma is at that time.

#### **People who return to Burma without a valid passport**

- 3.10.13** 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'<sup>62</sup> 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

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<sup>58</sup> FCO letter 15.08.07

<sup>59</sup> FCO letter 15.08.07

<sup>60</sup> US Immigration & Nationality Service 2001

<sup>61</sup> [2006] UKAIT 00012 HM (Risk factors for Burmese citizens) Burma CG

<sup>62</sup> The Burma Immigration Act 1947

fine of a maximum of K.1500 or with both' under the terms of section 13 sub section 1 of the same Act.<sup>63</sup>

**3.10.12 Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the State authorities, they cannot apply to these authorities for protection.

**3.10.13 Internal relocation.** As this category of claimants' fear is of ill treatment/persecution by the State authorities, relocation to a different area of the country to escape this threat is not feasible.

### 3.10.14 Caselaw

**[2006] UKAIT 00012 HM (Risk factors for Burmese citizens) Burma CG Heard 29 November 2005, Promulgated 24 January 2006** The AIT found that a 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. The AIT consider the following to constitute illegal exit: (a) leaving without authorisation from the Burmese authorities, and (b) travel to a country to which the person concerned was not permitted to go by the terms of an authorised exit. The AIT found that it is likely that the Burmese authorities keep lists of those who leave Burma on a properly issued exit stamp.

The AIT also found that 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. They also found 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.

The AIT also found that if it comes to the attention of the Burmese authorities that a person who left Burma illegally or who returned without the correct documentation 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. However, whether the 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.

**[2004] UKIAT 00285 TW (Risk on return – Unauthorised Departure) (Myanmar) Heard 7 October 2004, Promulgated 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.

### 3.10.15 Conclusion.

#### Illegal exit from Burma

**3.10.15** 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 the AIT in **[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 3.10.7) 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.

<sup>63</sup> Law Amending the Myanmar Immigration (Emergency Provisions) Act, 1947

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.

### **Returning to Burma without a valid passport**

**3.10.16** In addition the AIT 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.

**EU letters** – For these purposes an EU Letter is not a valid passport, and a person should not be returned on an EU Letter.

**3.10.17** If the claimant returns to Burma without a valid passport then he 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.

### **Risk on return to failed asylum seekers**

**3.10.18** 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. The AIT 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 then there is a reasonable likelihood that the prison sentence will be increased. 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 may be appropriate.

**3.10.19** However, the AIT also found that those who have left Burma legally and will return to Burma legally (see para 3.10.20 below) will not face persecution or 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**

**3.10.20** 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 the AIT 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.

**3.10.21** Claimants 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** Claimants 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 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 claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.11.3 Consideration** The Department of Prisons operated approximately 35 prisons and approximately 70 labour camps throughout the country and conditions in both generally remained harsh and life threatening. In prisons, food, clothing, and medical supplies were reportedly in very short supply. Bedding consisted of a single mat on the floor. Prisoners were forced to rely on their families, who were allowed to visit once every two weeks for 15 minutes per visit, for basic necessities. Prisoners were held without being charged for weeks or months, and until a prisoner was officially charged with a crime, families could not visit or send critical supplementary food.<sup>64</sup>
- 3.11.4** The government continued to deny prisoners adequate medical care, although medical services in prisons partially reflected health care services available to the general population. During 2006 the year the health of several political prisoners deteriorated, and several died while in prison. On 10 January, Khin Maung Lwin died in Putao Prison after the officer in charge rejected appeals for medical treatment. On 23 March, Ko Oo died. He suffered from various ailments, but prison authorities would not refer him for treatment. On 2 May, Myiunt Than died in Thandwe Prison. He reportedly suffered a stroke and died after one month in hospital. In mid August Daw Nyunt Yin died in Insein Prison. She reportedly vomited blood before she died and did not receive qualified medical treatment. On 16 October, student leader Thet Win Aung died in Mandalay Prison. Despite his 2002 hunger strike to protest the lack of adequate medical treatment, and the poor prison diet, prison authorities continued to deny him adequate health care. On 26 October 2006, Maung San died in Mawlamyine Prison minutes after a paramedic treated him for gastric pain. He was denied treatment by a qualified doctor<sup>65</sup>
- 3.11.5** According to the government, political detainees were separated from common criminals. However, reports by prisoners indicated that the authorities frequently placed political prisoners in communal cells where they were subjected to beatings and mistreatment by hard-core criminals. On 2 January 2006, criminal prisoners in Insein Prison severely beat three political prisoners: Aung San Myat, Thiha Tun, and Han Win Aung. Prison officers reportedly allowed the attack and did not intervene. On 2 October 2006, political prisoners in Mawlamyine Prison staged a hunger strike to protest being housed with the criminal population rather than held separately with political prisoners. The warden beat the prisoners and used criminal prisoners to beat the political prisoners housed with them.<sup>66</sup>
- 3.11.6** In June 2005, Amnesty International detailed the case of prisoners who were punished by prison authorities, including being shackled, beaten, and made to perform *pounzan* (a squatting position, in which the individual has to place his hands clenched on his knees).<sup>67</sup>
- 3.11.7** The authorities in Burma continue to regularly use corporal punishment, shackling and other restraints and confinement in a dark cell as a punishment against detainees and prisoners, particularly against individuals who have protested their conditions of detention, including by staging hunger strikes. While the authorities have frequently stated that the use of prisoners

<sup>64</sup> USSD 2006 (Section 1)

<sup>65</sup> USSD 2006 (Section 1)

<sup>66</sup> USSD 2006 (Section 1)

<sup>67</sup> AI Travesties of Justice 2005

to discipline other prisoners is forbidden, it appears that they are continuing to use criminal prisoners to beat other prisoners, including political prisoners.<sup>68</sup>

- 3.11.8** Amnesty International has documented the pervasive and systematic use of torture by authorities in pre-trial detention during 2005, and believes that the practise is continuing. There have been widespread reports that individuals in pre-trial interrogation continue to be tortured and ill- treated. Political activists who have been taken into detention for short-term questioning, have reportedly been beaten, denied sleep, and in some cases subjected to abusive language by the authorities.<sup>69</sup>
- 3.11.9** At least six deaths in custody have been reported since January 2005, in which individuals in pre-trial detention and prisons are suspected to have died either as a result of a lack of adequate medical attention or torture or ill-treatment. No independent investigation is known to have taken place into the deaths that occurred in custody this year. Attempts by families to use the courts to secure such investigations have reportedly failed.<sup>70</sup>
- 3.11.10** In November 2005, authorities insisted that the USDA, MAAF and Myanmar Red Cross accompany the ICRC on all prison visits. After failing to obtain government permission to maintain its international practice of unfettered access to prisoners, the ICRC has not visited prisons or labour camps since the end of 2005. (see 2.7)The ICRC terminated some of its traditional services, such as providing medications and soap to detainees, because it could not verify that these supplies reached the prisoners. The ICRC could no longer follow the cases of more than 4000 detainees. During 2006, gains achieved earlier by the ICRC on prison problems, including the right to talk in private with prisoners, make repeated visits as desired, and have full access to most prisoners, were suspended, as were its efforts to expand ICRC access to more detainees. In November 2006 the government ordered ICRC field offices in Hpa an, Kengtung, Mandalay, Mawlawmyine and Taunggyi to close but later 'clarified' that instead of closing, the offices had to cease all field activities, including protection, basic hygiene and health care until further notice. The government allowed the ICRC to continue prosthetic services to mine victims.<sup>71</sup>
- 3.11.11 Conclusion.** Prison conditions in Burma are severe and taking into account ill-treatment of detainees by prison officials, the lack of adequate food and medical care coupled with overcrowding and poor sanitation, conditions in prisons and detention facilities in Burma are likely to reach the Article 3 threshold. Where caseowners believe that an individual is likely to face imprisonment on return to the Burma they should also consider whether the claimant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where caseowners consider that this may be the case they should contact a senior caseworker for further guidance. Where individual claimants are able to demonstrate a real risk of imprisonment on return to Burma and exclusion is not justified, a grant of HP is likely to be appropriate.

#### **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.
- 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

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<sup>68</sup> AI Travesties of Justice 2005

<sup>69</sup> AI Travesties of Justice 2005

<sup>70</sup> AI Travesties of Justice 2005

<sup>71</sup> USSD 2006 (Sections 1&4)



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 Instruction 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 they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

**4.3.2** Minors claiming in their own right without a family to return to, or where there are not adequate reception, care and support arrangements, 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 Instruction.

#### **4.4 Medical treatment**

**4.4.1** Claimants 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. Total expenditure on health was 1.5% of GDP which equalled per capita government expenditure of \$13 in 1998.<sup>72</sup>

**4.4.3** WHO (World Health Report) ranked Burma 190<sup>th</sup> out of 191 countries for overall health system performance in 2000. Burma has fairly well developed health facilities, but they are far from comprehensive, illustrated by a rate of 0.8 hospital beds per thousand population. Similarly, there is a lack of trained medical personnel, with Burma recording a rate of 0.3 doctors per thousand population. Healthcare has undergone little development since the advent of military rule and the lack of available funds results in limited expenditure on medical equipment and supplies.<sup>73</sup>

**4.4.4** The military government's spending on health care remains very low, resulting in a shortage of facilities, staff and medical supplies. Communicable and infectious diseases continue to take their toll on the population.<sup>74</sup> Each township has one hospital with a bed strength varying from 16 to 50 depending upon the population, one or two station hospitals and four to seven rural health centres (RHCs). Under each RHC there are four sub-centres staffed by midwives and public health supervisor (PHS II).<sup>75</sup>

**4.4.5** In addition to health care by modern medicine, the Department of Traditional Medicine provides community health care by traditional system of medicine through traditional medicine hospital and traditional medicine clinics all over the country. There are two 50-bed traditional medicine hospitals and ten 16-bed traditional medicine hospitals.<sup>76</sup>

#### **HIV/AIDS**

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<sup>72</sup> WHO Country Health Profile

<sup>73</sup> Episcom – Burma Medical Devices Market Report 2002

<sup>74</sup> MSF Activity Report 2002

<sup>75</sup> WHO Country Health Profile

<sup>76</sup> WHO Country Health Profile

- 4.4.6** Almost 339,000 people in Burma were infected with the HIV virus at the end of 2004, double the estimated 177,000 infections recorded in March 2002. Most Burmese living with HIV cannot afford anti-retroviral drugs. Many use herbal supplements or meditation techniques taught by Buddhist monks. UNICEF said it spends an average of 2 million dollars per year in Burma in support of HIV/AIDS prevention and care.<sup>77</sup>
- 4.4.7** 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 caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal 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** 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, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Burmese nationals may return voluntarily to any region of Burma at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Burma. The programme was established in 2001, 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 the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

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**Asylum and Appeals Policy Directorate  
31 October 2007**