



**Upper Tribunal
(Immigration and Asylum Chamber)**

TS (Political opponents -risk) Burma CG [2013] UKUT 00281 (IAC)

THE IMMIGRATION ACTS

**Heard at Field House
On 11, 12 and 13 March 2013**

.....
Before

**UPPER TRIBUNAL JUDGE DAWSON
UPPER TRIBUNAL JUDGE O'CONNOR
UPPER TRIBUNAL JUDGE RINTOUL**

Between

TS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mullins, instructed by Gillman-Smith Lee solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

- 1. In order to decide whether a person would be at risk of persecution in Burma because of opposition to the current government, it is necessary to assess whether such activity is reasonably likely to lead to a risk of detention. Detention in Burma, even for a short period, carries with it a real risk of serious ill-treatment, contrary to Article 3 of the ECHR and amounting to persecution/serious harm within the meaning of the Qualification Directive.*
- 2. A person is at real risk of being detained in Burma where the authorities regard him or her to be a threat to the stability of the regime or of the Burmese Union.*

3. *The spectrum of those potentially at risk ranges from those who are (or are perceived to be) actively seeking to overthrow the government to those who are in outspoken and vexing opposition to it. Whether a person is in need of protection will depend upon past and future political behaviour. This assessment has to be made against the background of a recently reforming government that carries a legacy of repression and continues to closely monitor those in opposition. The evidence points to a continuing anxiety over the break up of the state and the loss of its power.*
4. *The question of risk of ill-treatment will in general turn upon whether a returnee is detained by the authorities at any stage after return.*
5. *A person who has a profile of voicing opposition to the government in the United Kingdom through participation in demonstrations or attendance at political meetings will not for this reason alone be of sufficient concern to the Burmese authorities to result in detention immediately upon arrival. This is irrespective of whether the UK activity has been driven by opportunistic or genuinely held views and is regardless of the prominence of the profile in this country.*
6. *A person who has a profile of voicing opposition to the Burmese government in the United Kingdom can expect to be monitored upon return by the Burmese authorities. The intensity of that monitoring will in general depend upon the extent of opposition activity abroad.*
7. *Whether there is a real risk that monitoring will lead to detention following return will in each case depend on the Burmese authorities' view of the information it already possesses coupled with what it receives as the result of any post-arrival monitoring. Their view will be shaped by (i) how active the person had been in the United Kingdom, for example by leading demonstrations or becoming a prominent voice in political meetings, (ii) what he/she did before leaving Burma, (iii) what that person does on return, (iv) the profile of the people he or she mixes with and (v) whether a person is of an ethnicity that is seen by the government to be de-stabilising the union, or if the person's activity is of a kind that has an ethnic, geo-political or economic regional component, which is regarded by the Burmese government as a sensitive issue.*
8. *It is someone's profile in the eyes of the state that is the key to determining risk. The more the person concerned maintains an active political profile in Burma, post-return, the greater the risk of significant monitoring, carrying with it a real risk of detention.*
9. *In general, none of the risks identified above is reasonably likely to arise if an individual's international prominence is very high. The evidence shows that the government is keen to avoid adverse publicity resulting from the detention of internationally well-known activists.*
10. *In the light of these conclusions, TL and Others (Burma CG) [2009] UKAIT 00017 can no longer be relied on for Country Guidance. The issue of illegal exit and its consequences considered in HM (risk factors for Burmese Citizens) Burma CG [2006] UKAIT 00012 were not addressed by the parties and the guidance in that decision remains in force for the time being.*

11. *There is evidence of positive changes in Burma which as they become embedded may result in the need for the present country guidance to be revisited by the Upper Tribunal in the short to medium term.*

DETERMINATION AND REASONS

<i>TABLE OF CONTENTS</i>	<i>Paragraphs</i>
Preliminary matters	1-7
Ambit of the appeal	8
Agreed Facts in TS's case	9-11
Existing Burma Country Guidance cases	12-14
Summary of the evidence	
Evidence of Mr Maung, TN and HHS	15-20
Evidence of Dr Zarni	21-22
Evidence of Marcia Robiou	23-26
The Report of the Special Rapporteur	27-35
Other country information	36
Submissions	37-46
Legal background	53-57
Discussion and country guidance	58-83
Determination of the appeal	84-85
Schedule One	
Evidence of Ms Marcia Robiou	1-36
Evidence of Dr Zarni	37-60
Report of Special Rapporteur	88-89
Schedule Two	
Summary of skeleton argument –Mr Mullins	1-8
Mr Mullins supplementary skeleton argument	9-16
Summary of Mr Avery's initial skeleton argument	17-23
Mr Avery's supplementary submissions	24-27
Schedule Three- Documents considered	

Preliminary Matters

1. This appeal concerns a national of Burma who was born on 9 May 1958. On 18 March 2008 he unsuccessfully applied to the Secretary of State to be recognised as a refugee. As a result was faced with a removal decision dated 24 March 2009, which he then unsuccessfully appealed to a judge of the Asylum and Immigration Tribunal (Immigration Judge Neyman). On 9 December 2009 Senior Immigration Judge Moulden made an order for reconsideration. By virtue of the transitional provisions contained in the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 and by application of the Tribunals, Courts and Enforcement Act 2007, the appeal came before Upper Tribunal Judge Freeman on 15 March 2010. He

dismissed the appeal. Thereafter, permission to appeal to the Court of Appeal was granted by Longmore LJ at an oral hearing on 26 January 2011. On 23 May 2011 Sullivan LJ, by consent, ordered that the determination of Judge Freeman be set aside and that the appeal be remitted to the Upper Tribunal for appeal against the decision of the Secretary of State to be reconsidered. The Statement of Reasons records that at [4]:

“The Respondent accepts that the findings of fact, concerning the finding that the Burmese authorities (as distinct from the British authorities) would know that the appellant is a hanger on with no real commitment to the opportunist (sic) cause, is an error of law”

2. By this route, the appeal has come before us to re-make the decision.
3. The reference to “hanger-on” in the Court of Appeal’s Statement of Reasons comes from a decision of the Upper Tribunal giving country guidance on Burma: TL and Others (sur place activities – risk) Burma CG [2009] UKAIT 00017. This decision was recently the subject of similar criticism by the Court of Appeal in KS (Burma) [2013] EWCA Civ 67; although by then the Upper Tribunal had already decided, having regard to the recent and well-publicised events of change in Burma, to list this appeal for country guidance.
4. It is unsatisfactory that the journey of this appeal through the Upper Tribunal has been a slow one. There are a number of appeals in the system that has been held up as a result and the need for a prompt disposal became all the more important after KS (Burma). No procedural issues were left unresolved by the date of hearing and we are grateful to Mr Mullins (and his instructing solicitors) and Mr Avery for their prompt attention to the directions issues and their helpful and constructive approach to ensure the earliest possible hearing of this appeal once the decision had been made to list it for hearing.
5. Facts have been agreed between the parties and there was, therefore, no need for TS to give evidence. We heard evidence however from two expert witnesses, Marcia Robiou and Dr Maung Zarni, by video link from Bangkok and Kuala Lumpur respectively, on 11 and 12 March. We also heard evidence from three witnesses of fact relating to the experiences of Mr Maung, a British Citizen of Burmese origin. He recently applied to the Burmese consulate for a visa to visit his wife and child who currently reside in Burma having left the UK on Boxing Day 2012.
6. Shortly before the hearing it became apparent that Dr Maung Zarni, under pressure of time due to a change in his circumstances, was unable to prepare a supplementary report and so it was decided that he would participate in a telephone interview (by Skype) with Mr Avery and Mr Mullins in order to respond to questions posed in advance by the parties. A record was taken and this is summarised in the relevant section below. Mr Avery had no objection to the additional reports from the experts being served at the last minute and he was content with the time made available for him to consider what was being added to what had already been said. Similarly he

had no objection to Mr Maung and the additional witnesses giving evidence. As it turned out, the SSHD accepted their evidence.

7. The format of this determination is as follows. We set out below the agreed facts relating to the appellant and thereafter the ambit of the issues for us to determine. Details of the expert and other evidence are set out in Schedule One. Our conclusions on that evidence are in the body of this determination, as well as a summary of the submissions for which more detail is provided in Schedule Two. The relevant case law and previous country guidance is considered in the body of this determination, followed by our general conclusions giving country guidance and our determination of the appeal. The country on which we give guidance is referred to variously in the evidence before us as Burma and Myanmar. We have referred to it as Burma simply because that is how it was referred to in previous guidance. The former title Union of Burma relates to the creation of the current state comprising Upper and Lower Burma and the Frontier Areas, which had been separately administered under British rule prior to independence in 1948.

The ambit of this appeal

8. The ambit of this appeal decided by the Tribunal and agreed between the parties is in the following terms:-
 - (i) What is the risk to a Burmese citizen who has taken part in demonstrations in the UK against the current Burmese regime, upon his return to Burma?
 - (ii) What is the relevance to the assessment in (i) above of someone who came to the adverse attention of the authorities before leaving Burma but was nevertheless able to travel out of the country on a valid Burmese passport?
 - (iii) To what extent do the Burmese authorities distinguish between returnees who have no real political or oppositionist commitment but who attend demonstrations to bolster a claim to asylum and those who attend political demonstrations out of a genuine commitment to the opposition cause?
 - (iv) What impact does the answer to the (iii) above have on the risk on return?
 - (v) Do head notes 1-5 and 7 of TL and Others (Burma CG) [2009] UKAIT 00017 provide an accurate factual analysis and risk assessment faced by asylum seekers returning to Burma who have sought protection based on their political opposition to the current regime?
 - (vi) What is the risk with reference to the appellant's particular circumstances?

Agreed Facts in the appellant's Case.

9. Although the SSHD initially indicated that there were matters she disputed, at a case management hearing on 23 January the following facts were agreed.

10. In relation to the appellant's immigration history it was agreed that he first arrived in the UK on 4th April 2000, aged 41, with leave to enter to study English. Such leave was extended on a number of occasions, it last being conferred until 31 October 2005. The appellant was apprehended as a overstayer on 8 March 2008 and claimed asylum on 18 March 2008.
11. The following further facts were agreed :-
 - (i) The appellant was born in Hinthada in South Burma on 9th May 1958. In September 2004 he renewed his Burmese passport at the Burmese Embassy in London. His passport expired on the 19th January 2008;
 - (ii) Between September and December 2007 he participated in at least 30 demonstrations in Parliament Square against the Burmese government's treatment of Buddhist monks within Burma. In November 2007 he attended three demonstrations outside Downing Street. That month he also attended two meetings of the Burmese Democratic Movement Association (BDMA) at the Buddhist monastery in Colindale, north London;
 - (iii) On 16th May 2008 he took part in a demonstration outside the Burmese Embassy and collected donations from his friends for victims of Cyclone Nargis. During that demonstration he saw officials within the Embassy taking photographs of the demonstrators outside;
 - (iv) His claim for asylum was refused on the 22nd February 2009 against which he appealed. He continued his political activities and was involved in protests outside the Burmese embassy on the 27th March, 15th and 18th May. On 23rd May 2009 he protested outside the French Embassy over Total Oil's support of the Burmese Government. Photographs of him appear on *www.totaloutofburma.blogspot.com*. On 19th June he demonstrated outside the Burmese Embassy to demand the release of Aung San Suu Kyi on her 64th birthday. He appeared on *www.youtube.com*.
 - (v) Between the 30th July and 25th September 2009, the appellant attended seven more demonstrations outside the Burmese Embassy. 25th September was the second Anniversary of the Saffron Revolution. Footage from the demonstration appeared on Myanmar TV, which contained pictures of the appellant. Four days after the news broadcast, a military officer paid a visit to the appellant's wife in Burma to find out his whereabouts. She told the officer he was in England. The officer then asked what he was doing in England and if she knew anything about him appearing on TV taking part in the demonstration. She replied that he was studying in England and that she knew nothing about his picture appearing on TV;
 - (vi) On 26th March 2010 the appellant attended a demonstration outside the Burmese Embassy in the United Kingdom to mark Burma Resistance Day. On 3rd May 2010 he attended a demonstration in Trafalgar Square to demand the

release of comedian, Zarganar. Between 27th May and 6th August 2010, the appellant attended five more demonstrations outside the Burmese Embassy. On 6th November 2010 he participated in a rally and peaceful march to condemn Burma's sham election following which he appeared on *Youtube*;

- (vii) On 25th March 2011 the appellant attended a demonstration outside the Burmese Embassy to mark Burma Resistance Day. Between 17th June and 19th July 2011, the appellant participated in four further demonstrations outside the Burmese Embassy. In the first two of these demonstrations, which took place in June, his photograph appeared on the internet. On 22nd June 2011 the appellant attended the Aung San Suu Kyi event at the Royal Albert Hall;
- (viii) On 26th September 2012 he joined the "National League for Democracy – Liberated Area UK" (NLD-LA UK) as a member although he had been to meetings before joining. Before joining NLD-LA UK he was a member of the Burmese Democratic Movement Association (BDMA) but when they reformed and changed their name to 88 New Student Generation he decided to join NLD-LA UK. He is a member of their Activities Committee and helps to proof read letters prepared by members of NLD-LA UK before they are sent to Aung San Suu Kyi. These included proposed reforms for Myanmar. His photograph appears on the members' page of NLD-LA UK's website. On 27th September 2012 he attended a NLD-LA UK dinner party and Skype discussion. His photograph from this dinner appears on the NLD-LA UK website. On 3rd October he attended a meeting of the NLD-LA UK at the party's headquarters. His photograph from this meeting appears on the party's website;
- (ix) The appellant supports democracy, freeing political prisoners, unity amongst all ethnic groups and self-determination for Kachins. His participation in demonstrations protesting against the civil war in Kachinland and Kachin's fight for self-determination would be seen by the Burmese government as supporting the KNO and KIA, neither of which are recognised by the Burmese authorities;
- (x) If forced to return to Burma the appellant will continue with his political activities against the Burmese government, to fight for changes to the constitution, fair elections, self-government for other ethnic groups' and release of all political prisoners. He would continue his protests in Burma, including by taking part in demonstrations, because he believes in genuine democracy.

Existing Burma Country Guidance Cases

12. There are two extant country guidance cases on Burma. The first is HM (risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012, which became country guidance on 28 February 2006. In HM, the Tribunal gave the following country guidance:

- (1) 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. Exit will be illegal where 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) or (2) is 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. Whether that fact would come to the attention of the 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.

13. The second Country Guidance case is TL which was added to the country guidance list on the 28 April 2009, and set out the following guidance:

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 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.
14. As detailed above, the guidance given in TL was subject to scrutiny by the Court of Appeal in the recent decision in KS (Burma) & NL (Burma), in which Maurice Kay LJ, with the agreement of Moore-Bick and Rimer LJJ, allowed the appeals before them to the extent that were remitted to the Upper Tribunal for further consideration, on the basis that that the guidance in TL on hangers-on was legally flawed. This was said to be so for reason that the underlying assumption that the Burmese authorities in Rangoon¹ operate a rational decision-making process which can reliably be trusted to distinguish between a genuine political opponent and a hanger-on, was flawed. It was found that there was no evidence as to how the authorities in Burma, faced with a person identified and photographed participating in an anti-government demonstration outside the embassy in London, might go about satisfying themselves that the person in question is simply an opportunistic hanger-on, and that the general evidence about the behaviour of the authorities does not support a tendency to rational, careful assessment.

Summary of the Evidence

Evidence of Mr Maung, TN and HHS

15. Mr Maung is a naturalised British Citizen of Burmese origin who has demonstrated in front of the Burmese Embassy in the past. On 28 February 2013 he attended the Burmese Embassy to apply for a visa to enter Burma as a British citizen to visit his wife and children who had recently returned to Burma. His naturalisation as a British citizen has deprived him of Burmese nationality. He was accompanied by two Burmese passport-holders, TN and HHS, to act as his sponsors, a requirement he had been told about during prior enquiries made at the embassy.
16. On arrival at the embassy, Mr Maung was required to hand over his application form and was also asked to write down on a blank sheet of paper how he had come to the

¹ As with the name of the country, we refer to Yangon as Rangoon simply because that is how the city was referred to in the evidence before us.

United Kingdom, and how he had come to be a British Citizen. Once that was handed over, he and the sponsors were called into a room to see a consular official who asked them to read a form in which it was confirmed that on returning to Burma, Mr Maung would obey Burmese law, would not participate in any political activities, and would not go to any restricted areas. He and the sponsors signed this form and the sponsors were asked to leave the room.

17. The consular official then interviewed Mr Maung alone about how he had obtained his British status. Mr Maung explained he had not obtained this through claiming asylum. He was asked if he had participated in demonstrations outside the embassy, which he denied. He was then warned that he should not lie because CCTV, video and photographs are accessible, that his application would be sent back to the Home Ministry in Burma for investigation; and, that it would take months before he gets the result. Mr Maung explained in re-examination that he had not told the truth about demonstrating because he believed that, had he done so, his application would have been refused.
18. TN and HHS gave oral evidence confirming Mr Maung's evidence in all material respects.
19. Mr Avery challenged none of the evidence of these two witnesses, or that of Mr Maung, and later expressly accepted their accounts as fact.
20. We turn to the evidence of those put forward as expert witnesses.

Evidence of Dr Zarni

21. Dr Zarni comes from a large "military clan" in Burma, having been admitted to the Officer Training Corp, and has done extensive research on military affairs in the past 23 years. He is a founder of the Free Burma Coalition and campaigned internationally for the improvement of human rights conditions in Burma from 1995 to 2004. He obtained a PhD from the University of Wisconsin, USA, with a thesis entitled '*The Politics of Education under Burmese Military Rule*' and has held professorships and visiting fellowships at a number of Universities in the United Kingdom, United States of America and Thailand, including Oxford University and the LSE. He joined the University of Brunei Darussalam as Associate Professor in Social Anthropology on 1 January 2012. In 2011 he was appointed, after an open competition, as the sole expert reviewer of the United Kingdom's Country of Origin Information Report on Burma. As indicated above, full details of his evidence is set out in Schedule 1.
22. Dr Zarni's evidence can be summarised as follows:-
 - (i) The military are still in charge in Burma, despite presenting a show of reform. Expectations of significant improvement have been misplaced as is shown by the low number of prisoners of conscience who have been released. There is a significant disparity between the reality on the ground and the officially stated aspirations.

- (ii) In order to assess the situation, one must understand the military mindset which is a) unused to disobedience by civilians or military, b) is focused on security above all and c) is concerned with loss of face. In this context demonstrations outside embassies are viewed with disproportionate significance.
- (iii) The Burmese state has expended a considerable amount on setting up a large, sophisticated surveillance system using personnel trained in Russia, and operating outside and within Burma. The regime continues to photograph and document those who demonstrate outside embassies. This has not changed.
- (iv) The risk to individuals may fluctuate according to what is happening at the time in Burma. The anniversaries of some historical events raise tensions, and the regime is particularly sensitive to demonstrations about ethnic nationalities.
- (v) The rule of law does not run in Burma; rather, state institutions and personnel operate in an inconsistent manner. The consequence of this is that: i) jailed political activists have no recourse to law; and ii) it is difficult to predict whether an individual would be at risk. Those who are arrested, even for short periods, are at risk of torture.
- (vi) The authorities are unpredictable, but Dr Zarni was not aware of anyone being mistreated at the point of return within the last two years.
- (vii) There may be ill-treatment of activists without a profile who are not known, and people are still detained. Those whose activity abroad is known are likely to be monitored and later questioned at which point there is a continuing risk of torture.
- (viii) Dr Zarni revised his opinion in e-mails sent to the appellant's solicitors on 11 March 2013 as to whether the appellant, or those who had demonstrated outside the embassy, would be safe on return.

Evidence of Marcia Robiou

23. Ms Robiou describes herself as a “committed human rights specialist with a strong track record in writing, research and advocacy”. She was awarded a Bachelor of Arts in Anthropology and Politics at New York University in 2006. She worked as a teacher in Mandalay, Burma, between January 2010 and May 2010 and was thereafter employed as a Program Manager for an education network in Thailand. Since May 2011, she has been employed by the Assistance Association for Political Prisoners – Burma, [‘AAPP’] in Mae Sot, Thailand, as a Human Rights Research and Advocacy Adviser. In her oral evidence Ms Robiou described this organisation as having been founded in 2000 by two former Burmese political prisoners, being entirely staffed by former political prisoners from Burma, as having 10 people working in headquarters in Mae Sot and as having an underground network of ‘10 to 12 groups of five to seven former political prisoners spread throughout Burma and in particular near major prisons’. As to her role within the organisation, in her oral evidence, she described this as involving briefing diplomats and government officials on the situation of political prisoners in Burma and writing urgent appeals based on data

collected by the networks inside Burma. Ms Robiou also currently acts as a 'Researcher, Writer and Advocacy Consultant' to an organisation called Minority Rights Group International' also based in Mae Sot, Thailand. In that role she has authored a report on the denial of participation rights for ethnic minorities in Burma, as well as facilitating training on 'data collection for ethnic minority groups'.

24. We were provided with a lengthy written report from Ms Robiou, dated 22 January 2013, as well as three written addenda to that report. The first and second addenda are dated 5 March 2013, with the third being undated. In addition Ms Robiou provided evidence by way of an e-mail dated 8 March 2013, addressed to Mr Mullins.
25. By way of a further e-mail dated 14 March 2013 (and in response to our request for confirmation), Ms Robiou stated that she provided her evidence to the tribunal in her personal capacity and not on behalf of the AAPP.
26. We set Ms Robiou's evidence out in detail in Schedule 1. In summary it is as follows:-
 - (i) Although the regime in Burma is slowly opening up, only small scale reforms have taken place. Characteristics commonly exhibited in authoritarian regimes still remain in place;
 - (ii) People are arrested and tortured whenever they are deemed a threat to the state. Low-level protestors and demonstrators are arbitrarily and briefly detained and then released. In detention they are subject to physical harm and verbal harassment. In her oral evidence Ms Robiou categorised the risk of ill treatment during a brief detention as being 'very high', (she had earlier categorised this risk, during her written evidence, as 'real').
 - (iii) Many of the arrests have been of Kachin ethnic minorities or members of the All Burma Student Federation Union. There have been at least 52 politically motivated arrests since 17 September 2012. There has been a dramatic increase in the number of public demonstrations in the past year.
 - (iv) Legal reforms are undermined by vague and broad provisions making it clear that criticism of the regime is not tolerated.
 - (v) Former political prisoners who have been released by the current regime have complained of being monitored and such persons are 'not really' free and are vulnerable to arrest at any time. Their criminal records remain intact. They are subject to harassment including denial of passports, being barred from employment opportunities, and denial of educational opportunities.
 - (vi) The administration has extended an 'olive branch' to activists in exile for the purposes of gaining political capital in the eyes of the international community.
 - (vii) The Burmese authorities have an institutionalised and sophisticated spy network throughout the world with Burmese embassies being staffed by Military Intelligence. It is common for Military Intelligence to go undercover

and infiltrate protests, student unions and 'known hangouts for dissidents'. These networks monitor and document information on individuals involved in oppositionist movement. The information held by the Burmese authorities is very detailed.

- (viii) Ms Robiou initially stated that she found it difficult to comment as to how the Burmese authorities would treat persons returned to Burma who had demonstrated outside the Burmese Embassy but where there were no records held of oppositionist activities within Burma. She subsequently gave evidence that if a returnee, having demonstrated in the United Kingdom, is neither a prominent activist nor has a history of oppositionist activity in Burma, there would be a low risk of such person suffering serious harassment from the Burmese authorities, unless he/she continued to demonstrate in Burma.
- (ix) She is aware of low profile activists, who have not engaged in protests, demonstrations or processions, having returned to Burma and having not been harassed. These persons had either been engaged in lobbying activities against the Burmese government or were staff members of vocal exiled organisations. This is 'standard' for low-level activists seeking to return to Burma with no plans to partake in political activity.
- (x) Risks to an individual would increase if that individual had a long history of visible and outspoken political activism against the regime in Burma, is a member of an ethnic minority particularly Kachin, or lives near a conflict area or a development project. If the authorities believe an individual has useful information such as the structure of an underground network, or is eager to attribute blame for a particular crime such as a recent bomb explosion, the suspect will be psychologically and physically tortured.
- (xi) In her written report, Ms Robiou expresses the view that the appellant would be at risk if he continues his oppositionist activity in Burma or travels to an ethnic minority region where there is open conflict; there being ongoing conflicts in Kachin, Shan, Karen, Karenni and Arakan States. In her oral evidence, Ms Robiou was of the view that the appellant's political activity in the United Kingdom would put him at risk upon return to Burma; in that he would be monitored and then interrogated during a brief detention, at which time he would be tortured.
- (xii) High profile activists in the international arena are generally allowed to carry out their political and humanitarian activities with little or no incidences of harassment. This is a tactic the government of Burma uses to 'trick' the international community into believing that they are genuinely reform minded. Highly outspoken activists with foreign passports had returned to Burma with no incidences of arrest or major harassment.
- (xiii) Ms Robiou initially gave evidence that whilst the Burmese authorities had previously followed and monitored suspects, she had only noticed such actions

by the current regime in relation to prominent activists; however in her e-mail of the 8 March 2013 she had stated that low-level critics are still monitored, followed and harassed.

- (xiv) There is a 'real risk' to anyone who publically demonstrates in Burma, regardless of their ethnic origin. She was unaware of any cases in the post Thein Sein regime of an individual being questioned who is merely associated with activists.

The Report of the Special Rapporteur on the situation of human rights in Myanmar and the Burmese government's response

27. Between 11 to 16 February 2013, the United Nations appointed Special Rapporteur, Professor Tomas Quintana, conducted a mission to Myanmar and met the Minister for Home Affairs, the Minister for Social Welfare, Relief and Resettlement, the Attorney General, the Deputy Minister of Foreign Affairs, the Deputy Minister for Border Affairs, the Deputy Chief Justice and other justices of the Supreme Court, as well as several members of parliament and parliamentary committees. In Yangon, he met Daw Aung San Suu Kyi, members of the Myanmar National Human Rights Commission, 'prisoners of conscience' held in Insein prison, former detainees from Buthidaung Prison, the United Nations country team and the diplomatic community. He also visited Yangon University and met with the Dean and students, and visited the offices of the Myanmar Times.
28. The Special Rapporteur also visited Rakhine State, where he met state authorities and community leaders. He visited camps for displaced persons for both Buddhist and Muslim communities in Sittwe, Myebon and Pauk Taw and visited Sittwe Prison. He also visited Kachin State, where he met state authorities and visited camps for displaced persons in Myitkyina and Waingmaw and visited Myitkyina Prison. In an 'Advanced Unedited Version' of his report to the Human Rights Council, dated 6 March 2013, on the 'situation of human rights in Myanmar', the Special Rapporteur noted that 800 prisoners of conscience had been released, albeit the law enables the attachment of conditions to such releases. Over 250 prisoners of conscience remain detained. Many former political prisoners continue to be denied a passport, and some of those who were medical or legal professionals have had their licences to carry out such work revoked.
29. The Special Rapporteur is concerned about the ongoing practice of torture in Burma and had received allegations of arbitrary detention and torture by the military of Kachin men accused of belonging to the Kachin Independence Army. In Rakhine state he received allegations of Muslims being tortured and beaten to death in detention. He received consistent information that professionalised torture techniques continue to be used by police officers on suspects of violent crime with the aim of extracting confessions. A culture of impunity exists for acts of torture in police stations, prisons and other places of detention. In November 2012 it was agreed to allow the ICRC access to prisons. There had been a pilot visit by the ICRC in the period prior to his report.

30. Public broadcast news remains heavily censored, but there is increased freedom for internet users, with internet cafe owners no longer receiving police visits and no longer required to keep logs of computers used by customers². There are ongoing arrests and detention of persons involved in peaceful protests. If a peaceful protest takes place without a permit the criminal law provides for a period of 1 year imprisonment and a fine. Concern is expressed by the Special Rapporteur over the police handling of protests.

31. The report concludes:-

“82. Continuing reforms in Myanmar are resulting in ongoing improvements to the human rights situation. Important changes have taken place, such as legislative reform, but sometimes not to the point where international human rights standards are met.

83. There remains a large gap between reform at the top and implementation on the ground. While acknowledging that it will take time to close this gap, this should not be used as an excuse to avoid taking necessary steps, such as the capacity development of police, army, judges and lawyers.

84. While the process of reform is continuing in the right direction, there are significant human rights shortcomings that remain unaddressed, such as discrimination against the Rohingya in Rakhine State and the ongoing human rights violations in relation to the conflict in Kachin State. The Special Rapporteur believes that now is the time to address these shortcomings before they become further entrenched and destabilise the reform process.

85. The Special Rapporteur believes the continuing existence of his mandate is vital to highlight these concerns and support the Government in addressing them. It helps to remind the international community of the importance of prioritising human rights in its bilateral relations with Myanmar. And ultimately, it provides a positive contribution to improving the situation of human rights for the people in Myanmar.”

32. The Burmese government has made observations on the report. As to prisoners of conscience, and the reference to allegations of continued arrest for political reasons, it stated that:

“These allegations are unfounded. Nobody is arrested on political grounds. Maintenance of law and order is a key responsibility of the government. Legal action is taken against those who violate the existing laws.”

33. By way of response to “conditions of detention and treatment of prisoners,” it is stated:

² Since reserving our decision it has been widely reported that certain privately owned newspapers are now permitted.

- “3. Paragraph 11 of the Report contains the allegations of arbitrary arrest and torture of the people accused of association with the Kachin Independence Army (KIA). Legal action was taken against those who were found guilty of being unlawfully associative with the KIA.
4. Paragraph 11 also contains the allegations that Muslim prisoners detained in Buthidaun prison after the violence in 2012 were tortured and beaten to death. The authorities have examined these allegations. After verification they found that the allegations were baseless.”
34. The government also maintains that the allegations regarding attack against the civilian population and other forms of human rights violations and the chapter headed “Conflict and the Situation of Ethnic Minorities” are unfounded, with the observation that it is regrettable that the report has omitted the destructive, terrorist acts committed by the KIA in Kachin State. As to the situation in Rakhine State it is similarly stated that the allegations in paragraph 48 of the report of harassment, arbitrary arrest and arbitrary restriction of movement, destruction of places of worship and restrictions are unfounded, with reference to temporary places of worship being set up in the IDP camps and government medical personnel actively working with the Myanmar Red Cross.
35. The references in the report to human rights violations committed by Nasaka particularly against the Muslim community are described as “inappropriate” and therefore “unacceptable.” It is stated that the 1982 Myanmar Citizenship Act does not target any particular group. It is not agreed that Dr Tun Aung is a prisoner of conscience. The government does not share the Special Rapporteur’s view regarding the risks taken by Rohingyas in taking to sea in the Bay of Bengal. As to the emphasis made by the Special Rapporteur that the laws of the land should be in line with International Human Rights Standards and applied equally to all persons, institutions and entities, including the military, and the need for civilian control of the military, it is stated:

“The Special Rapporteur’s recommendations that are contained in paragraph 66 are premature. Time is not right to consider the amendment of our constitutional provisions.”

Other country information

36. We have before us a wide range of country information. We have taken an overview on this additional evidence, which has assisted us in reaching the conclusions set out below. We have had particular regard to the most recent reports including those by Human Rights Watch, Amnesty International and ACCORD although we have not considered it necessary to summarise their contents.

Submissions

Respondent's submissions

37. We summarise below the submissions of the parties. These comprise the skeleton arguments served prior to the hearing, final closing written submissions helpfully completed by the parties before the third day of the hearing and oral submissions (the detail of all of which is set out in Schedule One).
38. As observed above, the facts pertaining to the appellant are no longer in dispute.
39. Mr Avery accepted that there was no evidence before the Tribunal to rebut the findings of the Tribunal in HM that prison conditions in Burma are in themselves a breach of Article 3 ECHR. He further accepted the evidence of Mr Maung, TN and HHS to be credible in its entirety.
40. As to why the SSHD had not herself adduced any evidence either from the overseas post or by way of an expert, Mr Avery observed that this was due to “time and money”.
41. Mr Avery further observed that the contents of the Secretary of State’s most recent Operational Guidance Note relating to Burma reflected current country guidance and was therefore, he submitted, of little assistance in determining whether such guidance required alteration.
42. He was unaware if there had been any recent returns to Burma. Mr Mullins, having conferred with his instructing solicitor, confirmed that he was not aware of any returns either.
43. The essence of what Mr Avery had to say at the hearing was to urge us to draw an adverse inference from the changes in evidence of the experts, as between their original reports and the addenda, which they subsequently relied on. He argued that they had given insufficient reasons for such changes.
44. Mr Avery emphasised the respondent’s case to be that an individual’s participation in demonstrations in the UK would not of itself be likely to result in ill-treatment on return and that, if he had left Burma legally, any risk was likely to be less. He submitted that if such an individual had left illegally, the risk upon return would be dependent on the specific facts. He then invited the Tribunal to conclude that the situation in Burma had significantly changed since the date of the determination in TL; submitting that it would have been inconceivable at the time that TL was decided that opposition parties could operate in Burma in the manner in which they currently operate.
45. As to the risk from those who demonstrated in Burma, Mr Avery submitted that the conclusions of the experts on this issue were not borne out by the evidence they sought to rely upon in this regard.

46. When asked whether there was a distinction in the treatment of those who are briefly detained and those who are imprisoned, Mr Avery submitted that the former suffer from harassment, and that any assertion they are ill-treated and tortured during a brief detention was neither clear nor supported by evidence.

The appellant's submissions

47. Like Mr Avery, Mr Mullins relied on his skeleton arguments. He supplemented these, in part, at the hearing but added nothing new of a material nature.
48. We queried the reference in Mr Mullins supplementary skeleton argument to the submission that the appellant would not be given permission to return (having regard to Mr Maung's evidence) in the light of their difference in nationality. He responded candidly by accepting that he was "flying a kite" in making such a submission.
49. In response to our further questions, Mr Mullins submitted that it is possible a refusal to allow a national to re-enter his own country may, following Adan Nooh, Lazarevic & Radojevic v SSHD [1997] EWCA Civ 1007 amount to persecution, but he conceded that there was no further evidence to support such a submission that the Burmese authorities would act in such a manner.
50. Mr Mullins submitted that the evidence of the experts could be relied on, and that it could not be suggested that their sources could be bettered. He observed that their concerns mirrored the reality on the ground; that the Burmese regime had successfully sought to woo the international community to get investment, and that the changes were superficial. He argued that there is a real risk of those who are returned to Burma being monitored and that this would place them in danger if they continued to participate in political activities; noting as he did so that the respondent had accepted that the appellant would do so.
51. Mr Mullins further submitted that it had to be assumed that Burmese intelligence would continue to monitor and record demonstrations in the United Kingdom as before.
52. We asked Mr Mullins to address us on the risk to a returnee on arrival at the airport in Burma. He couched his submission in terms of the risk to the appellant that as identified in the evidence of Dr Zarni, the appellant was likely to be called in for questioning and that he would be monitored after he leaves the airport. As to what would happen thereafter, Mr Mullins argued the risk to the appellant would arise when (a) contacting others to find out when and where demonstrations are to be held and (b) when he attended demonstrations in Burma. He submitted that the fact that the appellant would be monitored would subsequently lead to him being questioned and, consequently, to him being tortured.

Legal Background

53. The legislative framework to these appeals includes international and European Union law comprising the Refugee Convention and the European Convention on Human Rights (the Human Rights Convention), the Charter of Fundamental Rights of the European Union (the Charter) and the Council Directive 2004/83/EC (the Directive). This framework is well-known and does not need to be elaborated.
54. The now well-established principles laid down by the Supreme Court in HJ (Iran) [2010] UKSC 31 set out the approach we are required to take when considering situations where it is said that concealment or the exercise of discretion might avoid a risk of persecution; see the judgments of Lord Hope [35] and Lord Rodger [82].
55. Although the Supreme Court was concerned with issues surrounding gay men, the principles are applicable to cases other than those involving sexual orientation; see: RT (Zimbabwe) [2012] UKSC 38.
56. In Germany v Y & Z [2012] EUECJ C-71/11 the Court of Justice concluded that an individual will have a well-founded fear of persecution if he intends, once back in his country of origin, to pursue religious activities which expose him to a risk of persecution and where it cannot reasonably be expected that he should forego these activities, and specifically to forego manifesting his faith.
57. We consider in the context of the appeal before us, and following RT, that the same must apply as if “political” were substituted for “religious”.

Discussion

58. Although the Secretary of State chose not to be represented by counsel in this appeal, this does not mean we were without “proper argument”: see S v Secretary of State for the Home Department [2002] EWCA Civ 539 where Laws LJ referred (at paragraph 29) to “the duty to give reasons with a particular rigour” in country guidance cases and HM (Iraq) [2011] EWCA Civ 1536, where Sullivan LJ emphasised the need for “proper argument”.
59. We are satisfied that Mr Avery, a Senior Presenting Officer with considerable experience, had a good grasp of the issues in the case and represented the Secretary of State in an authoritative and competent manner, reflected in the arguments which he made on the Secretary of State’s behalf and the matters which he conceded. This is not to be taken as an indication by the Tribunal that the employment of presenting officers on country guidance should be routinely applied. Complex matters of law or a considerable volume of evidence may well result in a need for counsel.
60. We do, however, express some concern that the Secretary of State has chosen, in a case designated to provide country guidance, not to call expert, or indeed any, evidence. The explanation that there was neither available time nor money indicates to us that the Secretary of State has chosen to apply her available resources elsewhere. How the Secretary of State allocates the finite resources available to her is,

of course, entirely a matter for her. We simply observe that Country Guidance decisions are intended to be as comprehensive as the subject permits and to be authoritative in forming the Secretary of State's instructions to its officers, as well as judges hearing appeals. If there is a dispute between the parties on matters directly relevant to the guidance to be given by the Tribunal, as there is in the instant case, there are obvious benefits to both parties calling evidence to support their position.

61. If the Secretary of State chooses not to call evidence to rebut expert testimony on behalf of an appellant, she must accept that such a failure may have a bearing on the findings made by the Tribunal. That is not to say that unchallenged or uncontradicted expert evidence must be accepted by the Tribunal if there is good reason not to do so (see KS (Burma) at [29]), but inevitably if only one party provides expert, or indeed any, evidence, there is a greater likelihood of such evidence being accepted.
62. We now turn to the evidence of those put forward as expert witnesses. In respect of both experts, the weight we can give to their evidence has been reduced for the reasons we now set out.
63. We consider Dr Zarni to be well-qualified to speak about matters in Burma, despite not having been there for some six years. As with Ms Robiou, Dr Zarni acknowledged areas about which he was unable to give an opinion. In respect of both experts the weight we can give to their evidence has been reduced for the reasons we now set out.
64. We note that Dr Zarni's initial report is dated 16 November 2011, which, in the context of the rapid changes in Burma, is a factor we take into account in assessing his views about the apparent lack of progress by the time of writing. By the time of his *Skype* interview, over a year had elapsed since that report had been made available. We have particular concern over the evidence of Dr Zarni regarding the risk to those returning to Burma who had previously demonstrated outside the Burmese Embassy in the United Kingdom. In answer to a question on this issue put to him at the *Skype* interview of 12 February 2013, Dr Zarni unequivocally stated contrary to the opinion given in his report in November 2011, that he did not know whether there was a still a risk on return for failed asylum seekers who had previously demonstrated outside the embassy in London and neither could he say whether the appellant would be arrested and tortured upon return. However in an e-mail to the appellant's solicitors sent on the 11 March 2013, i.e. just under a month later, he stated that the risk to Burmese citizens who have taken part in anti-regime protests in the United Kingdom of getting arrested and tortured remains as high as prior to the reforms.
65. In an e-mail of the same date sent to Mr Mullins, Dr Zarni explained that this 'modification' to his evidence was a consequence of having taken into account two additional sources of evidence, namely, (i) the Special Rapporteur's report and (ii), 'a recent interview with a former political prisoner who gave a local grounded analysis of the situation pertaining to political arrests and detainees'. Despite accepting that in

this e-mail he had modified his evidence, Dr Zarni sought to maintain at the hearing before the Tribunal that his evidence had not changed regarding the risk to returned asylum seekers who had previously demonstrated outside the Burmese Embassy in London.

66. We consider that, contrary to this assertion, Dr Zarni did change his position on this core aspect and that he did so without any coherent or reasonable explanation. There was nothing new in the Special Rapporteur's report that could have better informed Dr Zarni in the evidence he gave in relation to the risk to those persons who had previously demonstrated outside the Burmese Embassy in London. As to the relevance of the evidence derived from the 'interview with a former political prisoner', although Dr Zarni did not disclose the detail in his written evidence it turned out that this was an edited interview that Dr Zarni had seen on television, recorded in Norway and shown on the Voice of Burma. The shortcomings of relying on such evidence are obvious, and the fact that Dr Zarni was prepared, based partially on such evidence, to move from a position where he was originally unable to provide evidence as to the level of risk to returned asylum seekers who had demonstrated outside the Burmese embassy in London, to one where he was able to assert a definitive position on such a matter to the Tribunal, leads us to question the academic rigour with which he has approached the task before him. This in turn affects not only the weight we attach to his evidence on this one issue but also to our consideration of his evidence as a whole.
67. Similarly, while Ms Robiou has relevant academic credentials, recent experience in Burma, and substantial experience in the field of human rights research and advocacy, as reflected in her current post with AAPP and Minority Rights Group International, the weight we can attach to her evidence is diminished because (i) much of the information she relies upon to form her conclusions is derived from 'underground networks' of former political prisoners operating near major prisons in Burma, evidence which is not capable of objective scrutiny, (ii) the nature of the information she receives as part of her post at AAPP and the Minority Rights Group is, by the very nature of those organisations, partisan in its presentation and assertions on the denial of rights in Burma rather than on the wider picture and, (iii) that her evidence displays in part a lack of consistency and sufficient academic rigour.
68. In relation to the "underground networks", their very anonymity as sources is problematic. Whilst there will be occasions when an expert is unable to disclose the identities of sources, particularly where there is a potential risk to the parties concerned, the weight that can be given to such evidence depends on the quality of the rest of a report and, the adequacy of sourcing overall, as well as the particular expertise that is drawn upon.
69. As to the third reason identified above, we have concerns insofar as Ms Robiou's evidence relates to (i) the category of persons which the Burmese state "monitor, follow and harass", (ii) the risk to those persons returning to Burma who had

previously demonstrated outside the embassy in London and, (iii) the risk to persons who take part in political demonstrations in Burma.

70. In relation to the first category, Ms Robiou changed her evidence on this issue, stating in her original report that a person who was not a prominent activist would not likely be followed or monitored, whereas in her e-mail of 8 March 2013 she stated that even low level critics are monitored, followed and harassed on a regular basis. Her explanation for this change of evidence was that since the writing of her original report low-level critics had returned and suffered such actions. When pressed on this issue she provided no further examples other than two, or possibly three, of her colleagues at AAPP having recently returned and having heard a sound 'like typewriters' in the background when on the telephone in Burma. Much as in respect of Dr Zarni, we find the fact that Ms Robiou was prepared to alter her evidence to significant effect on the basis of thin evidence that cannot be objectively verified, bears directly on the weight we attach to her evidence as a whole.
71. As to the second and third categories, Ms Robiou's evidence relating to the risk to those persons returning to Burma who have previously demonstrated outside the Burmese embassy in London, this suffers from serious contradiction, without satisfactory explanation. Ms Robiou accepted that she was unaware of any such person suffering difficulties upon return. She further noted that the government of Burma is being careful not to upset members of the international community. As a consequence she initially concluded that (i) the appellant would only be at risk 'if he continues his oppositionist activity in Burma' and, (ii) that, unless such a person is a prominent activist or has a history of oppositionist activity in Burma, the risk of them being 'harassed' in Burma would be low. However, in the same report, she concludes that the risk to low profile returnees would conceivably be higher than those with more prominent profiles. In her oral evidence Ms Robiou asserted, contrary to the position she set out in writing, that the appellant's activities in the UK would put him at risk upon return.
72. We finally turn to the evidence given by Ms Robiou in relation to those persons who take part in political demonstrations in Burma. In this regard Ms Robiou maintained that *anyone* undertaking such activity is at real and high or very high risk (the assessment has been variously stated) of being detained and ill-treated. Our difficulty with such evidence is that the examples provided support a different contention: being the leader or leaders of such demonstrations runs a high risk of detention and ill-treatment. When pressed as to the basis of her conclusions on this issue, Ms Robiou confirmed that she did not have any statistical evidence to support her evidence, but that there had been 'some' detentions at every protest.
73. Given the current spotlight on Burma, we consider that had there been detentions of the type and scale claimed, this would have attracted wide publicity. The absence of such evidence inevitably dictates the weight we can give to her assertion regarding the risk faced by all persons taking part in political demonstrations.

74. Turning to the evidence provided in the report from the Special Rapporteur, neither party sought to suggest that such evidence was not cogent, considered and of significant weight. It is recent, was produced on the basis of a wide range of sources and followed a visit by the Special Rapporteur to Burma. There can be no doubt, and neither was there any suggestion otherwise, that the report is independent and well researched.
75. In addition, the other country information provided by the appellant is extensive, and is, almost in its entirety, at one with the report from the Special Rapporteur. Without this body of evidence, we would be faced with difficulties in deciding this appeal in the light of the short-comings in the expert evidence. We do not discount the expert evidence of Dr Zarni and Ms Robiou altogether; it is a matter of the weight we can give to it. It appears to us that the experts have endeavoured to fill perceived gaps in their initial reports because of a lack of evidence and in doing so have revealed a real struggle to find the evidence to support their ultimate conclusions. In contrast the report by the Special Rapporteur is untouched by such concerns, it accords with other major reports and it is one to which we are able to give particular weight.
76. With these matters in mind and drawing together the evidence of the expert witnesses and the report from the Special Rapporteur, and in addition, the country information, we begin with our general conclusions and findings on the Burmese state's respect for the human rights of those who are opposed to the government and/or who seek reform in the country.
77. There is no doubt that significant progress has been made by the government to attempt to address serious human rights abuses, which have been well-chronicled in recent years. The enquiry before us is whether, notwithstanding the stated intention of the government to address the problem, there remains a culture in the security services, including the police, of abusive action towards those opposed to the government and its policies, and a lack respect for human rights generally and in addition, specifically in relation to the concerns of ethnic nationalities. We have no doubt the government is seeking to persuade other countries and international agencies that the days of human rights abuses are over, and its motive for doing so is clear, as observed by the Special Rapporteur.
78. Taking into account all the evidence before us, we consider that whilst there is a real possibility of an enduring and permanent improvement in the Burmese government's respect for human rights and it may well be that, with the passage of time, the positive changes that have occurred will become sufficiently embedded to warrant a re-examination of the situation in Burma in the short to medium term. Nevertheless, we are not satisfied that the reforms and improvements to the human rights have yet reached root and branch level such that those who voice opposition to the regime are free to do so confidently without risk of discriminatory interference by the state with potentially severe consequences for some at present.

79. It is not disputed that prison conditions in Burma are severe and likely to breach the Article 3 threshold: see HM [83]. The evidence we have heard is of a risk of interrogation and brief detention of those who participate in demonstrations particularly when they are unlawfully held or when there is sufficient interest in them from monitoring to lead to detention for interrogation. The evidence of Ms Robiou and Dr Zarni points to a risk of ill-treatment in detention. This receives support in the Special Rapporteur's report. He makes specific reference to the ongoing practice of torture in detention in Myanmar as well as in locations outside the principal cities. He refers also to the culture of impunity that exists for acts of torture in police stations, prisons and other places of detention, particularly during the interrogation of suspects. The reference to torture in police stations indicates that the risk of harm may even be present when detention is short.
80. We therefore conclude that despite the assertions to the contrary by the Burmese government, there remains a real risk of torture and or serious ill-treatment during short detentions.
81. There is no evidence that the sophisticated state intelligence network has been dismantled. The evidence we heard from Dr Zarni as to the investment in training of that network is not undermined by the concerns we have otherwise expressed as to his evidence. We conclude that the state will be aware of those who are actively opposed to the government and its policies and who represent, in the state's view, a threat of destabilisation; and, those who do not have such a profile although voice opposition either in Burma or abroad. We approach this aspect of the evidence with particular care in the light of the observation at [31] in the judgment of Maurice Kay LJ in KS:
- "The second flaw is the underlying assumption that the Burmese authorities in Rangoon operate a rational decision making process which can reliably be trusted to distinguish between a genuine political opponent and a hanger-on. There is no evidence of how the authorities, faced with a person identified and photographed participating in an anti-government demonstration outside the Embassy in London might go about satisfying themselves that the person in question is simply an opportunistic hanger-on. The general evidence about the behaviour of the authorities does not support a tendency to rational, careful assessment. The accepted evidence is of a repressive, arbitrary regime. A presumption of rational assessment - which is what paragraph 93 amounts to - is, in my judgment, counterintuitive in the context of the rest of the accepted evidence. The confidence placed in the Burmese authorities is not supported by evidence. For these reasons, I do not consider that the reasoning of the UT can be supported."
82. We heard evidence that intelligence gathered in London on those who demonstrate against the government and who are involved here in political opposition is fed back to senior officers in Burma for assessment. Given Dr Zarni's experience we are satisfied this is an accurate reflection on what has gone before and we have no evidence to believe that it does not continue. It appears to us that the Burmese government is seeking to achieve what may well prove to be the impossible; to maintain control of its citizens, to permit opposition but to preserve itself in power,

and furthermore to preserve the Union. This explains the evidence we have heard of the response by the government to protests in regions where there is a strong presence of “ethnic nationalities” and the concern expressed by Dr Zarni in his evidence of the snowballing effect when the causes of ethnic nationalities are taken up by mainstream oppositionists in the country at large. In such a context and because considerable resources appear to be devoted to intelligence and control, it is highly unlikely that this is executed without some form of evaluation of the security threat an individual may pose. This is reinforced by the evidence we heard about monitoring which we consider to be indicative of an evaluative based approach by the Burmese authorities in particular the matters referred to in [22(iii)] and [26(iv)] above and [8], [44] and [48] in Schedule Two. Although it is clear as a general principle that for repressive arbitrary regimes rational decision making cannot be assumed, on the particular evidence now before us, risk can be assessed on what surveillance and monitoring are likely to reveal.

83. Based on the evidence as a whole, the guidance we give is as follows.

- (i) *In order to decide whether a person would be at risk of persecution in Burma because of opposition to the current government, it is necessary to assess whether such activity is reasonably likely to lead to a risk of detention. Detention in Burma, even for a short period, carries with it a real risk of serious ill-treatment, contrary to Article 3 of the ECHR and amounting to persecution/serious harm within the meaning of the Qualification Directive.*
- (ii) *A person is at real risk of being detained in Burma where the authorities regard him or her to be a threat to the stability of the regime or of the Burmese Union.*
- (iii) *The spectrum of those potentially at risk ranges from those who are (or are perceived to be) actively seeking to overthrow the government to those who are in outspoken and vexing opposition to it. Whether a person is in need of protection will depend upon past and future political behaviour. This assessment has to be made against the background of a recently reforming government that carries a legacy of repression and continues to closely monitor those in opposition. The evidence points to a continuing anxiety over the break up of the state and the loss of its power.*
- (iv) *The question of risk of ill-treatment will in general turn upon whether a returnee is detained by the authorities at any stage after return.*
- (v) *A person who has a profile of voicing opposition to the government in the United Kingdom through participation in demonstrations or attendance at political meetings will not for this reason alone be of sufficient concern to the Burmese authorities to result in detention immediately upon arrival. This is irrespective of whether the UK activity has been driven by opportunistic or genuinely held views and is regardless of the prominence of the profile in this country.*
- (vi) *A person who has a profile of voicing opposition to the Burmese government in the United Kingdom can expect to be monitored upon return by the Burmese authorities.*

The intensity of that monitoring will in general depend upon the extent of opposition activity abroad.

- (vii) Whether there is a real risk that monitoring will lead to detention following return will in each case depend on the Burmese authorities' view of the information it already possesses coupled with what it receives as the result of any post-arrival monitoring. Their view will be shaped by (i) how active the person had been in the United Kingdom, for example by leading demonstrations or becoming a prominent voice in political meetings, (ii) what he/she did before leaving Burma, (iii) what that person does on return, (iv) the profile of the people he or she mixes with and (v) whether a person is of an ethnicity that is seen by the government to be de-stabilising the union, or if the person's activity is of a kind that has an ethnic, geo-political or economic regional component, which is regarded by the Burmese government as a sensitive issue.*
- (viii) It is someone's profile in the eyes of the state that is the key to determining risk. The more the person concerned maintains an active political profile in Burma, post-return, the greater the risk of significant monitoring, carrying with it a real risk of detention.*
- (ix) In general, none of the risks identified above is reasonably likely to arise if an individual's international prominence is very high. The evidence shows that the government is keen to avoid adverse publicity resulting from the detention of internationally well-known activists.*
- (x) In the light of these conclusions, TL and Others (Burma CG) [2009] UKAIT 00017 can no longer be relied on for Country Guidance. The issue of illegal exit and its consequences considered in HM (risk factors for Burmese Citizens) Burma CG [2006] UKAIT 00012 were not addressed by the parties and the guidance in that decision remains in force for the time being.*
- (xi) There is evidence of positive changes in Burma which as they become embedded may result in the need for the present country guidance to be revisited by the Upper Tribunal in the short to medium term.*

Determination of the Appeal

84. As we have observed there is no dispute on the facts. The appellant has been able to demonstrate a high-profile in the UK, and also an active intention to protest and demonstrate on return. The authorities will know about him; it is not likely that he will be detained on arrival at the airport, but he will be monitored and, as he progresses politically in Burma, it is reasonably likely that he will be seen as vexing the authorities by espousing the separatist cause and he will be detained for questioning. He will thus be in need of protection. His appeal is allowed.
85. We have all contributed to this determination.

Upper Tribunal Judge Dawson

Dated 10 June 2013

Schedule one – the expert and other evidence in detail

Evidence of Ms Marcia Robiou

1. Ms Robiou describes herself as a ‘Committed human rights specialist with a strong track record in writing, research and advocacy’. She was awarded a Bachelor of Arts in Anthropology and Politics at New York University in 2006. She worked as a teacher in Mandalay, Burma, between January 2010 and May 2010 and was thereafter employed as a Program Manager for an education network in Thailand. Since May 2011 she has been employed by the Assistance Association for Political Prisoners – Burma, [hereinafter ‘AAPP’] in Mae Sot, Thailand, as a Human Rights Research and Advocacy Adviser. In her oral evidence Ms Robiou described this organisation as having been founded in 2000 by two former Burmese political prisoners, being entirely staffed by former political prisoners from Burma, as having ten people working in headquarters in Mae Sot and as having an underground network of ‘10 to 12 groups of 5 to 7 former political prisoners spread throughout Burma and in particular near major prisons’. As to her role within the organisation she described this, in her oral evidence, as involving briefing diplomats and government officials on the situation of political prisoners in Burma and writing urgent appeals based on data collected by the networks inside Burma. Ms Robiou also currently acts as a ‘Researcher, Writer and Advocacy Consultant’ to an organisation called Minority Rights Group International’ also based in Mae Sot, Thailand. In that role she has authored a report on the denial of participation rights for ethnic minorities in Burma, as well facilitating training on ‘data collection for ethnic minority groups’.
2. We were provided with a lengthy written report from Ms Robiou, dated 22 January 2013, as well as three written addenda to that report. The first and second addenda are dated 5 March 2013, with the third being undated. In addition Ms Robiou provided evidence by way of an e-mail dated 8 March 2013, to Mr Mullins.
3. By way of a further e-mail dated 14 March 2013 Ms Robiou confirmed that she provided her evidence to the tribunal in her personal capacity and not on behalf of the AAPP.

Written Evidence

4. Ms Robiou’s report of 22 January 2013 is largely drawn as a direct response to questions posed of her by the appellant’s legal advisers [check].
5. Commenting on the attitudes and mind set of the Burmese regime she observes:
 - a. Although the regime in Burma is slowly opening, characteristics commonly exhibited in authoritarian regimes still remain in place.
 - b. Small scale reforms, such as legalising protests and increased space for political parties to operate, have taken place. There is now a greater sense of freedom in Burma that was not in existence under the previous regime. Genuine free and fair elections have yet to take place.
 - c. There is no guarantee or respect for human rights. People are arrested and tortured whenever they are deemed a threat to the state. Legal reforms are undermined by vague and broad provisions making it clear that criticism of the regime is not tolerated.

This conclusion is supported by reference to the arrest in March 2012 and re-arrest in December 2012 of the dissident monk Nyi Nyi Lwin (formerly known as U Gambira).

6. Ms Robiou notes that there have been at least 52 politically motivated arrests in Burma since 17 September 2012. Many of the arrests have been of Kachin ethnic minorities or members of the All Burma Student Federation Union. Some of the 52 may have been released on bond but still face court proceedings. As of the date of the report there were 222 political prisoners in detention. The government continues to deny the existence of political prisoners, asserting such persons to have 'committed criminal activities'.
7. As to how the Burmese administration views the opposition in exile Ms Robiou considers that:
 - a. The administration treats the opposition in exile with scepticism. They have extended an 'olive branch' to activists in exile for the purposes of gaining political capital in the eyes of the international community.
 - b. The names of 2,082 people were removed from the blacklist; a list comprised of foreign and Burmese nationals regarded as threats to peace and stability. These names were made public in August 2012. 4000 names remain on the blacklist. Nobody knows whose name is on the blacklist, save for the President.
8. Ms Robiou identifies the fact that the Burmese authorities have an institutionalised and sophisticated spy network throughout the world with Burmese embassies being staffed by Military Intelligence. It is common for Military Intelligence to go undercover and infiltrate protests, student unions and 'known hangouts for dissidents'. These networks monitor and document information on individuals involved in oppositionist movement. The information held by the Burmese authorities is very detailed. Each month a report is compiled and sent to the Ministry of Foreign Affairs and the Military Strategic Command Centre.
9. In answer to a question as to how the Burmese regime would treat persons returned to Burma who have demonstrated outside the Burmese embassy, but where there were no other records held of oppositionist activities within Burma, Ms Robiou responded by observing that it is difficult to comment on such matters given the unpredictable nature of the Burmese regime. She noted however that:
 - a. A number of highly outspoken activists with foreign passports had returned to Burma with no incidences of arrest or major harassment, including senior figures for the AAPP;
 - b. There have been accounts of returning exiles being forced to sign a form pledging they will not partake of any activities or engage in criticism that will 'harm the state';
 - c. Risk levels are exacerbated by outstanding grave criminal charges such as for rape or murder, a long history of visible and outspoken political activism against the regime in Burma, being a member of an ethnic minority particularly Kachin, or living near a conflict area or a development project.
10. Ms Robiou considers there to be a 'real', 'real and high' or 'very high' risk of detention (as variously stated) to anyone who publically demonstrates in Burma, regardless of their ethnic origin. She observes that there has been a dramatic increase in the number of public demonstrations in the past year and although peaceful demonstrations have been legalised,

this is superficial and the repression of public demonstrations still takes place. Ms Robiou supports this conclusion with reference to the arrest in September 2012 of 13 activists leading a peaceful march of 1000 demonstrators to commemorate International Peace Day and to call for an end to the civil wars in Kachin state and elsewhere in Burma, and the arrest and ill treatment of the leaders of an anti copper mine protest in Sagaing Division. She notes that the length of time spent in detention after arrest varies widely.

11. Ms Robiou further considers that the Burmese regime regards those who associate with suspected opponents with the same level of suspicion it regards genuine dissidents and activists, subjecting them to harassment, such as visiting the person at his/her place of residence to conduct a search of their home. Whilst the Burmese authorities previously followed and monitored suspects, she had only noticed such actions by the current regime in relation to prominent activists. She further acknowledged that she was unaware of any cases in the post Thein Sein regime where an individual was questioned merely for being associated with activists. She also acknowledged the practice of visiting a suspect's house does not occur as often under the current regime.
12. Suspects face being apprehended and taken to a detention centre. If the authorities believe the individual has useful information, such as the structure of an underground network, or where they are eager to attribute blame for a particular crime such as a recent bomb explosion, the suspect will be psychologically and physically tortured.
13. Former political prisoners who have been released by the current regime have complained of being monitored and such persons are 'not really' free and are vulnerable to arrest at any time. Their criminal records remain intact. They are subject to harassment including denial of passports, being barred from employment opportunities, and denial of educational opportunities.
14. Ms Robiou continues by observing that the regime acts in this manner because it is characterised by the paranoia of losing their hold on power. Associates of activists are monitored in order gather information on the activist/network so as to pre-empt something from happening, such as a large protest. Political prisoners are often charged with other serious offences.
15. She considers that it is reasonable to draw a distinction between those who have demonstrated in Burma, where it is inconceivable that a person would demonstrate unless that person opposed the regime, and those who have attended demonstrations in the United Kingdom; where demonstrators run a very low risk of being arrested. She noted, however, that anyone who engages in oppositionist activity is viewed with mistrust and seen as the opposition.
16. In response to being asked whether she agreed with the Tribunal's assessment in TL (Burma) that 'the regime would not persecute someone who they knew to be a hanger-on with no real commitment to the oppositionist cause who was demonstrating in the United Kingdom merely to enhance a false claim for asylum', Ms Robiou stated that she is unaware of any way in which the Burmese authorities would be able to determine a person's motivation for demonstrating in the United Kingdom.
17. Ms Robiou states that if a returnee, having demonstrated in the United Kingdom, is neither a prominent activist nor has a history of oppositionist activity in Burma, there would be a low risk of such person suffering serious harassment from the Burmese authorities, unless

he/she continued to demonstrate in Burma. It is conceivable that a returning exile not well known on either the domestic or international scene for his/her oppositionist activity is at higher risk than a more prominent returning exile. Arresting exiles on return is seen to tarnish the administration's reputation. It is therefore not in the interest of the regime to arrest a returned exile from the United Kingdom. She acknowledged that she is unaware of any returning exile having been arrested in Burma for their activism in the United Kingdom. Prominent leaders are subjected to harassment such as phone tapping and restrictions on their freedom of movement.

18. Ms Robiou notes that two of her colleagues, former political prisoners, have returned permanently to Burma without official invitation and using their Burmese passports. One works on a mental health project for former political prisoners and the other for an exiled organisation that documents human rights abuses. Neither has faced any harassment or monitoring.
19. She further confirms that bribery is endemic in Burma. She was unable to comment on the extent bribery plays in the issuing of passports and exit documentation, or as it relates to immigration officers at points of entry and departure from Burma.
20. In respect of the appellant, Ms Robiou concludes that he would be at risk if he continues his oppositionist activity in Burma or travels to an ethnic minority region where there is open conflict. There are ongoing conflicts in Kachin, Shan, Karen, Karenni and Arakan State. She states that she cannot be certain that the appellant would be arrested simply as a consequence of the activities he has undertaken in the United Kingdom.
21. She confirms that in order to better assess personal risk an individual could take the step of asking for an official invitation to visit the country from the government of Burma. She suggests that this is a path that the appellant may wish to take. However she also states that it is mainly exiled organisations and not individuals that are extended official invitations to return to Burma.
22. In the first addendum to her report of 22 January 2013, Ms Robiou observes as follows:
 - a. Low profile activists and dissidents are disproportionately targeted by the state security forces;
 - b. High profile activists in the international arena are generally allowed to carry out their political and humanitarian activities with little or no incidences of harassment. This is a tactic the Government of Burma uses to 'trick' the international community that they are genuinely reform minded;
 - c. Individuals with no history of activism are now fighting for their rights. The government, instead of responding to the concerns of the people, have responded in manners reminiscent of the 'brutal military rule';
 - d. There has been an arbitrary application of the protest bill. Demonstrations that support government policy are allowed to proceed, whereas those which criticise government policy are not allowed to and participants in such demonstrations are the subject of arrests, detentions and ill treatment.
23. In the second addendum, Ms Robiou cites examples of low profile demonstrators briefly detained (for several hours) for violating the Peace Assembly and Procession Bill but who

have not faced formal charges. She refers to such individuals being questioned and a number being required to sign admissions that they did not have permission to protest.

24. Ms Robiou further identifies that three activists who played a leading role in the copper mine protests were assaulted and treated in a degrading manner whilst in detention. She also provides an example of a labour activist who spent 177 days on remand awaiting trial, his family members being refused permission to see him on at least two occasions. Annexed to the second Addendum are three lists; the first identifies the names of eight persons convicted and sentenced under the 'Protest Bill', the legal provision breached, the date those persons were arrested (all in November or December 2012) and the sentence each received (either one month or six months imprisonment); the second lists 84 persons currently awaiting trial under for such crimes and includes the date of the persons arrest, and the third list comprises of the names of 40 persons that have been arrested for 'other' criminal offences.
25. In the third addendum to her report, Ms Robiou confirms that she is aware of low profile activists, who have not engaged in protests, demonstrations or processions who have returned to Burma and have not been harassed. These persons were engaged in lobbying activities against the Burmese government or were staff members of vocal exile organisations. Her opinion is that this is 'standard' for low level activists seeking to return to Burma with no plans to partake in political activity.
26. In her e-mail of the 8 March, Ms Robiou states:
 - a. Low level protestors and demonstrators are arbitrarily and briefly detained. In detention they are subject to physical harm and verbal harassment.
 - b. Critics in Burma are monitored, followed and harassed on a regular basis;
 - c. Her colleagues, low level activists who have returned to Burma to obtain passports, have complained of having their telephone conversations tapped;
 - d. The appellant will be subject to some sort of monitoring upon return. Depending on how much a threat the government perceives him to be, and his political activities in Burma, he could be subject to other repressive tactics such as restrictions on freedom of movement and denial of employment opportunities.
 - e. The 120 arrests that AAPP have record is not a 'small' number. Each and every protest faces some level of repression.

Oral evidence

27. In examine in chief Mr Robiou stated that the lists of those in detention attached to the second addendum of her report of January 2013 are incomplete. AAPP has a complete picture in relation to the Rangoon and Mandalay areas, but not for other areas. She expected the numbers to rise exponentially as other areas of Burma are accessed. She confirmed that AAPP has sent her a monthly list of those in detention, which shows 77 individuals facing trial under the Protest Bill, 48 face trials under miscellaneous Acts although many of these were arrested whilst protesting and 45 are on trial in Shan state. In her further belief is that approximately 1000 persons are imprisoned in Rakhine state, having been involved in clashes in July and August. She considered that those persons who live in conflict states are disproportionately targeted, with innocent people being arrested and tortured. In response to being asked the numbers of innocent people detained, Ms Robiou acknowledged that it was

difficult to access such information. She stated she was aware that 57 people are on trial in Kachin State and that many people are held in secret detention centres; not even family members knowing where they are detained.

28. It is Ms Robiou's opinion that the appellant would be monitored upon return to Burma. She agreed that the evidence given in her email of the 8 March 2013 was true, noting that low level protestors and demonstrators are arbitrarily briefly detained, without being told why, and suffer physical harm and verbal harassment during such a detention. She supported this conclusion by reference to the consequences suffered by a female copper mine protestor who was sexually abused by a policeman. She did not consider this to be an isolated incident and thought the risk of ill treatment during a brief detention to be 'very high'.
29. Finally in examination in chief, in response to being asked what she thought placed the appellant in a high risk category of a short term detention, Ms Robiou stated that the appellant's previous political activity in the United Kingdom would put him at risk because the government would be monitoring who he is interacting with and what sort of activities he was undertaking in Burma. She 'suspected' that during interrogation or brief detention the interrogators would want to extract information about the appellant's activist networks. The preferred tool for doing so is torture.
30. In cross examination Mr Avery asked Ms Robiou whether her two colleagues who had returned to Burma had any evidence to support their belief that their phones were tapped. She responded by accepting that such beliefs were based on suspicion only, however each had heard the sound of typewriters in the background whilst on the telephone. This was something that often used to happen under the military rule. She accepted that this was the extent of the difficulties suffered by her colleagues.
31. Mr Avery then drew Ms Robiou's attention to a conflict between the evidence she gave in her e-mail of the 8 March 2013, in which it is stated that low level critics are monitored, followed and harassed on a regular basis, and the evidence given in her report of 22 January 2013, in which it is said that the practice of following and monitoring suspects continued only in relation to prominent activists. Ms Robiou explained this by stating in the past couple of months more low level activists located in Thailand have gone back to Burma to apply for passports or visit family members. However, at the time of writing the report of 22 January 2013 only high level activists had gone back, and these were mainly at the invitation of the government.
32. She then acknowledged that she is aware of only 13 of the 1000 Peace Day protestors having been arrested; although she believed that she had only 70% of the complete picture. When asked what evidence she had to support her contention that there is a high risk of being detained at a protest, Ms Robiou accepted that she had no statistical evidence to support her contention, but was nevertheless aware that there have been detentions at every protest in Burma. She observed that the Burmese government was very keen to give the impression to the international community that there are no political prisoners and that they are not arresting political activists.
33. Ms Robiou was then invited to comment on a report authored by Amnesty International dated 23 May 2012, in which it was stated that the government had released 650 political prisoners between May 2011 and January 2012, and that many of these persons had told Amnesty International [during 2 visits by the organisation to Burma] that they had been relatively free to resume their political activity without harassment or intimidation. She

stated in reply that she did not agree with Amnesty International's statement, observing that if activists were free to pursue activities in Burma then AAPP would be in Burma.

34. In response to questions from the Tribunal Ms Robiou confirmed that AAPP had been founded in 2000 and is funded primarily by the Open Society Foundation, National Endowment for Democracy, the Netherlands Embassy in Bangkok and the OAK Foundation. Of the ten people working the headquarters, 4 had returned to Burma in the past twelve months; 1 permanently and 3 on visits. Of the 3 persons who had returned on a visit, 2 had been at the invitation of the government. Each of three persons believed their telephones had been tapped and heard the sound of typewriters in the background when making a telephone call.
35. Ms Robiou further confirmed that she was aware of 2 political prisoners who had been freed and then re-arrested - U Gambira and Nay Myo Zin, a charity worker who had been arrested twice since being released on October 2011.
36. In re-examination Ms Robiou observed that an individual could contact the Ministry of Home Affairs in order to ascertain whether they were on the blacklist, although it was unclear how responsive they would be to such a request. Doing so would not offer any protection however.

Dr Zarni's written evidence

37. Dr Zarni's initial report is dated 16 November 2011. He comes from a large military clan in Burma, having been admitted to the Officer Training Corp and has done extensive research on military affairs in the past 23 years. He is a founder of the Free Burma Coalition and campaigned for the improvement of human rights conditions in Burma from 1995 to 2004 internationally.
38. In his report he acknowledges that the appellant was not found to have been politically active in Burma and the focus of his report is therefore on the consequences of his activities in the UK [10].
39. Commenting on recent developments in Burma he observes:
 - a. That some critics and dissidents had begun to return and that the government was considering the release of jailed political activists at home.
 - b. On 25 August 2011 UN Special Envoy on Human Rights in Burma Professor Quintana said that he welcomed some positive developments but noted that there is still serious and ongoing human rights concerns that need to be addressed particularly the continuing detention of a large number of prisoners of conscience and the continuing allegations of torture and ill-treatment during interrogation.
 - c. UN Secretary General Ban Ki-Moon has said that a real opportunity for progress exists but the government must step up its efforts for reform if it is to bring about an inclusive - and irreversible - transition. In particular the authorities must cultivate improved dialogue with all political actors and release all the many political prisoners.
 - d. The Prime Minister of Myanmar has referred in his statement to the General Assembly that an early amnesty is being considered. [15]

40. Dr Zarni refers to the latest report by the Assistance Association for Political Prisoners in Burma published in 2010 which says that there are more than 2,000 people behind bars without access of guarantees to due process. There are 42 prisons in Burma, 109 labour camps and an unknown number of interrogation centres, and the deplorable conditions in these places are well-documented.
41. Dr Zarni considers also that:
 - a. Jailed political activists have no recourse to law, the single biggest obstacle in effective intervention of human rights being the absence of an independent judiciary.
 - b. there is a difference between the role and function for law in Burma and any norm based judicial systems [19] this being characterised as the “un-Rule of law” which is differentiated from the rule of law in depending upon uncertainty rather than certainty by which citizens can organise their lives and arbitrariness rather than consistency as to how state institutions and personnel operate and it is concerned with the denial with rights in the absence of norms upon which rights can even be nominally established.
42. Dr Zarni notes that there are signs that as at November 2011, Burma, may be at the point where changes become possible although:
 - a. expectations that Burma’s human rights conditions were going to improve significantly once the Burmese government declared an amnesty on 12 October 2011 turned out to be misplaced, given the very low number of prisoners of conscience that were released;
 - b. it has been argued that the political detainees were like hostages, being released at a trickle in exchange for deals being struck with various parties at home and abroad;
 - c. There is a significant disparity between reality on the ground regarding human rights and governmental conditions and the officially stated aspiration of goals which the Burmese military government claims to be striving towards and which the UN and international human rights organisations are urging the Burmese government to move.
43. The Burmese military rulers’ attitudes are comprehensible only through consideration of their mental/psychological make-up whereby:
 - a. Unquestioning loyalty and compliance from subordinates is required at all levels of the military; any disagreement and difference expressed by subordinates is seen as a sign of disloyalty and disorder and subordination;
 - b. Military leaders at all levels do not tolerate any form of dissent; under military rule military leaders have come to accept the same from the non-military sections of society and government with a zero tolerance towards public political opposition and defiance pervading all aspects of the state;
 - c. Citizens’ political protests are seen as unlawful acts of individual defiance and disloyalty to the nation, the official expression used in reference to Burmese opposition activists being “external destructive elements and lackeys of the alien powers”;
 - d. No material distinction or difference is made between organisers of protests and those who merely join the anti-government discrimination demonstrations either at home or abroad.

44. Dr Zarni considered that it would be difficult for the military government to assess commitment to the opposition's cause on the part of those Burmese nationals who turn up to demonstrate abroad outside diplomatic missions, but that there are certainly informers both within the country and outside who trade information for different purposes and the regime relies heavily on human intelligence in monitoring opposition of the activists inside and outside the country.
45. A person who had had contact with the opposition in exile would, on return, be likely to be interrogated about those contacts and torture is the norm during interrogation period when confessions are forcibly extracted. What would constitute real commitment can only be established over a period of time in assessing whether an activist has a real commitment to democratisation or the stamina to stick with the opposition's cause.
46. Protests by overseas communities in front of diplomatic posts do not immediately threaten to destabilise or disrupt the military controlled social order inside Burma, but because these protest demonstrations are usually headline news, the impact amongst the Burmese public is significant and for that reason the government views transmitted news of protests in front of its embassies abroad and other direct and practical instigations as having a contagious impact. Exiled activists are commonly known amongst the Burmese public as well as the government to incite popular protests and mass revolt within Burma.
47. Dr Zarni considers that Burmese military rulers attach disproportionate significance to peaceful protests by ex-patriots, exiles and émigrés in front of Burmese Embassies around the world, a significance attached to this being comprehensible only through consideration of the mental/psychological make-up of military leadership, in particular "loss of face". This is felt to an extreme degree by Burmese generals which is why they view the simple act of Burmese nationals demonstrating in front of Burmese Embassies abroad in such a negative light. Most of the news that has come out of Burma since the bloody crackdown of the people power uprising in 1988 has been grim and whilst the generals come to the negative news coverage of their military regime and since April 2011 constitution of military rule as a given, they remain extremely sensitive to Burmese nationals expressing negative views about the military and its rule.

The Military's surveillance of citizens abroad

48. The military government attaches much significance to monitoring Burmese nationals abroad even so far as to violate international policies and legal requirements such as placing Burmese military intelligence officials at the Burmese Embassy although the embassy in London is not supposed to have any military attaché. It is the responsibility for these military intelligence officials operating as civilian diplomats to record and report dissident activities abroad including anti-government protests in front of their embassy. Officials whom Dr Zarni met gave the impression that they were able to keep a watchful eye on the Burmese exiled communities in London and Washington through the frequent Burmese embassy functions and to Burmese monasteries. In the Burmese Ministry of Foreign Affairs almost all officials at all levels are military or ex-military officers and in addition, military intelligence personnel from the Ministry of Defence intelligence are attached to all embassies. There are numerous eyewitness accounts of Burmese Embassy staff photographing and recording protestors outside the embassies for the purpose of establishing their identities. Video and photographic recording of virtually all dissident activities including protests inside and outside Burma for the purpose of establishing the identities of those, not just protestors and key participants, but also hangers-on and onlookers is a well-known

intelligence/police practice by Burmese security organisations. Dr Zarni has seen embassy officials in all venues photographing and recording demonstrations of his own contacts, it is clear that the Ministry of Foreign Affairs maintains a blacklist of both Burmese political activists abroad and foreign nationals who are regime critics.

Would Burmese failed asylum seekers upon return be subject to ill-treatment by the military and police intelligence

49. Since the announcement in September 2011 by President Thein Sein that his government will consider leniently those political exiles and activists abroad who wish to return to Burma, a number of high profile dissidents have returned and so far are known to be left unharmed but can be arrested at any time. The amnesty turned out to be of little significance when only ten percent of the 2,000 jailed activists were released and where well-known activists' prominence may have afforded them a degree of protection, it not being in the interest of the government when it is trying to project a new image to be seen arresting or maltreating returning famous dissidents.
50. In Dr Zarni's opinion, the government is trying to cultivate a new image as a benevolent constitutional government rather than trying to bring about genuine improvement on human rights and political fronts and the same induced personal protection from persecution is less likely to be available to face those activists whose records of political opposition rest only with the military government's security agencies.
51. Because those who are labelled as "hangers-on" among protestors and organisers in front of British Embassies are not on the human rights and political radar of any major international human rights organisation, western embassies in Rangoon or even local Burmese media, there is no way of knowing whether they disappear upon arrival at Rangoon and other ports of entry into Burma.
52. Dr Zarni's view is that, although it is not possible to be certain, the authorities in Burma will not make any distinction between those with a real commitment to democratisation by the opposition movement or those who may be merely motivated in order to get asylum abroad. The concept of "hangers-on" has absolutely no meaning for the Burmese authorities as no threat is to be tolerated and no amount of challenge to their authority is insignificant. He does not think that any organisation could or would conceivably want to monitor so called hangers-on who are only known to the Burmese security agencies thanks to their participation in anti-government protests in front of Burmese Embassies in London etc. In the absence of any definitive evidence either way one is left with only the human rights track record of the military government and the existing verifiable conditions in terms of the absence of independent judiciary and the essential due process, the continuing use of torture and other numerous forms of ill-treatment and that there is always the risk of detention and arrest for Burmese nationals politically active abroad when they return to Burma, regardless of whether they have a recorded and known history of political involvement inside the country.

Factors that can exacerbate the risk to the group of "hangers-on"

53. There are a number of factors which would likely exacerbate the risk to "hangers-on" such as:-
 - a. political arrests and upheavals inside Burma which erupt chronically;

- b. bomb explosions and other terrorist acts usually attributed to exiles and foreign-based Burmese organisations;
 - c. increased military tensions with armed ethnic minority organisations which have a strong diaspora support; and
 - d. Rumours and intelligence that some exile groups are planning or instigating popular unrest in the country around historically important dates.
54. Although it is not possible to predict when exactly such an enhanced risk might arise, there are some recurring occasions such as 2 March, 18 September and 8 August during which the surveillance of citizens while security forces would be tighter and surprise security sweeps would be more frequent than usual.
55. At certain times there would also be enhanced checks on people arriving at an airport or on people who have recently returned from abroad given the carrying out of enhanced checks within the country. Also some irregularities in their passports and national ID cards which everyone is required to carry with them at all times or suspicious/nervous behaviour will attract immediate attention to activists on arrival. Even if they encounter no trouble at security immigration booths on arrival, the fact that their identities are established and maintained in the government's database of persona non grata the security agencies are in a position to track them down should they feel stricter surveillance is called for on the aforementioned occasions. Should a so-called hanger-on be arrested on arrival or subsequently, he would be subject to arbitrary and ill-treatment at the hands of security agencies and reference is made to reports of those returned in particular the COI Report (17 June 2011) at 33.25 referring to an IRBD report indicating that two persons with apparently similar circumstances may be treated completely differently by the Myanmar authorities which do not operate according to rational methods.
56. So far as Dr Zarni is aware, the FCO in Rangoon does not devote any human or financial resources to the systematic monitoring of how the authorities handle Burmese deportees and returning Burmese nationals who may have demonstrated outside the Burmese Embassies abroad. It is highly improbable that the FCO officials in Burma will know where, when, why and how arbitrary arrests and detentions of Burmese deportees and returning nationals from abroad take place. The FCO is not in a position to make a definite judgment as to whether it is only rally leaders and individuals who also have histories inside Burma who would be particularly at risk as it appears to have done so without material evidence or a system of monitoring in place in order to be able to make that assessment and "particularly" does not rule out the possibility of risk to people who do not fall within the categories identified. In contrast the Burmese authorities have a well-documented system set up abroad to identify all demonstrators in front of their embassies abroad.
57. In his view the appellant, if returned, faces risks common to all political activists: arbitrary arrest, detention, interrogation which is usually through various means of torture starting with systematic sleep deprivation, beating and hitting and he would be treated as a political activist even if the reasons for his political activism were purely opportunistic. Dr Zarni then refers to evidence showing that military intelligence search, arrest and interrogate without warrant anyone deemed political despite provisions to the contrary. All prominent political prisoners interviewed were held longer than 48 hours without warrant and without being brought for judicial authority, their basic rights to due process were denied and there are

instances in which military intelligence has passed sentences orally at the time of arrest before any trial has taken place.

58. Dr Zarni notes that the Burmese military regime used to send its intelligence agents to East Germany for advanced training and continues to use the Stasi methodology of training citizens to spy on each other. From his own first-hand interactions with Burmese intelligence and diplomatic officials in the US and the UK, Dr Zarni is of the view focus and energies of Burmese intelligence personnel abroad are directed at monitoring various anti-government activities of Burmese political exiles and activists and that they recruit informers through a few Burmese monasteries in the UK where Burmese exiles expatriates and émigrés congregate and business associates, foreign academics and those who need consular assistance for example passport renewal or Burmese entry visas may also volunteer information about what they consider anti-government activities. There is no way of ascertaining whether the UK based network of Burmese spies and informers are able to provide information on those who are genuine opponents or those who are not, that is who are hangers-on but even if they were able to provide categorical information to headquarters in Burma, Dr Zarni considers it to be unlikely to make a difference in the eyes of the Burmese authorities in light of the fact that the military or leadership views any and all imposition abroad as an act of national betrayal designed to tarnish the image of the country and hence inflict loss of face internationally.
59. Based on the appellant's statement that he has participated in anti-government demonstrations in London and attended political meetings at the Burmese monastery in Colindale, Dr Zarni considers that he will in all likelihood be in the military government's database of those Burmese nationals who publicly registered an opposition towards the government and this will rule out the possibility that the Burmese authorities will only regard him as a mere hanger-on even in the unlikely event they make such distinctions amongst anti-government activists abroad.
60. Given well-documented and pervasive rights abuses, Dr Zarni considers that it is important to understand that the nature of the state in Burma is highly arbitrary and therefore any decisions made concerning repatriation should be done with extreme caution and the Upper Tribunal should take extreme care before deciding it is safe to return TSs to Burma. While it is not certain what exactly the authorities would do if he were forcibly returned, he is likely to be detained and interrogated either upon return or subsequently given the frequency of his protest demonstrations in front of the embassy and the fact that he would by now be well-known to the intelligence agencies inside Burma a chance of him being left unharmed by the authorities will diminish in times of high security alerts generally triggered by the occasions referred to above.

Summary of Transcript of Conference Call with Dr Zarni

61. There is no other evidence to believe the regime has modified or changed its activity in taking photographs of those demonstrating at the embassy and there appears to be no change to the government's priorities in terms of intelligence gathering.
62. The main concern of the regime is how the demonstrations may tarnish the good name of the country especially now that they have been welcomed back into the international community. There is a renewed sense of importance attached to demonstrations around the world outside Burmese Embassies and Burmese Embassies coming from different communities, particularly the Kachin Christian minorities and the Rohinja Muslim minority

63. Given that the mindset of the authorities is security first, security second and security third this is virtually unchanged and human intelligence reliance may intensify, using and relying upon extensive formal and informal networks of voluntary informants as well as professional trained human intelligence officers. Some 5,000 to 10,000 Burmese military officers have now received technical training in Pakistan, Russia, China and India and the trained officers are known to be expert at hacking emails of journalists, dissidents and other common figures in and out of the country and civil monitoring continues to monitor cyberspace and will continue to record and take photographs of demonstrations. All the pictures are not taken for the purpose of keeping them in the embassies but transmitting them electronically to headquarters for further investigation and ID identification purposes.
64. There is no crystal clear definition of what are genuinely suppressive anti-government activities and what are phoney subversive activities designed to establish one's status as a dissident. In Burma such things are not spelt out or even where the laws are clearly spelt out the application of laws concerning subversive activities is elastic in the sense that individual officers retain a large degree of discretion or discretionary part to deem a particular person a genuine dissident or phony who poses no threat to the regime. The decision of whether a person is genuine or not is contingent upon which officer or agency is interpreting the matter. The intelligence agency has improved its ability to rely on human intelligence because it has built up cyber intelligence networks with very well-trained computer hackers and social media experts trained specially in Russia.
65. The authorities continue to torture during investigations: the most common records being psychological torture and sleep deprivation which does not result in physical injury. It is not clear whether they continue to beat up detainees during interrogations because if let out within a short period they would now go to the press and tell what had been done to them and in that sense the physical torture may be in decline but they have other methods available.
66. The authorities continue to view transmitted news protests in front of embassies as having a contagious impact at home. There are now some three to four million people known to be internet users in Burma who use cyber cafes. Facebook is the most popular medium in the country and so images get picked up and are re-transmitted by various different groups using Facebook and other social media websites. The images of political defiance towards the military regime are treated seriously by the authorities. Although the end of official censorship has been announced, there is an array of different laws designed to restrict a flow of information. The attitude of the authorities is still very much that there is a danger of "external, internal destructive elements, lackeys of aliens instilling wrong thoughts in youth that patriotism and nationalistic spirit are out of date instigating youth to entertain tendencies of confrontation violence in mind".
67. So far as Dr Zarni is aware the military is not decreasing or removing their military intelligence officer officials at the Burmese Embassy in London and if anything there will be an increase in the number of military intelligence agencies in their London Embassy given the extent to which the West is bending over backwards to woo the Burmese government away from China.
68. There is always a risk of detention and arrest for Burmese nationals politically active abroad and it is noted that when Aung San Suu Kyi attended a public meeting at the Royal Theatre near Waterloo, London, in response as to whether it was safe and secure for Burmese ex-patriots and exiles to return it was that you have to make your own judgment and that you

would not say it is completely safe for the Burmese to return, it depends on individual cases. There is always a risk of being detained.

69. The crucial element is unpredictability as one never knows what will trigger suspicion in the minds of local and national security officials as there is no uniformity as enforcement is so unpredictable that you will never know when a certain activity will be deemed a threat to national security. In the case of little-known activists who may have participated by demonstrating in front of the Burmese Embassy they will have no way of knowing where their pictures end up and who might be viewing them. The crucial thing is that the laws are enforced elastically and one can never be sure of what will trigger one's arrest. A protest in itself does not pose any security threat other than at best reputational damage but protest as a clear indicator of your sentiments makes protest crucial. The Burmese government see protesting as an indicator of either hardcore dissidents or potentially hardcore dissidents that is the crucial point.
70. If the British government does not know what Burmese citizens abroad are doing below the radar then they cannot say with certainty that they are not at risk of being picked up by intelligence. The main mission of the British Embassy in Burma is to promote the British national self-interest. They know every single important dissident but that is not the population with which we are concerned. If you look at the current political development the big activists from Aung San Suu Kyi down to the next 500 or 100 dissidents with recognisable names are no longer at a high risk as before, the risk is with little-known but up and coming activists who had basically picked up where the big famous dissidents left off.
71. Turning to the FCO letter 4 February 2011 Dr Zarni said he could not with certainty say that the appellant would most likely be arrested at Rangoon or other point of entry or elsewhere in the country and he cannot know whether he would be arrested or tortured or whether they would let him come and go without harming him and he cannot know whether he would be safe or not as he has no evidence to determine this. He does not know whether there is still a risk to returning failed asylum seekers who have demonstrated outside the Burmese Embassy in London and defers to the FCO letter.
72. Dr Zarni said that even given recent developments there would not be a difference in the eyes of the authorities to whether someone is categorised as a genuine appellant or a hanger-on assuming the Burmese spies or informers are able to provide this information. The system is not one of a vast bureaucratic evil machine coordinated from the very top down to the ground root; there are different layers of officers and non-officers who are pursuing their own interests like keeping their job which is what makes it so difficult in the context where the rule of law is not clearly established, not clearly or uniformly enforced and so it is difficult to answer with certainty many of the specific questions put.
73. Asked if he was confident that the reform process would not go into reverse, Dr Zarni said that there are some ominous signs that the Ministry of Defence and its economic conglomerate is under Chinese pressure, resorting to the use of canisters containing white phosphorous and using teargas to quell demonstrations or to break up mass gatherings indicating that the military has a clear mindset in terms of where its core interests lie in the regime, and anyone who attempts to rock the boat is going to get the same treatment. The generals have swapped their military attire for civilian clothing, have dropped the language of authoritarianism and speak the language of democratic democracy in civil society but their interest and mindset, where for operational and modus operandi remain unchanged. The dissidents are not running the country and do not even have a say in what types of

reform packages are debated or discussed. The reform process remains fragile and remains reversible primarily because the reforms are not about genuine democratisation or the genuine transfer of power from an entrenched military but are about reinventing the Burmese military in a way that is acceptable to the western government, international lending agencies and investors.

Dr Zarni's emails of 13 March 2013

74. In the first email of 13 March, Dr Zarni states that the risk to Burmese citizens who had taken part in anti-regime protests in the United Kingdom of being arrested and tortured on return remains as high as before the reforms. In his second email he explains (in response to Mr Mullins request to explain his change in assessment from one of uncertainty to one of high risk) that this is based on new information from various sources, as well as observations on the heightened risk in times of political fluidity; that the most significant source is the UN Special Rapporteur; that the other source is a recent interview with a former political prisoner; that none touched on returnees and the risks they faced; and, that he is drawing a new conclusion based on how the regime is treating local protestors.

Dr Zarni's oral evidence

75. Dr Zarni adopted as his initial report dated 14 November 2011, the transcript of his Skype interview on 12 February 2013 and his two emails of 13 March 2013 as his evidence in chief, adding that the former political prisoner to whom he referred in his second email was someone visiting Oslo whose interview on the "Voice of Burma" he had seen. He said he had not had any discussions with Ms Robiou. He said that since his report of November 2011, he had had interviews and conversations with different Burmese sources, some from inside the country when they had travelled abroad; he has not been back to Burma since 2006, and contacts people there via email, mobile and Facebook. His contacts come through a social network established since Burma opened up.
76. In cross-examination, it was put to Dr Zarni that 2013, in saying in his first email of 13 March 2013 that the risk to Burmese citizens who had taken part in anti-regime protests in the United Kingdom of being arrested and tortured on return remains as high as before the reforms, he had changed his position from the Skype interview [Q12 & Q 13] where he said that he could not know if the appellant would be safe on return as he had no evidence to determine if he would be safe or not; and that he did not know if those who demonstrated outside the embassy would be at risk on return.
77. Dr Zarni's response was that his view had not changed at all; that he had made the observation that in times of political uncertainty the risk of those returning and finding extra vigilance will increase, and that there are now three major developments: systematic persecution of Muslims in Western Burma, triggering demonstrations; over a year and a half of civil war in Northern Burma; and, land confiscation in government projects leading to small scale protests which had been picked up by the UNHRC Special Rapporteur. Dr Zarni said that he had modified his position in the light of the Special Rapporteur's report who (unlike him) was able to visit prisons and see the situation on the ground, and so he deferred to him, adding that the report should carry greater weight than the FCO letter to which he had previously deferred.
78. It was put to Dr Zarni that the Special Rapporteur's report added nothing new; he said that it depends on how you read it. He said he was not changing his view, just expressing a greater

degree of confidence on his earlier opinion, that there is always a risk of arrest, detention or torture. He said that he had not been fully confident to express his views before, until he read the report, and as the Special Rapporteur was politically independent and had reached the same conclusion as him that added to his confidence.

79. Asked when he had decided to change his view on the position of people returning from the UK, he said that he was not making observations with specific reference to those returning from the UK but that Burmese nationals who protest outside embassies would face the same risk as they would in the past, but that he could not quantify the level of risk to those returning, due to the high level of arbitrariness how the security forces conduct themselves. He was not, however, able to give examples of anyone who had been ill-treated on return within the last two years.
80. Dr Zarni did not accept that this suggests there is no problem as what is under consideration is not Burmese who are politically active abroad, but those who do not have profiles as dissidents and who are not known to the outside world, and so it is not known who gets picked up on return. He said he had no evidence to support or refute his view that there is a group of those who are not media literate and are on the margins and who may face difficulties on return but had no specific examples of this. He further understands that the Burmese regime does not have a clear definition of what constitutes a political crime.
81. Commenting on Ms Robiou's view that demonstrating outside Burma was not likely to cause someone to be at risk, Dr Zarni said that it depends on where the demonstration takes place, who is targeted and the type of media coverage received; it is not possible to make such a blanket statement.
82. Dr Zarni said that although a lot of high-profile former political prisoners have returned, it is in the interest of the Burmese Government to treat them well, as it is trying hard to show that it is reformist, but what is of concern are those not on the radar. He did not know how the Burmese government would assess if a person would be likely to come the attention of the international community, and while they had made mistakes in the past, he was not aware of any examples recently, although that did not mean it had not taken place.
83. Asked to comment on the lack of evidence of low-level activists being at risk, Dr Zarni said that people are being detained left and right, and that the Burmese government makes it their business to record every protest outside their embassies, the evidence being transmitted back to the Ministry of Foreign Affairs.
84. In re-examination, he said that if not arrested on return, someone of whom there is a record of their demonstrating outside an embassy will be called in for questioning, without a warrant or due process, at any time. There is a special branch of the police whose mission is to monitor, interrogate and extract information from anyone suspected of being engaged in anti-government activities, including peaceful protests. Any Burmese national with a known history of political activities faces a greater risk of being closely monitored, and called in for questioning, even if there is no concrete evidence. A protest in the locality may be enough to trigger this.
85. Dr Zarni was sure that as the appellant had attended over 30 demonstrations that his face would be recognised by Burmese intelligence, as they take pictures of the demonstrations. He said that most Burmese come to the UK on official documents, and register with the consulate so the embassy will have records of them; it is the responsibility of the intelligence

officials in the embassy to link names to photographs. Dr Zarni's belief was that raw intelligence was sent back to Burma and any risk analysis was carried out by senior officials there.

86. Dr Zarni concurred with Ms Robiou's view that previous political activity would put THE APPELLANT at risk as he would be monitored on return to determine with whom he was interacting, and that he would face a brief detention and interrogation about this.
87. Dr Zarni considered that an individual who had studied in the United Kingdom but had not attended political meetings or demonstrations outside of Burma would not be at risk on return. He considered that if someone expresses political views publicly in social media, this will in due course come to the attention of Burmese intelligence which has spent a considerable amount in having some 10,000 military officers trained in cyber espionage in Russia. He said that the regime's current concern is not from well-known dissidents but with its relationship with little-known low level, organic opposition coming from those fighting loss of land and similar issues. That type of opposition cannot, in the view of Dr Zarni be separate from that centred on the cities, as there is a lot of across the board solidarity between the various groups.

Report of Special Rapporteur

88. In the chapter headed "Human Rights Situation", the Special Rapporteur, Professor Quintana sets out a number of chapter headings comprising Prisoners of Conscience, conditions of detention and treatment of prisoners, Freedom of Expression and Freedom of Assembly and Association. From these we note the following:
 - a. The grant of amnesties following the formation of the new government and the release of 800 prisoners of conscience (the most recent being announced on 16 November 2012 is welcomed although it is noted that the code of criminal procedure enables the attachment of conditions and it is reiterated that the release of prisoners of conscience must be without any conditions. Credible sources indicate that over 250 prisoners of conscience remain behind bars. The announcement on 6 February (2013) of the formation of a committee to identify the remaining prisoners of conscience to be released follows the government's earlier commitment made on 18 November 2012 to set up such a mechanism.
 - b. Professor Quintana visited Insein prison where he met five prisoners of conscience whose names are provided as well as Sittwe prison where he met another. Their cases were discussed along with four international non-governmental organisation workers who remain in Buthidaung prison with the home affairs minister in Naypyitaw.
 - c. In Yangon Professor Quintana met recently released prisoners of conscience, two of whom are named whom he had previously visited in Insein prison. He observes that many former prisoners continue to be denied passports and cannot travel abroad, and whilst some medical and legal professionals have had their licences revoked.
 - d. Specifically about conditions of detention and treatment of prisoners, Professor Quintana observes:
 - "11. The Special Rapporteur is concerned about the ongoing practice of torture in places of detention in Myanmar. During his interviews with displaced persons in the camps in Nyitkyina and Waingmaw and prisoners in Myitkyina prison he received

allegations of arbitrary arrest and torture during interrogation by the military of Kachin men accused of belonging to the Kachin Independence Army (KIA). In Rakhine State, he received allegations that Muslim prisoners detained in Buthidaung prison after last June and October's violence had been tortured and beaten to death.

12. While in Yangon, the Special Rapporteur met with the sister of Myint Swe who died following torture during interrogation whilst in police custody. His case is consistent with other information the Special Rapporteur has continued to receive on professionalised torture techniques being used by police officers on suspects of violent crime with the aim of extracting confessions. He highlights that addressing human rights violations through the criminal justice system is necessary to combat the culture of impunity that exists for acts of torture in police stations, prisons and in other places of detention, particularly during the interrogation of suspects. In addition he encourages the government to initiate human rights training programs for police officers and prison officials, and to develop the capacity of other relevant public officials, including judges and doctors, who can intervene on suspected cases of torture.
 13. The Special Rapporteur acknowledges the steps being taken by the Government to address the ongoing practice of torture in Myanmar. He commends the Government on its commitment last November to allow the International Committee of the Red Cross (ICRC) to resume prison visits in order to assess conditions and facilitate access to healthcare, and notes the subsequent successful completion of the first pilot visit in January ..."
- e. In respect of freedom of expression, Professor Quintana notes that in 2012 no journalists were jailed in Myanmar and the country rose eighteen places to 151 out of 179 states in the 2013 World Press Freedom Index. He was concerned that public broadcast news remains heavily censored, but welcomes the increased freedom for internet users, with internet café owners no longer receiving police visits and no longer required to keep logs of the computers used by its customers. He expresses concern, however, about the decision of Parliament on 17 January to investigate the online activities of a blogger who had criticised MPs' amendments to the constitutional tribunal law.
 - f. In respect of freedom of expression, Professor Quintana notes that in 2012 no journalists were jailed in Myanmar and the country rose eighteen places to 151 out of 179 states in the 2013 World Press Freedom Index. He was concerned that public broadcast news remains heavily censored, but welcomes the increased freedom for internet users, with internet café owners no longer receiving police visits and no longer required to keep logs of the computers used by its customers. He expresses concern, however, about the decision of Parliament on 17 January to investigate the online activities of a blogger who had criticised MPs' amendments to the constitutional tribunal law.
 - g. Concerns are expressed over the extent to which the right to freedom of assembly and association is being respected because of shortfalls in the 2011 Peaceful Assembly and Peaceful Procession Act and its associated bylaw as well as the problematic implementation and enforcement of this legislation by state officials and police officers on the ground. This is reflected in the ongoing arrest and detention of people involved in peaceful protests. If a peaceful assembly or procession takes place without a permit the criminal code provides for punishment of up to one year imprisonment and a fine

of 30,000 kyat. Furthermore, he observes the act is being used in conjunction with other laws under which the failure to gain permission to hold an assembly can result in two years' imprisonment of the criminal code and five years sentence under 1988 law relating to the formation of organisations for people who participate in groups that in broad and vague terms:

“... attempt, instigate, incite, abet or commit acts that may in any way disrupt law and order, peace and tranquillity, or safe and secure communications; [or] affect or disrupt the regularity of state machinery.”

There was an additional power to the President under the 1908 Unlawful Associations Act authorising the President to declare at his discretion any organisation to be unlawful with the sanction of between two and three years imprisonment for a member of such an association.

- h. Reference is made to thirteen activists having been arrested under what we understand to be the Peaceful Assembly and Peaceful Procession Act on 21 December 2013 in Yangon in which opposition was voiced to the war in Kachin State, and in October ten activists in Mandalay Bago were charged under the Act with participating in peaceful protests against electricity charges. Reference is also made to four gold mine workers having been sentenced to six months imprisonment for leading a march on 23 November 2012 on the basis that they had done so without permission. On 26 November eight activists including a former prisoner of conscience who was named were arrested for protesting in Yangon against the expansion of the Monywa copper mine and they too were charged for protesting without a permit. On 13 December four activists in Mandalay and four activists in Monywa were arrested for the same reason, and on 18 January they were sentenced to one month imprisonment but were released as they had already spent 33 days in prison after their arrest.
- i. Concern is expressed by Professor Quintana over the police handling of protests. In their attempt on 29 November to clear the main protest site near the copper mine in Monywa resulted in 73 people including 67 monks being injured, with around 30 persons suffering burn injuries. Mr Quintana had met with the participants in the protests who described how incendiary devices had been used to disperse the crowds, resulting in serious injuries. The Minister of Home Affairs denied this and Mr Quintana welcomes the establishment by the government on 1 December of a commission chaired by Aung San Suu Kyi to look into the protests.

89. The report additionally considers the situation in Burma under these further chapter headings:

- a. Conflict and the Situation of Ethnic Minorities
- b. Situation in Rakhine State
- c. Democratic Transition and Establishing the Rule of Law
- d. Truth, Justice and Accountability.

before the following conclusions are made:

- “82. Continuing reforms in Myanmar are resulting in ongoing improvements to the human rights situation. Important changes have taken place, such as legislative reform, but sometimes not to the point where international human rights standards are met.
83. There remains a large gap between reform at the top and implementation on the ground. While acknowledging that it will take time to close this gap, this should not be used as an excuse to avoid taking necessary steps, such as the capacity development of police, army, judges and lawyers.
84. While the process of reform is continuing in the right direction, there are significant human rights shortcomings that remain unaddressed, such as discrimination against the Rohingya in Rakhine State and the ongoing human rights violations in relation to the conflict in Kachin State. The Special Rapporteur believes that now is the time to address these shortcomings before they become further entrenched and destabilise the reform process.
85. The Special Rapporteur believes the continuing existence of his mandate is vital to highlight these concerns and support the Government in addressing them. It helps to remind the international community of the importance of prioritising human rights in its bilateral relations with Myanmar. And ultimately, it provides a positive contribution to improving the situation of human rights for the people in Myanmar.”

Schedule two – Submissions in detail

Summary of Skeleton Argument – Mr Mullins

1. Mr Mullins notes the acceptance by the respondent of the Statement of facts and sets out the ambit of the case, its procedural history and the relevant legal provisions in international law, European law and domestic law. He also sets out the headnote of TL & ors (sur place activities – risk) Burma CG [2009] UKAIT 17 and the relevant passages from KS & NL (Burma) [2013] EWCA Civ 67, and refers to Maurice Kay LJ's approval in that case of the UT's approach in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC).
2. It is submitted also that an individual who has no political beliefs should not be expected to pretend to the contrary to avoid persecution, and that an individual has a well-founded fear of persecution if he intends on return to his country of origin to pursue political activities which would expose him to a risk of persecution and it cannot reasonably be expected for him to forego manifesting his political beliefs.
3. Mr Mullins submits that on the basis of the evidence set out in TL, and in particular that of Mr Morland, as confirmed by a letter from the FCO dated 4 February 2011 and set out in the OGN of September 2012 that:
 - a. An individual's participation in demonstrations outside the Burmese embassy is very likely to be recorded, and those records sent to the Burmese immigration authorities;
 - b. Burmese nationals who regularly participate in such demonstrations are very likely to be have been photographed by the Burmese authorities;
 - c. If such a person is returned and there are additional risk factors that would trigger the attention of the Burmese authorities, there is a real risk of persecution on return;
4. Mr Mullins submits that the Burmese regime:-
 - a. on the basis of Dr Zarni's evidence;
 - i. Has not changed in respect of intelligence gathering, and its policy and priorities are very much driven by the security of the regime; and
 - ii. Still relies heavily on human intelligence both inside and outside Burma and
 - b. on the basis of Ms Robiou's evidence:-
 - i. has a sophisticated network of spies throughout the country, monitoring those believed to be dissidents, to collect evidence against them, to understand how the organisations operate, and to pre-empt anti-state activities;
 - ii. has a sophisticated network throughout the world, staffed by military intelligence, who monitor and document information on those involved in the oppositionist movement;

and that accordingly, it is likely that the measures identified as put in place in TL are still in place, and that while high profile leaders may not be at risk, that does not apply to those without an identifiable profile, nothing Ms Robiou's evidence that those who do return are forced so sign a pledge not to partake in activities or engaged in criticism harming the state.

5. Relying on Dr Zarni's evidence, he submits that there is still a risk on return of detention and arrest for Burmese nationals politically active abroad, and that, relying on Ms Robiou's evidence, those dissidents with international profiles may on return be protected by that profile, those less well known may well be at greater risk.
6. He submits that, on the basis of the evidence of both Dr Zarni and Ms Robiou and bearing in mind the conclusions of the Court of Appeal, the regime does not differentiate between those returnees who have no real commitment and attend demonstrations just to bolster a claim and those whose commitment is genuine, the regime being concerned not so much with motive but with the act.
7. In conclusion, Mr Mullins submits that risk on return will turn on what the returnee does on his return and that if he refuses to sign the pledge referred to above, he will be denied entry.
8. As regards the appellant, it is submitted that he will continue to demonstrate on his return, putting him at a very high risk of being arrested, and once detained, he is likely to be tortured.

Mr Mullin's supplementary skeleton argument

9. In summary, Ms Robiou's evidence is that:-
 - a. There are a lot of arrests in Burma that do not lead to formal charges, but are brief detentions during which the risk of torture is still very high;
 - b. The appellant's political activity in the UK will put him at risk on return to Burma as the government will monitor him and will seek to interrogate him about his activist networks and by using torture;
 - c. There is more evidence of torture and abuse in ethnic minority areas than in urban areas;
 - d. A lot of exiled organisations, including her own, consider that it is still not safe to return to Burma although they have visited the country recently;
10. Ms Robiou's evidence is supported by the Special Rapporteur's Report dated 16 February 2013 as this draws attention to:-
 - a. the on-going practice of arbitrary arrest and torture of Kachin men;
 - b. the detention of NGO staff in Rakhine state;
 - c. the still significant number of prisoners of conscience despite the large number of releases;
 - d. the widespread use of torture;

- e. the shortcomings of the Peaceful Assembly procession Act demonstrated by the arrest and detention of people involved in peaceful protest
11. Ms Robiou's evidence is also supported by the statement by the Special Rapporteur that people are still being arrested and imprisoned for holding demonstrations; and, by the investigation into the Copper Mine Protests.
 12. In summary, Dr Zarni's evidence is that:-
 - a. Recent developments, and the Special Rapporteur's Report have led him to a more pessimistic assessment of the dangers to those returning from abroad;
 - b. Returning protestors from abroad are likely to be called in for questioning, without warrant, at the airport or subsequently, without due process and are likely to be monitored;
 - c. Those with a known history face a greater risk of being closely monitored, and being called in for questioning, their past record being an aggravating factor;
 - d. The appellant has been a regular face at demonstrations, has shown up in photographs with well-known dissidents and is likely to be known to Burmese Intelligence;
 - e. The regime is concerned with protests snow-balling, and as there is solidarity between the different groups, a distinction between them cannot be drawn.
 13. Mr Maung's evidence is significant as:-
 - a. It confirms that the embassy is still filming and photographing demonstrations, passing that information back to Burma;
 - b. That the reforms are superficial;
 - c. That those who refused to sign declarations will be refused a visa;
 - d. The appellant will not be given permission to return, and that even if he is allowed to return, the intelligence services will have a record of his activities.
 14. The response of the Burmese govt to the Special Rapporteur's report – a wholesale rebuttal of all the conclusions – indicates the very limited nature of the reforms, and confirms Dr Zarni and Ms Robiou's fears that the reforms are simply cosmetic.
 15. The respondent's submissions do not address the fact that the brief detentions referred to by Ms Robiou do not lead to trial and rely on her evidence selectively, incorrectly dismissing her evidence that the phones of those who return are tapped. The respondent also fails to take into account Ms Robiou's reasons for nuancing her opinion – that it is only in recent weeks that low-level activists have returned.
 16. Mr Maung's evidence corroborates the fears of Ms Robiou and Dr Zarni that, away from the spotlight, the Burmese government continues to harass the population and to intimidate and suppress freedom of expression. The appellant will not be able to return to Burma without attending the embassy to have his passport renewed and as he has demonstrated on at least

62 occasions outside the embassy, he will most certainly be known by intelligence officers in Rangoon, and will be at risk of detention and torture on return.

Summary of Mr Avery's initial skeleton argument

17. Mr Avery sets out the background to the case, and the agreed ambit. He also submits that the appellant's sur place activity and the observations in YB Eritrea are relevant.
18. An individual would not be at risk on return to Burma on the basis of demonstrations in the United Kingdom alone, the available evidence disclosing only one incident of a returning political activist being detained, that individual having an outstanding arrest warrant. Ms Robiou's evidence indicates that a person without a history of activism would not be a risk, and Dr Zarni defers to the FCO letter to the effect that without additional risk factors, those who have demonstrated outside the embassy are not at risk of persecution on return.
19. Whether an individual who had come to the adverse attention of the authorities but had been able to leave using a valid Burmese passport would be at risk on return, having also demonstrated outside the Embassy is fact sensitive.
20. There is no evidence to suggest that the Burmese authorities do distinguish between those demonstrators who have a genuine commitment to the opposition cause, and those who attend to bolster asylum claimed, but neither category is at risk.
21. Since TL was promulgated in 2009, there has been a substantial and durable improvement in Burma. In TL it was noted that any sign of dissent, even minor, was savagely punished; now, the NLD has participated in elections; the NLD leader, Aung San Suu Kyi has been released and has been elected to parliament; laws have been passed allowing demonstrations and restrictions on the press have been relaxed; political prisoners have been released; and, many exiled opposition activists have returned.
22. While it is possible that those demonstrating in Burma would be at risk of arrest, it is not accepted that this would be reasonably likely. The opinion of Ms Robiou that the risk is very high is not supported by the evidence in her report.
23. Although it is accepted that there have been arrests at demonstrations, it is not considered that it is reasonably likely that the appellant would face arrest and/or ill-treatment.

Mr Avery's supplementary submissions

24. Ms Robiou has not given a sufficient basis for revising her view that a returnee who was not a prominent activist would be at risk of being monitored; the suspicions of her colleagues who had returned to Burma that their phones were being tapped as they heard sounds "like typewriters" was unconvincing evidence of actual monitoring. Neither Ms Robiou's evidence of 13 arrests when 1000 demonstrated, figures she described as 70% accurate, nor the other figures, support her claim that there is a high risk of arrest for those demonstrating in Burma. The evidence suggests that those who arrested are the leaders of the demonstration.
25. Dr Zarni has in his email substantially revised his answers to Qs 12 and 13 from the Skype interview. The three reasons for this doing so – the political fluidity of the situation, the views of the Special Rapporteur and a TV interview with a freed political prisoner, are

lacking in substance. Since the Skype phone-call, there has been no substantial change in the political situation in Burma and the Special Rapporteur's report contains no new information not already in the public domain. Dr Zarni is unable to point to any evidence that people who were low-level activists abroad had suffered any difficulties on return. The view that they were under the radar is unsustainable.

26. While not doubting the evidence of Mr Maung and those who attended the embassy with him, there is no other evidence showing that former Burmese nationals who have become British had experienced difficulties in obtaining visas to return to Burma. This evidence is of limited assistance.
27. The respondent maintains her position that, in the light of the changes in the general situation in Burma, a history of demonstrating in the United Kingdom would not on its own lead to a reasonable likelihood that a returnee would face ill-treatment. While there may have been arrests following demonstrations in Burma, the numbers are small and appear to be confined to the leaders of protests. Even were the appellant to participate in demonstrations in Burma on his return, he would not be at real risk of ill-treatment.

Schedule three -Documents considered

Date	Document
2008	Constitution of Burma 2008
20/09/2008	Myanmar Launches Cyberspace Attacks -
11/11/2008	Burma Blogger Jailed for 20 Years
01/06/2010	Asian Legal Resource Centre - Diagnosing the un-rule of law in Burma: A submission to the UN Human Rights Council's Universal Periodic Review
06/09/2011	Burmese Pipeline to China Under Construction, Despite Criticism
07/10/2011	Austrian Centre for Country of Origin & Asylum Research and Documentation (ACCORD) - Myanmar
16/11/2011	Report of Dr Maung Zarni
01/01/2012	Human Rights Watch - Burma country summary
05/03/2012	Addendum II to Marcia Robiou's Report
16/03/2012	RFA - A person calling for the release of political prisoners, arrested
16/03/2012	DVB - A solo protested was sent to mental illness hospital
28/04/2012	ThitHtooLwin - U Soe Kywe, called for repairing the damaged roads, sentenced one year
25/05/2012	Amnesty International - Document - Myanmar: Revisiting Human
26/05/2012	BBC News - Burma's ethnic conflicts see slow progress to resolution
31/05/2012	Torture and Ill Treatment in Burma -
01/07/2012	UKBA - Burma OGN
13/07/2012	Seven farmers arrested by the army
16/07/2012	DVB- The Army indicted farmers in Padaung
23/07/2012	RFA - All Burma Federation of Student Union members parents pressured by Special Branch Police
31/07/2012	DVB - Four leaders in the farmers protest in Thegon, arrested
28/08/2012	Mizzima - The second court of four ethnic Kachin, arrested from refugee camp, held
29/08/2012	Radio Free Asia - Burma: Karen face rights abuses
01/09/2012	Chin Human Rights Organization - "Threats to Our Existence": Persecution of Ethnic Chin Christians in Burma: Contents, chapters 4 & 5
01/09/2012	Land Grabbing in Dawei - September 2012
03/09/2012	The Irrawaddy - Mandalay Monks Hold Ant-Rohingya Protests dated
03/09/2012	The Myanmar Times - Controversial Former ABSDF Leader returns
05/09/2012	Integrated Regional Information Networks (IRIN) - Chins denied religious freedom in Myanmar
06/09/2012	The Irrawaddy - Exiled Dissidents Return to Push Reform dated 6.9.12
07/09/2012	Radio Free Asia - Burma: Karen recruited for army labor
09/09/2012	The Myanmar Times - 88 Gen Leaders Unhappy about Passport

10/09/2012 Radio Free Asia – Burma: Dozen mine protesters arrested

11/09/2012 Legendary 30-Comrade Member Invited to Return to Burma

11/09/2012 BBC News – Burmese Political Satirists Return Home from Exile

17/09/2012 Human Rights Watch – Burma: Former Political Prisoners Persecuted

17/09/2012 BBC News Asia – Burma Releases 500 Prisoners in Amnesty dated

25/09/2012 United Nations General Assembly – Situation of human rights in Myanmar

27/09/2012 AAPP – Arbitrary arrests in Burma: a tool to repress critical voices

27/09/2012 BBC News – Burma Ex-General Shwe Mann Rides Wave of Change

01/10/2012 Human Rights Watch – Burma: Peaceful Protest Organizers Charged

01/10/2012 RFA – two leaders of peace protest summoned by Sanchaung Township Court

01/10/2012 Mizzima – Myanmar Human Rights Commission asked to investigate the circumstances of the death of a Kachin girl

01/11/2012 Austrian Centre for Country of Origin & Asylum Research and Documentation (ACCORD) – Myanmar Update

15/11/2012 Radio Free Asia – Burma’s new amnesty under fire

16/11/2012 Internal Displacement Monitoring Centre (IDMC) – Myanmar: 89 killed, more than 36,000 people newly displaced in new waves of violence

17/11/2012 Human Rights Watch – Burma: Satellite Images Show Widespread Attacks on Rohingya

17/11/2012 Press TV: Rohingya Muslims in Myanmar’s Rakine state face genocide:

19/11/2012 Integrated Regional Information Networks (IRIN) – How real are Myanmar’s reforms?

29/11/2012 AAPP – List of brutally crackdown in Latt Pa Daung Mountain copper mine

29/11/2012 AAPP – President U Thein Sein: Immediately investigate and bring justice the police responsible for grave crimes committed against peaceful demonstrators

29/11/2012 Burma: Riot Police Move in to Break up Copper Mine Protests

29/11/2012 DVB TV Live – Thein Sein’s Office Says Crackdown Protects “Rule of

30/11/2012 Court Judgement of political prisoner – Dr. Tun Aung

01/12/2012 Human Rights Watch – Burma: Investigate Violent Crackdown on Mine Protesters

03/12/2012 Kachiland News – KIO condemns government’s violent crackdown on Letpadaung protesters

03/12/2012 BBC News – Burma leader Thein Sein signs law allowing protests

04/12/2012 Air War in Kachinland: Burma Military Air Attacks on Kachin

04/12/2012 The Irrawaddy – Letpadaung Protests to Test the Limits of Reforms

06/12/2012 UN News Service – Myanmar: UN official urges stepped-up efforts to address humanitarian issues causing instability

09/12/2012 The Irrawaddy – Monks stage protest in Rangoon

10/12/2012 Deutsche Welle – Myanmar activists protest jailing of ex-monk

10/12/2012 Myanmar Times – China vows to respect findings of mine probe

11/12/2012 Associated Press (AP) – Myanmar court grants bail to Yangon demonstrators against copper mine

12/12/2012 The Irrawaddy – Allegations of Development Abuses Rife Across Burma

12/12/2012 Associated Press (AP) – Protesting gold miners claim homes destroyed

12/12/2012 Monks Protest in Burmese Cities over Mine Crackdown

13/12/2012 Global Post – Copper mine strikes raise questions in Myanmar

13/12/2012 The Irrawaddy – Protesting gold miners claim homes destroyed

14/12/2012 The Irrawaddy – Anti-Copper Mine Activists Detained

14/12/2012 AsiaNews.it – Burmese activists arrested for demonstrating against violence towards monks

14/12/2012

17/12/2012 AFP, AP, Global Post, The Irrawady - Burma: Further arrests, as mining protests continue

27/12/2012 Radio Free Asia – Burma: Bomb blast, shelling in Kachin

29/12/2012 Radio Free Asia – Burma: Warning over Kachin conflict

31/12/2012 AAPP - Arrest since November 2012. AAPP do not find that they are released from prison

02/01/2013 Video Shows Burma Military Targeting Kachin Rebels

02/01/2013 Myanmar Military Admits to Airstrikes on Kachin Rebels

03/01/2013 BBC News – Burma admits military airstrikes on Kachin rebels

03/01/2013 AAPP- Political prisoners facing trial

05/01/2013 AAPP – Burma: Investigate the death of former political prisoner

05/01/2013 AAPP – Burma: Investigate death of former political prisoner

06/01/2013 Burma: In Memoriam: Phyo Wai Aung, a Courageous Fighter Against

07/01/2013 The Irrawaddy – Returning to a Relaxed Rangoon dated 7.1.13

08/01/2013 AAPP – Update of all political prisoners list

12/01/2013 The Irrawaddy – Rohingya continue to flee West Burma in thousands

14/01/2013 Karen News – Burma military expands conflict in Kachin state with air power

14/01/2013 Aung San Suu Kyi to head inquiry into violent crackdown on Burma

14/01/2013 The Vigilante Journalist: Exclusive Interview: DVB Chief Returns to

15/01/2013 Amnesty International – Myanmar – Protect civilians caught in Kachin state conflict, investigate attacks

17/01/2013 Karen News – International community condemns Burma’s government over Kachin conflict

17/01/2013 Burma: Halt Indiscriminate Attacks on Kachin State

17/01/2013 Human Rights Watch – Halt Indiscriminate Attacks in Kachin state

22/01/2013 Expert’s report of Ms. Marcia Robiou

22/01/2013 Annex A – Ms. Robiou biography

22/01/2013 Report of Marcia Robiou

26/01/2013 Kachin Rebels in Burma Lose Key Hilltop

26/01/2013 Voice of America: Burma Protests US Embassy Criticism
28/01/2013 Govt Slams US Kachin Statement
07/02/2013 Burma Initiates Committee Scrutinizing the Political Prisoners Left
10/02/2013 E-Mails of Reporters in Myanmar are Hacked
10/02/2013 Burma Observers Participate in US Led Military Exercises in Thailand
11/02/2013 Transcript of Conference Call with Dr Maung Zarni
11/02/2013 Google and Facebook Remain Tentative in Myanmar
14/02/2013 Report of Evidence Regarding Controversies at Letpadaung Hill
Copper Mine Project by Lawyers Network/Justice Report on
16/02/2013 Statement of the Special Rapporteur on the Situation of Human Rights
17/02/2013 UN: Myanmar Tortured Kachin
19/02/2013 The Telegraph: Burma Copper Mine Protest Broken up by Riot Police -
05/03/2013 Addendum I to Marcia Robiou's Report
06/03/2013 Report of the Special Rapporteur on the situation of human rights in
08/03/2013 Global Post - dated 8th March 2013
08/03/2013 Email from Marcia Robiou dated 8th March 2013
09/03/2013 Statement of Saw Ming Maung and status documents
11/03/2013 Email from Dr Maung Zarni dated 11th March 2013
11/03/2013 Email from Dr Maung Zarni dated 11th March 2013 at 3.23pm
12/03/2013 Statement of HHS
12/03/2013 Statement of Thu Latt N Myo

undated List of injured in Copper Mine Protest
undated Schedule of People Sentenced under Protest Bill
undated Schedule of People Facing Trial under Protest Bill
undated Schedule of People Facing Trial under other Legislation
undated Addendum III to Marcia Robiou's Report