



OPERATIONAL GUIDANCE NOTE

BURMA

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1. Introduction

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

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

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

1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.

1.4 If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

2.1 Caseworkers should refer the relevant COI Service country of origin information material. An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/read-and-download-the-report/>

2.2 Actors of protection

2.2.1 Caseworkers must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

2.2.2 The Myanmar Police Force (MPF) was created in 1995 and is part of the Ministry of Home Affairs. The Force has a strength of more than 93,000 men and women, with its headquarters located in the administrative capital Nay Pyi Taw. Myanmar is divided into seven states and seven regions, each with its own local police force.¹

¹ Interpol, Myanmar; Myanmar Police Force, undated <http://www.interpol.int/Member-countries/Asia-South->

- 2.2.3** There are police stations in all major population centres. In addition, there are a number of Police Task Force Units scattered around the country, mainly for anti-narcotics duties.²
- 2.2.4** Since March 2011, Lieutenant General Ko Ko has headed the Ministry of Home Affairs, which oversees all police units of the Myanmar Police Force (MPF). The MPF is divided into headquarters, state and division police forces (seven of each), special forces, training centres, reserved units and police battalions. Other law enforcement agencies under the Ministry of Home Affairs, but independent of the Myanmar Police Force, include the Special Branch, which is concerned with 'political' crimes, the Criminal Investigation Department, the Railways Police Department, and the City Development Police Department. Reserved units are assigned to highway patrol and oil field security and are attached to state and divisional police forces. The Office of the Central Committee for Drug Abuse Control has 26 anti-narcotic drug suppression units throughout Myanmar. The body is chaired by the minister for home affairs, and the secretary is the director general of the Myanmar Police Force. Many senior police officers have either been seconded from the army or have completed military service. According to one source from the Special Branch, the practice of bringing in lieutenants from the army to become police captains, without having completed the standard 10 years in the force, is commonplace. This is believed to be done to ensure that the military controls the police and that it cannot become an independent power base.³
- 2.2.5** The Ministry of Home Affairs oversees the police force, which is largely responsible in law and practice for law enforcement and maintenance of order in urban areas. The Ministry of Defence oversees the Office of the Chief of Military Security Affairs (OCMSA) and also plays a significant role in the maintenance of law and order, particularly in rural and border areas.⁴
- 2.2.6** Even before President Thein Sein came to power, an effort was being made to expand the MPF's capabilities, improve its performance and reform its culture. The force is now about 80,000 strong, which gives an estimated ratio of one policeman for every 750 Burmese citizens. This includes 18 battalions of paramilitary police, specially equipped to respond to serious outbreaks of civil unrest such as that seen in Arakan (Rakhine) State in 2012.⁵
- 2.2.7** The MPF is grappling with a wide range of problems, with the aim of creating a more professional force. Loyalty to government is still valued highly, but there is now a greater emphasis in training courses on personal discipline and an increased focus on community policing. Officer recruitment standards have been raised and specialised instruction at all levels has increased. Some steps have been taken to deal with corruption and further measures have been promised. It remains to be seen how successful this program will be. As developments over

[Pacific/Myanmar](#)

² Jane's Sentinel Security Assessment: Myanmar-Security and Foreign Forces – 5 January 2012

<http://articles.janes.com/articles/Janes-Sentinel-Security-Assessment-Southeast-Asia/Security-and-foreign-forces-Myanmar.html> (subscription only)

³ Jane's Sentinel Security Assessment: Myanmar-Security and Foreign Forces – 5 January 2012

<http://articles.janes.com/articles/Janes-Sentinel-Security-Assessment-Southeast-Asia/Security-and-foreign-forces-Myanmar.html> (subscription only)

⁴ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 1 Role of the Police and Security Apparatus <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dldid=204190>

⁵ The interpreter Lowy institute for International Policy, Burma's police: The long road to reform, 13 December 2012 <http://www.lowyinterpreter.org/post/2012/12/13/Burmas-police-The-long-road-to-reform.aspx>

2012 demonstrate, such a profound cultural shift will be difficult and will take time. Until that occurs, the force will continue to face accusations of brutality and corruption.⁶

- 2.2.8** Security forces continued to exert a pervasive influence on the lives of inhabitants, due to the fear of arbitrary arrest and detention and also through threats to individual livelihoods. These forces enjoyed impunity. Effective legal mechanisms do not exist to investigate security force abuses. The government took some steps to address the Burma Army's use of child soldiers.⁷
- 2.2.9** In conflict areas in Kachin and Shan States, the Burmese military carried out extrajudicial killings, sexual violence, torture, forced labour, and deliberate attacks on civilian areas, all which continue with impunity.⁸
- 2.2.10** The Burmese military continues to engage in extrajudicial killings, attacks on civilians, forced labour, torture, pillage, and use of antipersonnel landmines.⁹
- 2.2.11** The Burmese government has emphasised that rule of law is a priority. However, Burma has yet to sign and ratify important treaties which will embed international human rights norms into its legal system – in particular the International Covenant on Civil and Political Rights, the Convention against Torture, and the Rome Statute, which established the International Criminal Court.¹⁰
- 2.2.12** The National Human Rights Commission, created in September 2011, continued to disappoint in 2012. The commission exists by executive order and lacks independence from the government, contrary to the Paris Principles—minimum standards endorsed by the UN on the functioning of national human rights commissions. Statements from Burma's commission on Kachin and Arakan States failed to mention any abuses by the state security forces, or government-imposed restrictions on delivering humanitarian aid to tens of thousands of internally displaced persons (IDPs).¹¹
- 2.2.13** The Myanmar Human Rights Commission (MHRC) is another government structure that fails to protect citizens from torture and ill treatment. Established by President Thein Sein in September 2011, the MHRC is supposed to investigate human rights violation across the country. Yet it is plagued by many problems. The staffing of the Commission calls its ability to be independent into question. Although the 15 member body included representatives from ethnic nationalities and academic backgrounds, it also includes a number of civil servants and retired diplomats with ties to the former military government. Min Wra, Chairperson of the MHRC, has denied the existence of human rights violation in Burma during his lifelong career as a diplomat. Perhaps the biggest challenge is that the MHRC lacks a budget to undertake its work. In March 2012 parliament failed to allocate the requested budget to the MHRC on the grounds that its establishment was

⁶ The interpreter Lowy institute for International Policy, Burma's police: The long road to reform, 13 December 2012 <http://www.lowyinterpreter.org/post/2012/12/13/Burmas-police-The-long-road-to-reform.aspx>

⁷ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 1 Role of the Police and Security Apparatus <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

⁸ Human Rights Watch, World Report 2013: Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma>

⁹ Human Rights Watch, World Report 2013: Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma>

¹⁰ FCO, Human Rights Report 2012: Burma, 15 April 2013 <http://www.hrdreport.fco.gov.uk/wp-content/uploads/2011/01/2012-Human-Rights-and-Democracy.pdf>

¹¹ Human Rights Watch, World Report 2013: Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma>

unconstitutional. Its legal status and official role remains unclear. Although the European Union has pledged some funding to assist with training staff members, the future of the MHRC remains in doubt. While the establishment of the MHRC appears on paper to be a step in the right direction, its current lack of effectiveness and independence renders it unable to prevent ill treatment or prohibit torture.¹²

- 2.2.14** Despite public commitments to respect the Rule of law and create an independent and transparent judiciary made by president Thein Sein in inaugural speeches to Parliament on 30 March 2011, to cabinet members and Government officials on 31 March 2011, and to chief ministers of regional and State governments on 6 April 2011 little seems to have changed in how Burma's judiciary is appointed or operates.¹³
- 2.2.15** According to the 2008 Constitution, the President selects the justices of Burma's Supreme Court, with parliament restricted to the role of confirming that nominees are constitutionally eligible for such positions. Because the President is chosen by a military dominated parliament, this structure of appointments ensures that members of the judiciary are reliant on the military for their appointments. This process creates a civilian court that is closely linked to the military and likely with little desire to hold military and former military personnel accountable.¹⁴
- 2.2.16** The judiciary is not independent. Judges are appointed or approved by the government and adjudicate cases according to its decrees. Administrative detention laws allow individuals to be held without charge, trial, or access to legal counsel for up to five years if the government concludes that they have threatened the state's security or sovereignty. Political prisoners have often been held incommunicado in pretrial detention, facilitating torture, but it is unclear exactly how widespread such practices were in 2012. The government allowed several large-scale prisoner releases in 2011 and 2012, and the freed inmates included some political prisoners. However, the release of political prisoners often coincides with trips abroad by Burmese officials or visits to Burma by high-profile delegations, and conditions are often placed on the release of political prisoners, who can be arbitrarily returned to prison. Impunity for crimes and human rights violations committed by state security forces remains deeply entrenched.¹⁵
- 2.2.17** Burma's ineffective judiciary continues to allow for the manipulation of the country's legal code and the perpetuation of unjust trials. Such trials lack basic rights of due process, including the right of defendants to call and question witnesses, the right to access counsel, the lack of judicial appeal, and the denial of the defendant's right to a public trial. All of these elements place those accused into situations where they are more likely to experience torture and prevent them from seeking redress in the courts.¹⁶
- 2.2.18** If the applicant's fear is of ill-treatment/persecution by the state authorities, or by agents acting on behalf of the state, then it is improbable that they can apply to

¹² Burma campaign, Extreme Measures; Torture and ill treatment in Burma since the 2010 elections, May 2012 <http://www.burmacampaign.org.uk/images/uploads/extreme-measures.pdf>

¹³ Burma campaign, Extreme Measures; Torture and ill treatment in Burma since the 2010 elections, May 2012 <http://www.burmacampaign.org.uk/images/uploads/extreme-measures.pdf>

¹⁴ Burma campaign, Extreme Measures; Torture and ill treatment in Burma since the 2010 elections, May 2012 <http://www.burmacampaign.org.uk/images/uploads/extreme-measures.pdf>

¹⁵ Freedom House, Freedom in the world 2013; Burma, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/burma>

¹⁶ Burma campaign, Extreme Measures; Torture and ill treatment in Burma since the 2010 elections, May 2012 <http://www.burmacampaign.org.uk/images/uploads/extreme-measures.pdf>

those authorities for protection. If the ill-treatment/persecution is at the hands of non-state agents, then the provision of effective state protection is likely to be limited. Each case must be considered on its individual facts and the assessment of whether effective protection is available should be considered in relation to the particular circumstances and profile of the claimant and the latest country of origin information.

2.3 Internal relocation.

- 2.3.1** Caseworkers must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.3.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.3.3** There are no laws explicitly protecting freedom of internal movement, foreign travel, emigration, and repatriation.¹⁷
- 2.3.4** In practice regional and local orders, directives, and instructions restricted freedom of movement. The law requires that persons who intend to spend the night at a place other than their registered domicile must inform local ward or village authorities in advance. Any household that hosts a person not domiciled there must maintain a guest list and submit it to authorities. Unlike in previous years, there were no reports of unannounced night time checks of residences by ward officials for unregistered visitors outside of conflict areas during 2012.¹⁸
- 2.3.5** The government restricted the ability of IDPs, refugees, and stateless persons to move. While freedom of movement was primarily related to a person's possession

¹⁷ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

¹⁸ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

of identification documents, in practice ethnicity and place of origin were sometimes factors for the authorities in enforcing regulations. Authorities require the Rohingya, a stateless population, to carry special documents and travel permits for internal movement in five areas in northern Rakhine State where the Rohingya ethnic minority primarily reside: Buthidaung, Maungdaw, Rathedaung, Kyauktaw, and Sittwe¹⁹.

- 2.3.6** Citizens of ethnic states reported that the government restricted the travel of, involuntarily confined, and forcibly relocated IDPs, refugees, and stateless persons. Unlike in previous years, in 2012 officials did not impede the travel of women under the age of 25.²⁰ According to the Social Institutions and Gender Index, freedom of movement is very limited and women's freedom of movement is disproportionately curtailed by the threat of violence, particularly from the military.²¹
- 2.3.7** The government restricted foreign travel of political activists, former political prisoners, and some local staff of foreign embassies. Authorities denied passports and exit permission, although unlike in previous years, late in 2012 they began issuing passports to some persons whose requests had previously been denied. On 19 November 2012, the government issued a public statement stating that it had "eliminated a 'blacklist' of persons barred from entering or leaving the country based on their suspected political activity" and established a point of contact in the office of the president for citizens and foreigners to inquire about their status.²²
- 2.3.8** The Ministry of Home Affairs refused to issue passports to many former political prisoners, including democracy and human rights activists, public interest lawyers, and journalists, preventing them from travelling abroad.²³
- 2.3.9** Careful consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant. Caseworkers need to consider the ability of the persecutor to pursue the claimant in the proposed site of relocation, and whether effective protection is available in that area. Caseworkers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the claimant, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including the claimant's ability to sustain themselves.

2.4 Country guidance caselaw

[TS \(Political opponents –risk\) Burma CG \[2013\] UKUT 00281 \(IAC\)](#)

- 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

¹⁹ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

²⁰ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

²¹ OECD, Social Institutions and Gender Index 2012: Myanmar, (accessed March 2013) *Restricted civil liberties* <http://genderindex.org/country/myanmar>

²² U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

²³ Human Rights Watch, World report 2013: Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma>

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.

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

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

[HM \(Risk factors for Burmese citizens\) Burma CG \[2006\] UKAIT 00012](#) (23 January 2006)

- (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) and (2) is a failed asylum seeker, that it is reasonably likely to have a significant effect upon the length of the prison sentence imposed for his illegal exit and/or entry. To return such a person from the United Kingdom would accordingly be a breach of Article 33 of the Refugee Convention. Whether that fact of being a failed asylum seeker would come to the attention of the Burmese authorities will need to be determined on the facts of the particular case, bearing in mind that the person is highly likely to be interrogated on return.

(5) It has not been shown that a person who does not fall within (1) or (2) above faces a real risk of persecution or Article 3 ill-treatment on return to Burma by reason of having claimed asylum in the United Kingdom, even if the Burmese authorities have reason to believe that he has made such a claim, unless the authorities have reason to regard him as a political opponent.

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Burma. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

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

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal's judgment in [Karanakaran](#) should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)').

3.3 For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all Agency activities.

3.4 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on [Discretionary Leave](#))

Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

3.5 An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an

applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

Other severe humanitarian conditions and general levels of violence

- 3.6** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

3.8 Credibility

- 3.8.1** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'Section 4 – Making the Decision in the Asylum Instruction [‘Considering the asylum claim and assessing credibility’](#). Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the UK Border Agency file. In all other cases, the case worker should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.9 Involvement with opposition political organisations/parties in Burma

- 3.9.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Burmese authorities due to their involvement with opposition pro-democracy political organisations/parties in Burma.
- 3.9.2 Treatment.** Burma is not an electoral democracy. The military, which has long controlled all executive, legislative, and judicial powers, carefully rigged the electoral framework for the 2010 national elections, which were neither free nor fair. The process of drafting the 2008 constitution, which the elections put into effect, was closely controlled by the military and excluded key stakeholders such

as the NLD. Although the charter establishes a parliament and a civilian president, it also entrenches military dominance, and allows the military to dissolve the civilian government if it determines that the “disintegration of the Union or national solidarity” is at stake.²⁴

- 3.9.3** Burma’s national parliament and 14 regional and state assemblies completed a first full year in operation in 2012 since the formal end of military rule. Former military generals hold most senior ministerial portfolios and serving generals are constitutionally guaranteed the posts of ministers of defence, home affairs, and border affairs security. Many former military officers hold important positions in the ruling military-backed Union Solidarity and Development Party.²⁵
- 3.9.4** Freedoms of association and assembly are better respected than under the military regime, though there have been unsystematic efforts to rescind laws restricting freedom of assembly and public expression. Authorities reportedly remain concerned about the destabilizing potential of large-scale demonstrations, and continue to rely on repressive crowd-control tactics. In November 2012, security forces violently dispersed a protest by monks and villagers against the expansion of the Letpadaung copper mine in upper Burma. The assault, which caused significant injuries among the protesters, drew a public outcry and an unusual apology from a senior police representative. Other public gatherings during 2012, including some that were technically illegal, proceeded largely without incident.²⁶
- 3.9.5** In 2010, the Political Party Registration Law gave new political parties only 60 days to register, mandated that existing parties reregister, and required parties to expel members currently serving prison terms. However, during the 2012 by-elections, there were fewer restrictions on party organization and mobilization, with only sporadic reports of mild interference, and many parties, including the NLD, convened meetings and rallies throughout the country.²⁷
- 3.9.6** In April 2012, the NLD participated in by-elections for both chambers of the national parliament. The party won all 37 seats at stake in the lower house, with one seat going to Aung San Suu Kyi. In the upper house, the NLD captured four of the six seats that were contested, with the other two going to the USDP and the SNDP. However, voting was postponed in three constituencies in the war-torn Kachin State.²⁸
- 3.9.7** After spending a total of 15 years under house arrest since 1989, and otherwise facing travel restrictions, Aung San Suu Kyi’s right to travel domestically and internationally was restored, and she travelled to five European countries in June, including Oslo to accept her 1991 Nobel Peace Prize. In September she travelled to the US where she accepted the Congressional Gold Medal in recognition of her non-violent struggle for democracy and human rights, awarded in 2008 while she

²⁴ Freedom House, Freedom in the World 2013; Burma, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/burma>

²⁵ Human Rights Watch, World report 2013: Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma>

²⁶ Freedom House, Freedom in the World 2013; Burma, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/burma>

²⁷ Freedom House, Freedom in the World 2013; Burma, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/burma>

²⁸ Freedom House, Freedom in the World 2013; Burma, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/burma>

was under house arrest.²⁹

- 3.9.8** However, other former political prisoners continue to face persecution, including restrictions on travel and education. The Ministry of Home Affairs refused to issue passports to many former political prisoners, including democracy and human rights activists, public interest lawyers, and journalists, preventing them from travelling abroad.³⁰
- 3.9.9** Many political prisoners have been released as part of general prisoner amnesties. The mass release of prisoners is a regular event in Burma and happens every year or two. Hundreds or even thousands of prisoners are released under amnesties and some political prisoners are usually included in those released.³¹
- 3.9.10** On 16 May 2011, Burma's new President, Thein Sein, announced that all prisoners would have their sentences reduced by one year, and that those on death row would have their sentences commuted to life imprisonment. As a result, 72 political prisoners were released. In a general prisoner amnesty on 12 October 2011, around 300 political prisoners were released. The low number of political prisoners released places these releases in the same category as the many similar releases in Burma over the years. On 2 January 2012, instead of an expected amnesty for political prisoners, the government again reduced prison sentences. Prisoners serving more than 30 year sentences had their sentences reduced to 30 years; prisoners with 20 to 30 year terms had their sentences reduced to 20 years; and prisoners with less than 20 years had their sentences reduced by a quarter. This meant that 34 political prisoners were released. In the past, these releases have never been an indicator that change is on the way. They have been used by the dictatorship to try and secure positive publicity in order to ease international pressure.³²
- 3.9.11** However, many of the most senior political prisoners, including leaders of the 88 Generation Students, such as Min Ko Naing, are serving prison sentences of more than 60 years. Even with such a reduction, a prison term of 30 years is still a life sentence. Despite the promises of reform, Thein Sein has failed to deliver on one of the key benchmarks for progress – the release of all political prisoners. Thein Sein's government has officially denied political prisoners even exist. In its response to questions about political prisoners made as part of a UN review on Burma's human rights record in February 2011, the government stated: 'Those referred to as "political prisoners" and "prisoners of conscience" are in prison because they had breached the prevailing laws and not because of their political belief.' However, the existence of political prisoners has been accepted in some private meetings with diplomats.³³
- 3.9.12** The Burma Partnership website report that President Thein Sein's office has been urging ministries to remove some 4,000 people remaining on the blacklist. The website states that some returning exiles have been asked to sign agreements

²⁹ Human Rights Watch, World report 2013: Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma>

³⁰ Human Rights Watch, World report 2013: Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma>

³¹ Burma Campaign, Burma Briefing Political Prisoner releases in Burma, updated 10 January 2012 <http://www.burmacampaign.org.uk/images/uploads/16-Political-Prisoner-Releases.pdf>

³² Burma Campaign, Burma Briefing Political Prisoner releases in Burma, updated 10 January 2012 <http://www.burmacampaign.org.uk/images/uploads/16-Political-Prisoner-Releases.pdf>

³³ Burma Campaign, Burma Briefing Political Prisoner releases in Burma, updated 10 January 2012 <http://www.burmacampaign.org.uk/images/uploads/16-Political-Prisoner-Releases.pdf>

that they will not do anything that could “harm the state.” The agreement says that exiles can repay the government’s “generosity” by avoiding actions that would disrespect the government and not participate in actions or publish anything that would harm the country’s stability, which hark back to language used by the military regime.³⁴

- 3.9.13** The government announced on 9 February 2013 that it would proceed with setting up a committee, which will look into granting amnesties to political prisoners. Many prisoners of conscience are still imprisoned in Myanmar, having been falsely charged or convicted of a serious offense, arbitrarily detained, or imprisoned solely for their peaceful political activities.³⁵
- 3.9.14** In a report dated March 2013 the UN Special Rapporteur met with recently released prisoners of conscience, including Gambira and Khaymar Sara, whom he had previously visited in Insein Prison. While overjoyed to be speaking to them in freedom, he was concerned to hear of the difficulties they faced in rebuilding their lives and that some had faced repeated detention since their initial release. He reiterates that it is the duty of the State to provide adequate medical and psychosocial services to those released; in particular those who suffered ill-treatment or prolonged periods of solitary confinement. Rehabilitation support should also be provided, given that many former prisoners face difficulties in finding employment or continuing their education. Furthermore, many former prisoners continue to be denied passports and cannot travel abroad, while some who are medical and legal professionals have had their licences revoked.³⁶
- 3.9.15** In 2011 and 2012, the government allowed members of the parliament to speak about democratic rights. The legislators’ time to speak was severely limited, but many of their speeches received coverage in the domestic media, and they were not harassed for their remarks.³⁷
- 3.9.16** Burma eased media restrictions in line with its historic transition from military to quasi-civilian rule. At least 12 journalists, including those associated with banned exile media groups, were released in a series of pardons. The government abolished pre-publication censorship – a process that had forced private newspapers to publish in weekly formats – and it allowed coverage of many previously banned topics, including stories on opposition leader Aung San Suu Kyi. But the government did not dismantle its censorship body as promised, and it required newspapers to submit copies for official, post-publication review. Several restrictive laws remained in effect, including the 1962 Printers and Publishers Registration Act and Electronic Act and the 2000 Internet Law. Two news journals, Voice Weekly and Envoy, were temporarily suspended in August for violating censorship guidelines. The government began allowing foreign journalists to enter the country, although some were still refused visas. Passage of a new media law was delayed amid journalists’ protests after a leaked draft of the legislation showed that it would fail to guarantee press freedom. A defamation case filed by the government against The Voice newspaper for reporting on alleged corruption

³⁴ Burma Partnership, No More Than a Semblance of Freedom of Assembly, Association and Expression, 22 October 2012 <http://www.burmapartnership.org/2012/10/no-more-than-a-semblance-of-freedom-of-assembly-association-and-expression/>

³⁵ Amnesty International, New Myanmar prisoner amnesty committee needs wider mandate, 8 February 2013 <http://www.unhcr.org/refworld/country,,,MMR,,511a0110481,0.html>

³⁶ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 6 March 2013, paragraph 10 <http://www.unhcr.org/refworld/docid/513f10a37e.html>

³⁷ Freedom House, Freedom in the World 2013; Burma, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/burma>

in the Ministry of Mines signalled a possible shift to the use of courts to suppress the press.³⁸

- 3.9.17** Within the country, lawyers, activists, farmers and local villagers have been protesting on a range of crucial issues including land confiscation, mining projects, electricity shortages, the preservation of cultural heritage buildings in Rangoon and the need for nationwide peace. Those who speak out on issues that are sensitive to the government are detained, charged or threatened by authorities. One of the biggest cases as of October 2012 was that of the thirteen organisers of the peace protest on 21 September 2012 who are facing court cases in 10 different Rangoon townships for protesting without permission. They are required to appear at court hearings nearly every day and must inform the authorities if they plan to leave Rangoon.³⁹
- 3.9.18** Meanwhile, on 15 October 2012, thousands of monks and laypeople demonstrated in four cities against the Organisation of Islamic Cooperation's plan to open an office in Rangoon to provide aid to Muslims displaced by sectarian violence in Arakan State since June. The protest was not stopped by authorities, nor has there been any news of the organisers or participants facing charges for protesting without permission. In fact, the government decided to heed the protesters calls and said that it would not allow the OIC to open an office "as it is contradictory to the aspirations of the people." The Peaceful Demonstration and Gathering Law passed in December 2011 does little to protect demonstrators, but rather gives the government the legal framework within which it can arrest peaceful protesters. The law requires that protesters obtain permission five days in advance of any assembly or protest and submit slogans for approval. The law also requires that every person who is going to participate must apply for permission. Rather than protecting the right to protest, this law gives the authorities the contact information and details they need to file cases and detain protesters that they want to silent.⁴⁰
- 3.9.19** According to Human Rights Watch World report the Burmese government continue to use other laws to imprison peaceful activists, lawyers, and journalists remain on the books, including, among others, the Unlawful Associations Act, the Electronics Act, the State Protection Act, and the Emergency Provisions Act.⁴¹ In March 2012, the Special Rapporteur on the situation of human rights in Myanmar reported that the on-going arrest and detention of people involved in peaceful protests reflects shortcomings in the Peaceful Assembly and Peaceful Procession Act and expressed concern over police handling of protests.⁴²
- 3.9.20** In January 2013, Human Rights Watch noted that, since September 2012, the authorities have denied protest applications on spurious grounds in Rangoon and Monywa, violently cracked down on anti-mining protests near Monywa in Salingyi Township, Sagaing Division, and used the peaceful assembly law to prosecute

³⁸ Committee to protect Journalists, Attacks on the Press in 2012 – Burma, 14 February 2013

<http://www.unhcr.org/refworld/country...MMR..512b79d931.0.html>

³⁹ Burma Partnership, No More Than a Semblance of Freedom of Assembly, Association and Expression, 22 October 2012 <http://www.burmapartnership.org/2012/10/no-more-than-a-semblance-of-freedom-of-assembly-association-and-expression/>

⁴⁰ Burma Partnership, No More Than a Semblance of Freedom of Assembly, Association and Expression, 22 October 2012 <http://www.burmapartnership.org/2012/10/no-more-than-a-semblance-of-freedom-of-assembly-association-and-expression/>

⁴¹ Human Rights Watch, World report 2013: Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma>

⁴² UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 6 March 2013, *D. Freedom of assembly and association, paragraphs 26 and 30* <http://www.unhcr.org/refworld/docid/513f10a37e.html>

rather than protect those exercising their basic rights. The government has also used excessive force against protesters.⁴³

- 3.9.21** According to the Asian Human Rights Commission, many activist groups and individuals continue to be subjected to various forms of harassment, such as arrest and questioning for a few hours. Individuals have been arrested and charged in connection with the sending of reports and photographs from areas affected by the conflict in the west of Burma, including local employees of the United Nations. Some of these people were held incommunicado at interrogation centres, which are commonly used for the purposes of extracting confessions through torture.⁴⁴
- 3.9.22** According to the International Federation for Human Rights reporting in March 2013, The Myanmar authorities continue to severely restrict the right to assemble peacefully. The Government's intolerance was highlighted internationally in November 2012 at the Letpadaung copper mine in Sagaing Region, when authorities used white phosphorus grenades to crack down on peaceful protesters. As a result, scores of monks and civilians were seriously injured. Article 18 of the Peaceful Gathering and Demonstration Law of December 2011 is frequently used against those peacefully protesting against human rights abuses. Section 401 of the Criminal Procedure Code threatens recently released political prisoners with re-arrest and being forced to serve the remainder of their original sentence for any violation of existing laws, thereby dissuading them from further protests.⁴⁵
- 3.9.23** The Assistance Association for Political Prisoners reports that between January and December 2012, at least 120 individuals were detained unlawfully as they were not informed of the charges being brought against them. Many who are released from detention are not even sure if they will face trial or not. Ethnic nationals fleeing conflict zones and protestors who challenge state-back initiatives and corporations for appropriating their lands and resources are particularly targeted.⁴⁶

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.9.24 Conclusion.** The Supreme Court held in RT (Zimbabwe) that the rationale of the decision in HJ (Iran) extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution.
- 3.9.25** A series of reforms in the months since the new government took up office has led to speculation that decades of international isolation could be coming to an end. However, in general, basic rights to freedom of expression, association and peaceful assembly remain circumscribed in Burma but are easing, for example, in

⁴³ Human Rights Watch, Burma: Drop Charges Against Peaceful Protesters, 13 January 2013

<http://www.hrw.org/news/2013/01/13/burma-drop-charges-against-peaceful-protesters>

⁴⁴ Asian Human Rights Commission, Burma: The State of Human Rights in 2012, 10 December 2012, page 18 www.humanrights.asia/resources/hrreport/2012/ahrc-spr-004-2012.pdf/at_download/file

⁴⁵ International Federation for Human Rights, Burma not ready for rights-compliant investment, 14 March 2013 <http://www.fidh.org/Burma-not-ready-for-rights-1296913>

⁴⁶ Assistance Association for Political Prisoners (Burma), 2012 annual report, 4 March 2013 *The Year in Review* http://www.aappb.org/AAPP_2012_annual_report.pdf

now allowing some peaceful political demonstrations. However, other protests continue to be violently dispersed and those who speak out on issues that are sensitive to the government are detained, charged and threatened by the authorities. Former political prisoners also continue to be at risk of persecution. Given the fluidity of the situation in Burma, and given that detention conditions are likely to breach the Article 3 threshold, caseworkers should consider each case carefully, on its individual facts, in light of the latest available country of origin information and according to the individual profile of the applicant. Where an individual is able to demonstrate that they are at serious risk of facing persecution on account of their perceived political opinion a grant of asylum will be appropriate.

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

3.10.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Burmese authorities due to their involvement with opposition political parties/organisations in the UK. Their activities in the UK usually centre on their participation in demonstrations outside the Burmese Embassy in London.

3.10.2 Treatment. In a letter dated 4 February 2011, a Foreign and Commonwealth Office (FCO) official at the British Embassy in Rangoon replied to the UK Border Agency's query on Burmese nationals attending demonstrations outside Burma, stating that the Embassy staff were not personally aware of any individuals who had returned to Burma and been arrested for their activism in the UK. Their assessment was that it would be rally leaders or individuals who also had histories inside Burma who would be particularly at risk.⁴⁷

3.10.3 The FCO letter of 4 February 2011 continued that:

- 1) A national's participation in demonstrations outside the Burmese Embassy is very likely to be recorded and we strongly believe that those records are sent to the Burmese immigration authorities in Burma;
- 2) Burmese nationals who regularly participated in such demonstrations are very likely to have been photographed and identified by the Burmese authorities;
- 3) If such a person is returned and there are additional factors that would trigger the attention of the Burmese authorities, there is a real risk of persecution, imprisonment and possibly ill treatment on return.⁴⁸

3.10.4 In an email to the COI Service dated 21 December 2011, the FCO confirmed that its view concerning Burmese nationals participating in demonstrations in the UK remained the same as in its letter dated 4 February 2011 with the exception that it now judged the risk of arrest and prosecution to have reduced following the Burmese government's invitation welcoming back people from exile.⁴⁹

3.10.5 In an article on 28 October 2011, The Irrawaddy News Magazine reported on the Burmese government's failure to put in place any policy or procedure that would allow political exiles to feel secure in returning to Burma. The report noted that most Burmese exiles still had doubts about their ability to safely go back home and very few have actually accepted the invitation and returned. The same source also

⁴⁷ FCO letter dated 4 February 2011 (available from COIS on request)

⁴⁸ FCO letter dated 4 February 2011 (available from COIS on request)

⁴⁹ E-mail to COIS dated 21 December 2011 (available from COIS on request)

stated the Burmese embassy in Bangkok said that exiles wishing to return home had to sign a five-point statement saying that they would avoid actions and words which could harm the state, avoid writing, talking and petitions which could harm the stability of the state, avoid contact with illegal organisations, prevent actions that were destructive or harassing and be loyal to the state and stay within the law. In addition, the source said that if any exile who had already requested asylum in any foreign country wanted to return home, that person must leave their travel documents and identity card at the embassy, which would provide them with a letter of identity. There was no transparent policy stating whether the exiles who returned home would be allowed to travel abroad once again.⁵⁰

3.10.6 Burma Campaign UK reported in September 2011, that the UN Special Rapporteur on Human Rights in Burma warned exiles they could be arrested if they do return; stating that the situation was that those who at the moment may decide to express their opinions against authorities may face the risk of being arrested arbitrarily.⁵¹

3.10.7 According to a country analyst for Asia at the Internal Displacement Monitoring Centre (IDMC) in correspondence dated 27 July 2007 with the Immigration and Refugee Board of Canada, the government of Burma was not in a position to monitor the activities of all of its citizens living in other countries as the number of people who have left Burma is enormous. There were an estimated 3 million people who have fled Burma due to persecution or human rights violations. However, in certain cases the government may monitor the activities of those citizens living overseas who were already engaged in political activities while living in Burma and came to the attention of the government. The likelihood of such people getting permission by authorities to leave the country, however, becomes small. A large part of the politically active Burmese community living overseas fled the country back in late 1980s/early 1990s by crossing the borders illegally with the assistance of Burmese ethnic minority groups that were engaged in armed conflict with the government. Many of them have not been able to return since because of their political opinions.⁵²

3.10.8 In October 2012 The Independent reported that Burmese exiles taking up the invitation of President Thein Sein to return to their country now that a wave of democratic reforms is underway, have been required to sign written undertakings that they will avoid criticising the government or publishing anything that could "harm the state". Activists claim the government's demand reveals that the changes in Burma only go so far. In the summer of 2011 and again this spring, Thein Sein invited the thousands or even millions of Burmese who had fled the country for "various reasons" to return. Confronted by a shortage of educated workers, including teachers and engineers, he said the government would even help them find jobs or develop businesses. But for some exiles the offer is not without strings. A number of Burmese who left the country to avoid repression or else to find work- especially political activists - have been told they need to sign the five-point undertaking before they will be granted a visa. A copy of the

⁵⁰ Irrawaddy news Magazine, Invitation to Return Falls Flat Among Exiles, 28 October 2011

http://www.irrawaddy.org/article.php?art_id=22346

⁵¹ Burma Campaign UK, Burma Briefing No.15, Political events in Burma: New or recycled? September 2011

<http://burmacampaign.org.uk/images/uploads/15-Political-Events-in-Burma-New-or-Recycled.pdf>

⁵² Immigration and Refugee Board of Canada, Whether the government monitors the activities of its citizens who travel to, or live in, Canada or other countries, especially if those citizens are engaging in political activities abroad in which they criticize the government (2005 - August 2007), 7 August 2007

http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=451430&l=e

agreement, obtained and translated by The Independent, says that to pay back the government's "generosity", exiles must agree to (1) avoid actions that would disrespect the government, (2) not to partake in actions that cause public instability, not to motivate people to partake in actions that cause public instability and not to publish anything critical of the government that could destroy the country's stability, (3) avoid contact with illegal organisations, (4) avoid actions that are against the government and (5) show gratitude to the government and live within the law.⁵³

- 3.10.9** Many of those hundreds who have been returning in recent months are former activists and dissidents and represent a potential threat to a supposedly civilian government that is still backed and supported by the military. The numbers of those returning is likely to increase after the government in August 2012 announced it was removing the names of up to 2,000 people who had been on its visa blacklist, among them former US Secretary of State Madeleine Albright, Ms Suu Kyi's two sons and the veteran Australian reporter John Pilger. It is not clear what punishment would befall anyone who breaks the signed agreement. But campaigners say that despite the flurry of reforms enacted by Thein Sein since an election in November 2010 there have been several incidents that might make exiles think twice before returning.⁵⁴
- 3.10.10** In addition to the August 2012 publication of the names of 2,000 people the government had removed from its immigration 'blacklist', it also announced that it would not allow citizens accused of treason or who had taken asylum in a foreign country to return home. Reportedly about 4,000 other remain on the notorious list. Burmese dissidents cut from the list cautiously welcomed the move, but were wary that the decision could be reversed at any time and without warning by Thein Sein's government even though it is moving to implement political and other reforms. "Whether or not to go back and work inside Burma will be based on each individual's and group's view. The current situation in Burma is not clear—not clear enough to decide. An arrest could take place at anytime," said Aung Htoo, exiled former secretary of the Burma Lawyers Council.⁵⁵
- 3.10.11** The Independent also states that in the summer 2012, lawyer and activist Saw Kyaw Kyaw Min returned to Burma having fled in 2008 when he was charged with contempt of court after three clients he was representing turned their backs on judges during what they said was a politically-motivated case. Saw Kyaw Kyaw Min escaped to Thailand but returned to Rangoon this spring after hearing the offer from the government only to find the himself pursued again over the contempt charge. In August he was found guilty and jailed for six months.⁵⁶ According to the Asian Human Rights Commission, the conviction of Saw Kyaw Kyaw Min sends a very bad signal, in two respects. First, it signals to Burmese citizens living abroad, who are interested in returning that they have no guarantees that if they do return, no pending criminal cases will be brought against them, or new ones initiated. Second, it signals to everyone in the country, as well as abroad, that the courts, police and many other key institutions in Burma continue to operate in much the same way as they did prior to the political changes initiated

⁵³ The independent, Burma's exiles can return - if they promise to be good, 19 October 2012

<http://www.independent.co.uk/news/world/asia/burmas-exiles-can-return--if-they-promise-to-be-good-8217108.html>

⁵⁴ The independent, Burma's exiles can return - if they promise to be good, 19 October 2012

<http://www.independent.co.uk/news/world/asia/burmas-exiles-can-return--if-they-promise-to-be-good-8217108.html>

⁵⁵ Radio Free Asia, Burma: Blacklist names released, 30 August 2012

<http://www.rfa.org/english/news/burma/blacklist-08302012184840.html>

⁵⁶ The independent, Burma's exiles can return - if they promise to be good, 19 October 2012

<http://www.independent.co.uk/news/world/asia/burmas-exiles-can-return--if-they-promise-to-be-good-8217108.html>

in recent times.⁵⁷

3.10.12 According to Human Rights Watch, former political prisoners continue to face persecution, including restrictions on travel and education. The Ministry of Home Affairs refused to issue passports to many former political prisoners, including democracy and human rights activists, public interest lawyers, and journalists, preventing them from travelling abroad.⁵⁸ In March 2013, the UN Special Rapporteur reported that some recently released prisoners of conscience had faced repeated detention since their initial release, while some who are medical and legal professionals have had their licences revoked.⁵⁹

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

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

3.10.14 A series of reforms in the months since the new government took up office has led to speculation that decades of international isolation could be coming to an end. However, in general, basic rights to freedom of expression, association and peaceful assembly remain circumscribed in Burma but are easing, for example, in now allowing some peaceful political demonstrations. However, other protests continue to be violently dispersed and those who speak out on issues that are sensitive to the government are detained, charged and threatened by the authorities. Former political prisoners also continue to be at risk of persecution.

3.10.15 The risk of arrest and prosecution may have reduced for some following the Burmese government's invitation welcoming back people from exile. However, given the fluidity of the situation in Burma caseworkers should consider each case carefully, on its individual facts, in light of the latest available country of origin information and according to the individual profile of the applicant.

3.10.16 Caseworkers must consider each case against the findings in the CG case [TS \(Political opponents – risk\) Burma](#). 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. 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.

⁵⁷ Asian Human Rights Commission, Burma: The State of Human Rights in 2012, 10 December 2012, page 5

www.humanrights.asia/resources/hrreport/2012/ahrc-spr-004-2012.pdf/at_download/file

⁵⁸ Human Rights Watch, World report 2013: Burma, 31 January 2013

<http://www.hrw.org/world-report/2013/country-chapters/burma>

⁵⁹ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 6 March 2013 paragraph 10

<http://www.unhcr.org/refworld/docid/513f10a37e.html>

- 3.10.17** 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.
- 3.10.18** 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.
- 3.10.19** 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.
- 3.10.20** 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.
- 3.10.21** 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 destabilising 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.
- 3.10.22** 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.
- 3.10.23** Where a claimant is able to demonstrate that they are at serious risk of facing persecution on account of their perceived political opinion a grant of asylum will be appropriate.
- 3.10.24** Additional factors affecting an applicants likelihood of being detained upon return to Burma, (e.g. lack of a valid Burmese passport and/or absence of permission to exit Burma) should be considered in line with the case [HM \(risk factors for Burmese Citizens\) Burma CG \[2006\] UKAIT 00012](#) . The issue of illegal exit and its consequences was not considered in TS, but the Upper Tribunal noted that the 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.

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

- 3.11.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Burmese authorities due to their membership of one of the above minority ethnic groups.
- 3.11.2 Treatment.** There are more than 135 different ethnic groups in Burma, each with its own history, culture and language. The majority Burman (Bamar) ethnic group makes up about two-thirds of the population and controls the military and the government. The minority ethnic nationalities, making up the remaining one-third, live mainly in the resource-rich border areas and hills of Burma, although many have been forcibly removed from their homes by the military-backed government as it confiscates land for development projects and resource exploitation. As a result, millions of people from these minority groups have become internally displaced people (IDPs) within Burma, or refugees in neighbouring countries.⁶⁰
- 3.11.3** Myanmar's indigenous Burman accounted for 69 percent of the country's population, according to the last official census of 1983.⁶¹
- 3.11.4** Ethnic minorities constitute an estimated 30 to 40 percent of the population, and the seven ethnic minority states make up approximately 60 percent of the national territory. Wide-ranging governmental and societal discrimination against minorities persisted. Tension between the government army and ethnic populations remained high; the army stationed forces in some ethnic groups' areas and controlled certain cities, towns, and highways. Abuses included reported killings, beatings, torture, forced labour, forced relocations, and rapes of members of ethnic groups by government soldiers. Some armed ethnic groups also committed abuses.⁶²
- 3.11.5** The seven largest minority nationalities are the Chin, the Kachin, the Karenni (sometimes called Kayah), the Karen (sometimes called Kayin), the Mon, the Rakhine, and the Shan. Burma is divided into seven states, each named after these seven ethnic nationalities, and seven regions (formerly called divisions), which are largely inhabited by the Bamar (Burmans).⁶³
- 3.11.6** The Rohingya people are not recognised by the government as an ethnic nationality of Burma, and thus suffer from some of the worst discrimination and human rights abuses of all the people of Burma. Estimates put the Rohingya population of Burma at close to 2 million, living mainly in Rakhine State, and many more live as refugees in neighbouring countries like Bangladesh.⁶⁴
- 3.11.7** The 2008 Constitution offers no real protection for the many ethnic minorities of Burma, and many leaders in the different ethnic communities have voiced their concerns that it is meant to wipe out the diverse cultures of the people of Burma.

⁶⁰ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

⁶¹ IRIN news, Briefing: Myanmar's Rohingya crisis, 16 November 2012 <http://www.irinnews.org/Report/96801/Briefing-Myanmar-s-Rohingya-crisis>

⁶² US State Department, Human Rights Report 2012: Burma, 19 April 2013, Section 6, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

⁶³ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

⁶⁴ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

Burma Campaign UK has said that the "Constitution is likely to lead to the continued Burmanisation of ethnic minorities ... [and] to increased militarisation of ethnic areas, with the subsequent increase of human rights abuses which always follows the presence of the Burmese Army ... At the National Convention which drafted the Constitutional principles, every single one of the proposals by ethnic representatives that would give more power, autonomy and protection of ethnic cultures was rejected by the dictatorship."⁶⁵

- 3.11.8** Ethnic minority groups generally used their own languages at home. However, throughout all parts of the country controlled by the government, including ethnic minority areas, Burmese remained the mandatory language of instruction in state schools, and teaching in local languages was limited. In ethnic minority areas, most primary and secondary state schools did not offer instruction in the local ethnic minority language. There were very few domestic publications in indigenous minority languages. The right to educate children in their native language became a common demand in various ongoing peace negotiations. The government tightly controlled the limited number of Buddhist monastery-based schools, Christian seminaries, and Muslim madrassahs.⁶⁶
- 3.11.9** Fighting slowed between government forces and most ethnic armed groups in eastern Burma as negotiations on tenuous ceasefires continued. In northern Burma, however, fighting continued between the Burmese armed forces and the Kachin Independence Army (KIA).⁶⁷ In March 2013, the Special Rapporteur on the situation of human rights in Myanmar noted continuing arrests of ethnic Kachin men suspected to have links with the Kachin Independence Organization (KIO) or the KIA (mostly made under the Unlawful Associations Act, the Explosive Substance Act and the Emergency Provisions Act) and the torture of suspects to extract confessions.⁶⁸
- 3.11.10** The Burmese military continues to engage in extrajudicial killings, attacks on civilians, forced labour, torture, pillage, and use of antipersonnel landmines. Sexual violence against women and girls remains a serious problem, and perpetrators are rarely brought to justice. The KIA and some other ethnic armed groups have also committed serious abuses, such as using child soldiers and antipersonnel landmines.⁶⁹
- 3.8.11** Internally displaced Kachin swelled to an estimated 90,000 in 2012, and the government continued to prevent international nongovernmental organizations and UN agencies access to IDP camps in KIA-held territory to provide humanitarian assistance. Kachin fleeing to China to escape violence and persecution were not welcome. Several thousand Kachin refugees temporarily in Yunnan province in southwest China lacked adequate aid and protection. In August, China forced back more than 4,000 Kachin to conflict zones in northern Burma.⁷⁰

⁶⁵ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

⁶⁶ US State Department, Human Rights Report 2012: Burma, 19 April 2013 Section 6,

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

⁶⁷ Human Rights Watch, World report 2013; Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma?page=2>

⁶⁸ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 6 March 2013 paragraph 37

<http://www.unhcr.org/refworld/docid/513f10a37e.html>

⁶⁹ Human Rights Watch, World report 2013; Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma?page=2>

⁷⁰ Human Rights Watch, World report 2013; Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma?page=2>

3.11.12 More than 550,000 people remain internally displaced in Burma, including 400,000 due to decades of conflict in eastern Burma. There are an additional 140,000 refugees in camps in Thailand and several million Burmese migrant workers and unrecognised asylum seekers who suffer due to inadequate and ad hoc Thai policies causing refugees to be exploited and unnecessarily detained and deported.⁷¹

Rohingya

3.11.13 The Rohingya are a Muslim minority ethnically related to the Bengali people living in neighbouring Bangladesh's Chittagong District. They form 90 percent of the one million people living in the north of Rakhine State in Myanmar, which borders Bangladesh and includes the townships of Maungdaw, Buthidaung and Rathedaung. While residents in northern Rakhine State are predominantly Muslim, ethnic Rakhines - primarily Buddhist - are the majority of the state's three million residents. In 1989 the military-led government changed the state's colonial name of Arakan to Rakhine.⁷²

3.11.14 The Rohingya and Arakan (Rakhine) populations in Burma, estimated to total 800,000 to 1,000,000 people, have often clashed in daily life and long expressed mutual animosity. Successive Burmese governments have discriminated against the Rohingya, who they assert are foreigners with no right to live in Burma, a view shared by much of the Arakan population. This has been state policy since 1982, when a citizenship law passed by the then-military government excluded the Rohingya from Burmese citizenship, effectively rendering them stateless.⁷³

3.11.15 The Rohingya's lack of legal status has contributed to tensions in Arakan State. By law, full citizens are persons who belong to one of the enumerated "national races," which does not include the Rohingya, or those whose ancestors settled in the country before 1823, the beginning of British occupation of what is now Arakan State. Those who cannot provide "conclusive evidence" that their ancestors settled in Burma before 1823, are denied full citizenship and attendant rights. Rohingya face restrictions on freedom of movement, access to education, and employment— rights guaranteed to non-citizens as well as citizens under international law. Thousands of dispossessed Rohingya would likely face serious hunger and possibly starvation annually without interventions by the United Nations World Food Program.⁷⁴

3.11.16 Around 800,000 Rohingyas lack citizenship cards. Official discrimination has encouraged Buddhists to believe that they can justifiably campaign for their forced expulsion or segregation.⁷⁵

3.11.17 Without citizenship, Rohingya cannot legally leave the townships of Rakhine State

⁷¹ Human Rights Watch, World report 2013; Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma?page=2>

⁷² IRIN news, Briefing: Myanmar's Rohingya crisis, 16 November 2012 <http://www.irinnews.org/Report/96801/Briefing-Myanmar-s-Rohingya-crisis>

⁷³ Human Rights Watch, "The Government Could Have Stopped This" Sectarian Violence and Ensuing Abuses in Burma's Arakan State, August 2012, Summary, page 5 http://www.hrw.org/sites/default/files/reports/burma0812webwcover_0.pdf

⁷⁴ Human Rights Watch, "The Government Could Have Stopped This" Sectarian Violence and Ensuing Abuses in Burma's Arakan State, August 2012, Summary, page 5 http://www.hrw.org/sites/default/files/reports/burma0812webwcover_0.pdf

⁷⁵ BBC news, Displaced and divided in Burma's Rakhine, 8 November 2012 <http://www.bbc.co.uk/news/world-asia-20264279>

and, since 1994, must request special permits (often available only through bribes) to marry, which restricts Rohingya couples to having two children, a limitation other ethnic groups do not face. Common-law couples are vulnerable to prosecution. The government includes the Rohingya in official family registries and gives them temporary registration cards. However, such documents do not mention place of birth and are not considered as evidence of birth in Myanmar.⁷⁶

- 3.11.18** As a result of statelessness, suspicion, and deep-seated hatred, the Rohingya continue to face persecution and are subject to discrimination through targeted restrictions (like family size) and requirements (unpaid forced labour for security forces).⁷⁷
- 3.11.19** Some Rohingya have been in Myanmar for centuries while others arrived in recent decades; regardless of how long they have been in country, Burmese authorities consider them undocumented immigrants and do not recognise them as citizens or as an ethnic group.⁷⁸
- 3.11.20** Anti-Rohingya and anti-Muslim sentiments, long a part of the political and social landscape of Burma, have become rampant since the outbreak of violence in June 2012. Burmese government officials typically refer to the Rohingya as “Bengali,” “so-called Rohingya,” or the pejorative “Kalar,” which has a variety of disturbing translations.⁷⁹ The term “Rohingya” is not recognised by most Buddhists; they use the term ‘Bengali Muslims’, a reference to the official view that they are illegal immigrants from Bangladesh.⁸⁰
- 3.11.21** The Rohingya face widespread animosity from broader Burmese society, including from longtime pro-democracy advocates and members of ethnic nationalities who themselves have long faced oppression from the Burmese state.⁸¹
- 3.11.22** Perhaps the most significant challenge for Thein Sein’s government that emerged in 2012 was an outbreak of violence between the Rohingya minority—Muslims who the government asserts are illegal migrants from Bangladesh—and the Buddhist populations of Rakhine State. Long-simmering animosity between the communities was stoked by allegations of criminal attacks and reprisals. More than 100 people were reportedly killed, tens of thousands more were displaced, and mobilizations of government security forces led to allegations of human rights abuses. The situation in Rakhine State remained tense at year’s end.⁸²
- 3.11.23** Clashes between ethnic Rakhine Buddhists and Rohingya Muslims in June 2012 razed homes and places of worship in northern parts of the state, killed an estimated 80 and displaced tens of thousands more. The government imposed a

⁷⁶ IRIN news, Briefing: Myanmar’s Rohingya crisis, 16 November 2012 <http://www.irinnews.org/Report/96801/Briefing-Myanmar-s-Rohingya-crisis>

⁷⁷ IRIN news, Briefing: Myanmar’s Rohingya crisis, 16 November 2012 <http://www.irinnews.org/Report/96801/Briefing-Myanmar-s-Rohingya-crisis>

⁷⁸ IRIN news, Briefing: Myanmar’s Rohingya crisis, 16 November 2012 <http://www.irinnews.org/Report/96801/Briefing-Myanmar-s-Rohingya-crisis>

⁷⁹ Human Rights Watch, “The Government Could Have Stopped This” Sectarian Violence and Ensuing Abuses in Burma’s Arakan State, August 2012, Summary, page 5 http://www.hrw.org/sites/default/files/reports/burma0812webwcover_0.pdf

⁸⁰ BBC news, Displaced and divided in Burma’s Rakhine, 8 November 2012 <http://www.bbc.co.uk/news/world-asia-20264279>

⁸¹ Human Rights Watch, “The Government Could Have Stopped This” Sectarian Violence and Ensuing Abuses in Burma’s Arakan State, August 2012, Summary, page 6 http://www.hrw.org/sites/default/files/reports/burma0812webwcover_0.pdf

⁸² Freedom House, Freedom in the world 2013; Burma, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/burma>

night-time curfew and declared a state of emergency in six townships, including Maungdaw and Buthidaung near the border with Bangladesh.⁸³

- 3.11.24** Burmese security forces committed killings, rape, and mass arrests against Rohingya Muslims after failing to protect both them and Arakanese Buddhists during deadly sectarian violence in western Burma in June 2012. Over 100,000 people were displaced by widespread abuses and arson. State security forces failed to intervene to stop the sectarian violence at key moments, including the massacre of 10 Muslim travellers in Toungop that was one of several events that precipitated the outbreak. State media published incendiary anti-Rohingya and anti-Muslim accounts of the events, fuelling discrimination and hate speech in print media and online across the country.⁸⁴
- 3.11.25** In June 2012 violence between ethnic Rakhine and Rohingya residents following the alleged rape of an ethnic Rakhine woman by a group of Muslim men displaced nearly 75,000, mostly Rohingya; most are still in nine overcrowded camps in Sittwe township, the capital of Rakhine State. After relative calm, violence resurged in October, spread into a larger area and displaced an additional 35,000, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA) in Yangon.⁸⁵
- 3.11.26** In July 2012, Burmese President Thein Sein shocked human rights groups by saying Rohingyas should be placed in UN-sponsored refugee camps, while at the same time offering to resettle Rohingyas in any other country willing to accept them. "Burma will take responsibility for its ethnic nationalities but it is not at all possible to recognise the illegal border-crossing Rohingyas who are not an ethnic [group] in Burma," said a statement on the President's Office website.⁸⁶
- 3.11.27** At the same time, the President's Office announced on 31 October 2012 that it will continue to "take actions against individuals and organizations responsible for the conflict" to prevent further violence, and that investigations are under way.⁸⁷
- 3.11.28** Violence erupted again in late October 2012 in 9 of the state's 17 townships, with coordinated violence and arson attacks by Arakanese against Rohingya and Kaman Muslims—a government-recognised nationality group, unlike the Rohingya. In some cases violence was carried out with the support and direct involvement of state security forces and local officials, including killings, beatings, and burning of Muslim villages, displacing an additional 35,000 Rohingya and non-Rohingya Muslims.⁸⁸ The International Crisis Group reported in November 2012 that the performance of parts of the security forces had been biased and woefully inadequate. Local police and riot police are overwhelmingly made up of Rakhine Buddhists who are at best unsympathetic to Muslim victims and at worst allegedly complicit in the violence.⁸⁹

⁸³ IRIN news, Briefing: Myanmar's Rohingya crisis, 16 November 2012 <http://www.irinnews.org/Report/96801/Briefing-Myanmar-s-Rohingya-crisis>

⁸⁴ Human Rights Watch, World Report 2013; Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma?page=2>

⁸⁵ IRIN news, Briefing: Myanmar's Rohingya crisis, 16 November 2012 <http://www.irinnews.org/Report/96801/Briefing-Myanmar-s-Rohingya-crisis>

⁸⁶ IRIN news, Briefing: Myanmar's Rohingya crisis, 16 November 2012 <http://www.irinnews.org/Report/96801/Briefing-Myanmar-s-Rohingya-crisis>

⁸⁷ IRIN news, Briefing: Myanmar's Rohingya crisis, 16 November 2012 <http://www.irinnews.org/Report/96801/Briefing-Myanmar-s-Rohingya-crisis>

⁸⁸ Human Rights Watch, World Report 2013; Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma?page=2>

⁸⁹ International Crisis Group, Myanmar: Storm Clouds on the Horizon, 12 November 2012, *E. Moving away from violence*

- 3.11.29** Government restrictions on humanitarian access to the Rohingya community have left tens of thousands in dire need of food, adequate shelter, and medical care. The authorities indefinitely suspended nearly all pre-crisis humanitarian aid programs, affecting hundreds of thousands more Rohingya who were otherwise unaffected by the violence and abuse.⁹⁰ Thousands of Muslim Rohingyas, who were uprooted after sectarian clashes in western Burma in 2012, are still not registered as internally displaced persons (IDPs) by the government and continue to be denied humanitarian assistance.⁹¹
- 3.11.30** Local security forces detained hundreds of Rohingya men and boys—primarily in northern Arakan State—and held them incommunicado without basic due process rights. UN and international NGO staff were among the arrested and charged. Many remain detained at the end of 2012.⁹² According to the March 2013 report of the Special Rapporteur on the situation of human rights in Myanmar, more than 1,100 persons have been detained in relation to the violence in June and October 2012; the vast majority of whom are Rohingya men and boys. The Special Rapporteur was concerned about their possible arbitrary arrest and their conditions of detention and treatment; particularly those from the Rohingya community in Buthidaung Prison, who he believes are especially vulnerable to human rights violations. The Rapporteur expressed concern over the possible torture and ill treatment of detainees, as well as the violation of due process rights, including access to legal counsel, judicial control over arrest, guarantees of habeas corpus, pre-trial detention as the exception rather than the norm, and the right to be tried without undue delay.⁹³

Shan

- 3.11.31** Most ethnic Shan live in Shan State in eastern Burma, but smaller Shan communities also live in Kachin State to the north, and in China, Thailand and Laos, which border Shan State. Though current census information for Burma is unavailable, there are an estimated 4-6 million Shan in Burma. There are many smaller ethnic groups in Shan State as well, including the Kokang, Lahu, Palaung, Pao and Wa. While most Shan are Theravada Buddhists, Christianity is also practiced among a number of the other ethnic groups in Shan State.⁹⁴ The term Shan itself is however problematic, at least as it is used by Burma authorities, since they include under this term 33 ethnic groups that are in fact quite distinct and to a large degree unrelated except for close geographic proximity.⁹⁵
- 3.11.32** In 1947, Shan leaders signed the Panglong Agreement with the Government of Burma, which aimed to create a unified Burma in which Shan State would be largely autonomous, and would have the option to secede from the Union after 10

[http://www.crisisgroup.org/~media/Files/asia/south-east-asia/burma-myanmar/238-myanmar-storm-clouds-on-the-horizon.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/burma-myanmar/238-myanmar-storm-clouds-on-the-horizon.pdf)

⁹⁰ Human Rights Watch, World Report 2013; Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma?page=2>

⁹¹ Democratic Voice of Burma, Thousands of displaced Rohingya still receive 'no aid', 5 February 2013

<http://www.dvb.no/news/thousands-of-displaced-rohingya-still-receive-%E2%80%98no-aid%E2%80%99/26221>

⁹² Human Rights Watch, World Report 2013; Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma?page=2>

⁹³ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 6 March 2013 paragraph 58

<http://www.unhcr.org/refworld/docid/513f10a37e.html>

⁹⁴ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

⁹⁵ Minority Rights Group, World Directory of Minorities and Indigenous Peoples: Myanmar, 2009, *Shan*

<http://www.minorityrights.org/?lid=4477#peoples>

years of independence. The Agreement never came to fruition, however, as Burmese leader Aung San was assassinated that same year and the political situation in Burma descended into chaos.⁹⁶

- 3.11.33** The government's army began operating in Shan State in the 1950s, as ethnic rebels fought for greater autonomy and basic rights. Under the country's former military junta, which handed power to Thein Sein in March last year, government soldiers used anti-insurgency campaigns to target civilians, hoping to stop villagers from joining the rebel forces.⁹⁷
- 3.11.34** Shan State is home to a number of armed ethnic armies, including the Shan State Army-South (SSA-South), fighting against the Burma Army. The most recent ceasefire agreement between the SSA-South and the Burmese Government, signed in December 2011, broke down in February 2012 as fighting broke out in areas across Shan State. Civilians in Shan State have been subject to human rights violations by the military and other government authorities both when there is active fighting and when there is not, including forced labour, portering or conscription, arbitrary detention, torture, rape and extrajudicial killings. The Burma Army has also been known to confiscate land from villagers in Shan State, often leaving them with no means of making a livelihood.⁹⁸
- 3.11.35** Despite the ceasefire, Charm Tong, a co-founder of the women's group, the Shan Women's Action Network (SWAN) stated following a visit to Shan State that "the villagers and women continue to complain about sexual violence being committed by the government's Burma Army".⁹⁹ Another SWAN representative also noted that "Villagers who are suspected of having rebel sympathies are beaten up and arrested, sometimes for months at a time. Others have had their lands seized by the government forces".¹⁰⁰ In March 2013 the Special Rapporteur on the situation of human rights in Myanmar expressed concern over the allegations he continues to receive of attacks against civilian populations, extrajudicial killings, sexual and gender-based violence, arbitrary arrest and detention, as well as torture in Kachin and Northern Shan States. He has also received allegations of the use of landmines, the recruitment of child soldiers, as well as forced labour and portering committed by all parties to the conflict.¹⁰¹ Amnesty International also reports that farmers and villagers in ethnic minority areas such as Shan and Kachin states have been arbitrarily imprisoned.¹⁰²
- 3.11.36** Ethnic Shan groups in Burma were allowed to openly celebrate Shan State National Day on 7 February 2012 for the first time in two decades after the government loosened its attitude towards the event. "It is the first time we officially celebrated the event within 20 years... If we did ceremonies in the past, we were not allowed to use the name of 'Shan National Day' or 'Shan State Day,'" said Sai

⁹⁶ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

⁹⁷ The Irrawaddy, Despite Ceasefire, Sexual Violence Continues in Shan State: Women's Group, 22 December 2012 <http://www.irrawaddy.org/archives/21914>

⁹⁸ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

⁹⁹ The Irrawaddy, Despite Ceasefire, Sexual Violence Continues in Shan State: Women's Group, 22 December 2012 <http://www.irrawaddy.org/archives/21914>

¹⁰⁰ Mizzima News, Govt troops still abuse villagers, says Shan NGO, 20 December 2012 <http://reliefweb.int/report/myanmar/govt-troops-still-abuse-villagers-says-shan-ngo>

¹⁰¹ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 6 March 2013 paragraph 37 <http://www.unhcr.org/refworld/docid/513f10a37e.html>

¹⁰² Amnesty International, Myanmar: Independent human rights monitoring still needed, 7 March 2013 <http://www.amnesty.org/en/library/asset/ASA16/001/2013/en/a203877f-7fc6-4b09-bd63-0ebc4ac57387/asa160012013en.pdf>

Leik, spokesperson for Rangoon-based Shan Nationalities League for Democracy. “By allowing us to do so, I think it is a chance for our ethnic Shan people to gain fundamental rights,” he said. The holiday commemorates the unification of several Shan principalities into a single Shan State on February 7, 1947.¹⁰³

3.11.37 Ten armed rebel groups reached tenuous ceasefire agreements with the government in the past two years. The Shan, which have one of the most powerful rebel armies in Burma with some 7,000 fighters, agreed to a ceasefire in December 2011. Despite the agreement, there have been occasional reports of skirmishes between Shan rebels and the Burmese military.¹⁰⁴

3.11.38 Large parts of Shan State, including the capital Taunggyi, are under control of Burma’s central government, but since the agreement Shan rebels have opened liaison office in several cities. Because of the improvement in relations between Shan rebels and the government, ethnic Shan in government-controlled areas are able to celebrate the national day openly.¹⁰⁵

Karen

3.11.39 The Karen people of Burma, thought to number around 7 million people, make up one of the largest ethnic groups in the country. The religious make-up of the Karen people is a combination of Buddhism, Animism and Christianity. They reside mainly in the Southern and South Eastern part of the country, whilst thousands live over the border in Thailand in a state of limbo.¹⁰⁶ The group encompasses a great variety of ethnic groups, such as the Karenni, Padaung, Bghai, Brek, etc.¹⁰⁷ Discrimination against the Karen remains deeply entrenched in the institutions of the state. State schools in Karen areas, even where they are the majority of the population, is exclusively provided in the Burmese language and government offices provide no access to services in Karen languages. Numerous reports continue to point out that government jobs in Karen areas appear to be increasingly the reserved domain of ethnic Burman.¹⁰⁸

3.11.40 The Karen sided with the allied forces during the Second World War and were hopeful that with peace they would be able to achieve long sought-after independence. However, the decolonisation process saw Karen State remain part of Burma, which, along with continued aggression towards Burma’s ethnic peoples, helped to instigate an armed uprising against the central government. This uprising was led by the Karen National Liberation Army and resulted in one of the longest running civil wars in history.¹⁰⁹

3.11.41 In January 2012, after more than 60 years of armed conflict, the main democratic

¹⁰³ The Irrawaddy, Shan Celebrate National day amid new freedoms, 8 February 2013

<http://www.irrawaddy.org/archives/26425>

¹⁰⁴ The Irrawaddy, Shan Celebrate National day amid new freedoms, 8 February 2013

<http://www.irrawaddy.org/archives/26425>

¹⁰⁵ The Irrawaddy, Shan Celebrate National day amid new freedoms, 8 February 2013

<http://www.irrawaddy.org/archives/26425>

¹⁰⁶ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

¹⁰⁷ Minority Rights Group, World Directory of Minorities and Indigenous Peoples: Myanmar, 2009, *Karen*

<http://www.minorityrights.org/?lid=4477#peoples>

¹⁰⁸ Minority Rights Group, World Directory of Minorities and Indigenous Peoples: Myanmar, 2009, *Karen*

<http://www.minorityrights.org/?lid=4477#peoples>

¹⁰⁹ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

party of the Karen - the Karen National Union (KNU) - signed a ceasefire agreement with the Burmese government. However, the Burmese Army breached this ceasefire in March, and fighting is ongoing.¹¹⁰

3.11.42 Throughout 2012, Karen villagers continued to describe serious abuses related not to armed conflict, but to the continued militarization of the region. These have included forced labour, arbitrary taxation and extortion, violence or threats of violence to enforce orders, as well as land confiscation, destruction of villagers' livelihoods, development-induced displacement and forced relocation. Villagers cite ongoing military activities or the presence of large numbers of soldiers from different armed groups as a source of concern. The Karen Human Rights Group (KHRG) has already published several detailed reports of army camps resupplying rations, ammunitions and troops, as well as rebuilding or establishing new camps and roads. In some cases, villagers have been forced to contribute labour, equipment or building materials for these resupply operations. KHRG has not recorded a military attack on a village during 2012, but there have nonetheless been sporadic incidents of indiscriminate fire and of villagers being shot-on-sight.¹¹¹

3.11.43 Freedom House reports that some of the worst human rights abuses take place in border regions populated by ethnic minorities, where the military kills, beats, rapes, and arbitrarily detains civilians, according to human rights groups. Amongst other groups, the Karen are frequent victims. In 2012, renewed fighting in Kachin areas resulted in some 100,000 people being displaced from their homes. Tens of thousands of ethnic minorities in Shan, Karenni, Karen, and Mon states still live in squalid relocation centers as a legacy of previous military campaigns.¹¹² Physicians for Human Rights reported in August 2012 that human rights violations by the Burmese army in Myanmar's eastern Karen State are continuing, with 30 percent of 665 ethnic families surveyed having reported experiencing human rights violations, including being forcibly evicted from their homes, forced to work for the army, and physically attacked - sometimes even tortured or raped. Karen State, also known as Kayin State, has been hit by a decades-long ethnic insurgency which has left more than 300,000 internally displaced, according to aid groups.¹¹³

Mon

3.11.44 The Mon people live mostly in Mon State, which is situated in the Southern part of Burma and borders Bago (formerly Pegu) Region, Tanintharyi (formerly Tenasserim) Region and Karen State. It also has access to the Andaman Sea.¹¹⁴

3.11.45 The Mon are considered to be one of the first peoples in the Southeast Asia and the earliest one to settle in Burma. They were responsible for spreading Theravada Buddhism, the oldest school of the religion, in Burma and Thailand.

¹¹⁰ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

¹¹¹ Karen Human Rights Group, Steps towards peace: Local participation in the Karen ceasefire process, 7 November 2012 <http://www.khrg.org/khrg2012/khrg12c3.pdf>

¹¹² Freedom House, Freedom in the world 2013; Burma January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/burma>

¹¹³ IRIN, In Brief: New report highlights abuses in eastern Myanmar, 28 August 2012

<http://www.irinnews.org/report/96190/In-Brief-New-report-highlights-abuses-in-eastern-Myanmar>

¹¹⁴ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

Currently, there are estimated to be around 8 million Mon people in Burma.¹¹⁵

- 3.11.46** The Mon culture is very rich and ancient. It is credited for having a major influence on the dominant Burmese culture and the Mon script was incorporated into the unified Burmese language. However, the regime does not allow the Mon the right to speak their language or cultivate their traditions.¹¹⁶
- 3.11.47** The Mon people took active part in the anti-colonial struggle for Burma's freedom. Pursuant to Burma's independence in 1948, they began to seek self-determination. They rose in revolt several times and were bloodily suppressed by the regime. In 1962 the New Mon State Party emerged and a partially autonomous Mon state, Monland, was created in 1974 to appease the Mon. However, the clashes continued until 1996, when a cease-fire was signed.¹¹⁷ The Burmese army has continued to conduct occasional raids in those Mon areas where the ceasefire has not held. Severe human rights violations have been registered, including enforced labour, displacement, rape and murder, and widespread land confiscation. As a result, there has been a mass exodus of Mon to Thailand.¹¹⁸
- 3.11.48** Despite the cease-fire, the region is still very fragile and there are serious concerns regarding safety and human rights of the Mon people. Mon refugee communities in Thailand, but also in the United States and other countries, are advocating for granting autonomy to the region and ensuring that human rights are not violated there.¹¹⁹
- 3.11.49** On 26 February 2013 thousands of ethnic Mon from southeastern Burma celebrated the 66th Mon National Day with traditional Mon ceremonies, entertainment and military-style marches. At the event, Mon leaders again called on the government to recognise their rights and political demands.¹²⁰
- 3.11.50** Mon State has been fairly peaceful since the mid 1990s and confrontations between Mon armed groups and the government have been rare. The two sides held further ceasefire talks in February 2012 in order to work out a ceasefire agreement.¹²¹
- 3.11.51** The Mon are one of Burma's major ethnic groups and their national day commemorates the establishment of the first Mon kingdom, Hongsawadee, in 573 AD. The group has kept their national day alive for more than 60 years, despite efforts by the Burmese authorities to discourage overt displays of Mon nationalism because of fears it could fuel anti-regime sentiment. In recent years, the government has relaxed its attitude towards Mon ethnic holidays and the events are now celebrated openly across Mon State, both in government and Mon rebel-controlled areas. In a sign of the government's new tolerance, Mon State

¹¹⁵ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

¹¹⁶ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

¹¹⁷ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

¹¹⁸ Minority Rights Group, World Directory of Minorities and Indigenous Peoples: Myanmar, 2009, *Mon* <http://www.minorityrights.org/?lid=4477#peoples>

¹¹⁹ Oxford Burma Alliance, Ethnic Nationalities of Burma, undated, <http://www.oxfordburmaalliance.org/ethnic-groups.html>

¹²⁰ The Irrawaddy, Mon celebrate national day, call again for Federal State, 26 February 2013 <http://www.irrawaddy.org/archives/27736>

¹²¹ The Irrawaddy, Mon celebrate national day, call again for Federal State, 26 February 2013 <http://www.irrawaddy.org/archives/27736>

Parliament President Kyin Phay attended Mon National Day.¹²²

3.11.52 In July 2012, the Human Rights Foundation of Monland reported that although the new civilian-led government and ethnic groups have signed a number of ceasefires in 2012, many civilians continue to experience violations caused by military presence in their villages. Since March 2012, residents of two small villages in Karen and Mon States have been forced to work as porters, carrying heavy loads for the troops, or forced to labor on military plantations.¹²³

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.11.53 Conclusion. Members of Burma's ethnic minority groups face government sponsored and societal discrimination in Burma and the Burmese security forces continue to commit serious human rights abuses in ethnic minority areas including killings, beatings, torture, forced labour, forced recruitment, forced relocations, land confiscation, extortion, arbitrary arrests, sexual violence and a denial of humanitarian assistance. Caseworkers should consider each case carefully, on its individual facts, and in light of the latest available country of origin information. Where an individual is able to demonstrate that they are at serious risk of persecution on account of their ethnic origin a grant of asylum will be appropriate.

3.12 Minority religious groups; Muslims, Christians and Hindu

3.12.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Burmese authorities due to their involvement with minority religious groups.

3.12.2 Treatment. The 2008 constitution provides for freedom of religion. It distinguishes Buddhism as the majority religion, but also recognises Christianity, Islam, Hinduism, and animism. At times the government interferes with religious assemblies and attempts to control the Buddhist clergy. Buddhist temples and monasteries have been kept under close surveillance since the 2007 protests and crackdown. The authorities have also discriminated against minority religious groups, refusing to grant them permission to celebrate holidays and hold gatherings, and restricting educational activities, proselytizing, and construction of houses of worship.¹²⁴

3.12.3 Ongoing and important political reforms in Burma have yet to significantly improve the situation for freedom of religion and belief. During 2012, most religious freedom violations occurred against ethnic minority Christian and Muslim communities, with serious abuses against mainly Christian civilians during military interventions in Kachin State and sectarian violence by societal actors targeting

¹²² The Irrawaddy, Mon celebrate national day, call again for Federal State, 26 February 2013

<http://www.irrawaddy.org/archives/27736>

¹²³ Human Rights Foundation of Monland, Villagers forced to porter and labor for soldiers in Mon and Karen States, 31 July 2012 <http://rehmonnya.org/archives/2384>

¹²⁴ Freedom House, Freedom in the world 2013; Burma, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/burma>

Muslims in Rakhine (Arakan) State. In addition, Buddhist monks suspected of anti-government activities were detained or removed from their pagodas, and at least eight monks remain imprisoned for participating in peaceful demonstrations. In addition to sometimes severe restrictions on worship, education, and other religious activities and ceremonies, religious groups continue to face a range of problems, including pervasive surveillance, imprisonment, discrimination, societal violence, destruction or desecration of property, and censorship of religious materials.¹²⁵

- 3.12.4** In 2012, the Burmese government continued to release political and religious prisoners, revised laws on media censorship and freedom of assembly, and allowed Aung San Suu Kyi's National Democracy Party (NLD) to assume its seats in parliament. Nevertheless, Burma's overall human rights record remains poor and the government was either unable or unwilling to curtail security forces or social actors who engaged in serious abuses against religious minorities and others during armed conflicts in Kachin State and sectarian violence in Rakhine (Arakan) State. Rohingya Muslims, who are denied Burmese citizenship, experience widespread discrimination, strict controls over their religious activities and ceremonies and societal violence that is often incited by Buddhist monks and carried out with impunity by mobs and local militias, including police in Rakhine (Arakan) State. In the past year, over 1,000 Rohingya have been killed, their villages and religious structures destroyed, and women raped during attacks.¹²⁶
- 3.12.5** In Kachin and northern Shan states, home to large Christian minority populations, the military conducted large operations beginning in January 2013. The military reportedly continues to limit religious worship and forcibly promote Buddhism as a means of pacification in these areas and targets Christians for forced labour, rape, intimidation, and destruction of religious sites. The government also continues to censor religious publications and prohibits the import of Bibles and Qu'rans in indigenous languages. Released prisoners face harassment and restrictions, including U Gambria, the head of the All-Burma Monks Alliance.¹²⁷
- 3.12.6** There continue to be severe human rights violations in conflict-affected ethnic border areas, including attacks against civilians, extrajudicial killings, sexual violence, arbitrary arrest and detention, internal displacement, land confiscations, forced labour and portering, and the recruitment of child soldiers. The government has forged ceasefires with 10 ethnic minority militias, but armed clashes continue in Kachin, Kayah, Kayin and Shan states.¹²⁸
- 3.12.7** Christian groups in ethnic minority regions, where low-intensity conflicts have been waged for decades, face particularly severe and ongoing religious freedom abuses. The UN Special Rapporteur on Human Rights in Burma, Tomas Quintana, has highlighted in his reports the discrimination against religious and ethnic minority groups by the Burmese military and continued by the civilian government, including policies preventing the teaching of minority languages in schools and restrictions on freedom of religion or belief. His 2012 report contains evidence of severe religious freedom abuses against ethnic minority Kachin and Chin,

¹²⁵ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013 [http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

¹²⁶ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013 [http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

¹²⁷ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013 [http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

¹²⁸ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013 [http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

including restrictions on the building of places of worship, destruction of religious venues and artefacts, prohibitions on some religious ceremonies, and the policy of coerced conversions to Buddhism at the government's "National Races Youth Development Training Schools," where Buddhist monks were reported to be working together with the Ministry of Religious Affairs.¹²⁹

Muslims

- 3.12.8** Mistrust and apathy towards Muslims is deeply rooted in Burma, dating back centuries when large numbers of predominantly Muslim migrant workers of South Asian origin arrived during British colonial rule. Successive military regimes exploited religious and racial tensions for political gain, particularly at times of economic or social crises, to divert the public's attention away from substantive issues. Under military rule, attacks or communal violence directed against Muslims were instigated by the police, Burma Army, Military Intelligence, local authorities or the Union Solidarity Development Association (USDA).¹³⁰
- 3.12.9** In June 2012, sectarian violence broke out in northern Arakan State between Arakan Buddhists and Rohingya Muslims (an ethnic, religious, and linguistic minority residing in northern Arakan State for several generations), following the rape and murder of an Arakan Buddhist woman, allegedly by three Muslims, and the killing of 10 Muslims by an Arakan mob. Thousands of Rohingya rioted in the northern Arakan town of Maungdaw causing an unknown number of deaths. Killings, violence, and the burning of homes and villages have been carried out by both Rohingya and Arakan communities, but the suffering of Arakan communities has been widely underreported by the international media. According to Human Rights Watch, local police, Burma Army soldiers, and the border security force Na Sa Ka have responded disproportionately to the crisis, targetting the Rohingya community with mass arrests and unlawful use of force. They have also been implicated in killings and other violations perpetrated against Rohingya during the crisis, continuing a long record of abuse and discrimination carried out by State actors against the minority group.¹³¹ In Rakhine State, the Special Rapporteur on the situation of human rights in Myanmar received allegations that Muslim prisoners detained in Buthidaung Prison after the June and October 2012 violence have been tortured and beaten to death.¹³² The Special Rapporteur has received reports that Muslim villagers, particularly in northern Rakhine State, have had their freedom of movement restricted by security forces, including Nasaka, to the point where they cannot access food or their livelihoods.¹³³
- 3.12.10** Described by the UN as "one of the most persecuted peoples in the world", the Rohingya are denied citizenship under Burma's highly discriminatory 1982

¹²⁹ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013

[http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

¹³⁰ Chin Human Rights Organisation, "Threats to Our Existence": Persecution of ethnic Chin Christians in Burma September 2012, 1.3. Discrimination, repression, and persecution of Muslims

http://www.chro.ca/images/stories/files/PDF/Threats_to_Our_Existence.pdf

¹³¹ Chin Human Rights Organisation, "Threats to Our Existence": Persecution of ethnic Chin Christians in Burma September 2012, 1.3. Discrimination, repression, and persecution of Muslims

http://www.chro.ca/images/stories/files/PDF/Threats_to_Our_Existence.pdf

¹³² UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 6 March 2013 paragraph 11

<http://www.unhcr.org/refworld/docid/513f10a37e.html>

¹³³ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 6 March 2013 paragraph 53

<http://www.unhcr.org/refworld/docid/513f10a37e.html>

citizenship law, effectively rendering them stateless. As well as the limitations on religious freedom described above, they face draconian restrictions on marriage and pregnancy, and are targeted for arbitrary arrest, detention, torture, rape, and forced labour. They are also denied socio-economic rights, particularly the right to healthcare and education. Attempts by Rohingya politicians to raise questions about their rights and citizenship in parliament have been rebuked by Union Minister for Immigration and Population U Khin Yi. In response to the deepening crisis in Arakan State, President Thein Sein stated that the government would not recognise the Rohingya and that they were willing to 'hand over' the Rohingyas to the UNHCR in preparation for them to be resettled in any third country "that are willing to take them".

- 3.12.11** Today in Burma, like Christians, Muslims are also denied freedom of religion. They also face restrictions on different aspects of religious freedom, including: the freedom of assembly to worship; freedom of movement; use of loudspeakers for the call to prayer; educational activities; proselytizing; restoring and constructing mosques; and publishing and importing religious literature. The authorities have also ordered the destruction and desecration of mosques and cemeteries.¹³⁴
- 3.12.12** Muslims in Rakhine (Arakan) State, particularly those of the Rohingya minority group, continued to experience the most severe forms of legal, economic, religious, educational, and social discrimination. The 1982 Citizenship Law denies Rohingya citizenship because their ancestors allegedly migrated to Burma during British colonial rule. Approximately 800,000 Rohingya live in Burma, concentrated mostly in Rakhine (Arkan) State and in the cities of Maungdaw, Buthidaung, Akyab, Rathedaung, and Kyauktaw.¹³⁵
- 3.12.13** Police often restricted the number of Muslims who could gather in one place, effectively banning public worship, religious ceremonies, and education. In Rangoon and surrounding areas, Muslims are only allowed to gather for worship and religious training during major Muslim holidays. In December 2012, seven Muslims were arrested for holding a prayer service at a mosque without permission. Similar arrests were made in 2011. All those arrested were released after paying fines. In early 2013, police reportedly beat Muslims living near the Takeda mosque in Rangoon and later removed them from their homes.¹³⁶
- 3.12.14** It is almost impossible for Muslims to obtain building permits for either mosques or schools and unlicensed venues are regularly closed or destroyed. The government has, in recent years, ordered the destructions of mosques, religious centres, and schools, including the Sufi Shahul Hamid Nagori Flag Post and Mosque in Insein during February 2012.¹³⁷
- 3.12.15** In June 2012, sectarian violence between ethnic Arakanese Buddhists and ethnic Rohingya Muslims led to hundreds of deaths and an estimated 100,000 internally displaced. Provincial police did not stop initial violence and supported ongoing attacks by both Arakanese groups and Buddhist monks on Rohingya villages and the denial of humanitarian access to Rohingya areas and camps. In October,

¹³⁴ Chin Human Rights Organisation, "Threats to Our Existence": Persecution of ethnic Chin Christians in Burma September 2012 http://www.chro.ca/images/stories/files/PDF/Threats_to_Our_Existence.pdf

¹³⁵ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013 [http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

¹³⁶ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013 [http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

¹³⁷ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013 [http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

sectarian violence erupted again in dozens of coordinated attacks that resulted in beatings, deaths, rapes, the destruction of entire villages, and additional displacement of Rohingya. Rohingya asylum seekers have been turned away from Bangladesh and Thailand, including being forcibly pushed back to sea by Thai military forces. Untold numbers have died attempting to seek refuge in these countries. Despite considerable international attention, the Burmese government, backed by a majority of popular opinion and groups promoting "Buddhist Nationalism," continues to restrict humanitarian assistance, sanction clandestine violence through impunity, and encourage refugee flows to other Southeast Asian countries.¹³⁸

3.12.16 Without citizenship, Rohingya Muslims lack access to secondary education in state-run schools, cannot be issued government identification cards (essential to receive government benefits), and face restrictions on freedoms of religion, association, assembly, and movement. Reports by refugees indicate that many Rohingya are prevented from owning property, residing in certain townships, or serving as government officials. Muslims are restricted in the number of children they may have and have difficulties obtaining birth certificates for newborns, particularly in the city of Sittwe. During the current reporting period, the Burmese government maintained "Muslim Free Areas" in the Thndwe, Gwa, and Taungup areas of Rakhine (Arakan) State.¹³⁹

3.12.17 In July 2012, Amnesty International noted that six weeks after a state of emergency was declared in Myanmar's Rakhine State, targeted attacks and other violations by security forces against minority Rohingyas and other Muslims had increased, as had communal violence.¹⁴⁰ Reporting on the October 2012 violence in Arakan (Rakhine) State, Christian Solidarity Worldwide reported that "this crisis is a cause for very grave concern, and poses a serious threat to peace and democratisation in Burma. The recent violence is especially troubling because it appears to have escalated into a wider anti-Muslim campaign, with Muslims generally, not only Rohingyas, facing attacks".¹⁴¹ In March 2013, at least 10 people were killed and mosques burned in Meiktila town south of Mandalay, which appears to be the most serious sectarian clash since almost 200 people were killed in 2012 in unrest in the western state of Rakhine.¹⁴²

Christians

3.12.18 Christianity has historically been viewed as a 'foreign' religion, even prior to British colonial rule in Burma. Successive military regimes sought to portray Christians as affiliated with neo-colonialists, and disloyal to the Union of Burma. Christians are routinely denied freedom of religion in Burma. They face restrictions on different aspects of freedom of religion, including: the freedom of assembly to worship; educational activities; proselytizing; restoring and constructing churches; and publishing and importing religious literature. Church compounds and graveyards

¹³⁸ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013
[http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

¹³⁹ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013
[http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscifr.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

¹⁴⁰ Amnesty International, Myanmar: Abuses against Rohingya erode human rights progress, 19 July 2012

<http://www.amnesty.org/en/news/myanmar-rohingya-abuses-show-human-rights-progress-backtracking-2012-07-19>

¹⁴¹ Christian Solidarity Worldwide, SW calls for international action to end violence in Arakan State, Burma, 1 November 2012
<http://dynamic.csw.org.uk/article.asp?t=press&id=1445&search=>

¹⁴² BBC, Buddhists and Muslims clash in central Burma town, 21 March 2013
<http://www.bbc.co.uk/news/world-asia-21873978>

have been desecrated, often to make way for Burma Army camps. Christian crosses have been torn down on the orders of the authorities. Such orders and restrictions are most vigorously enforced in ethnic Chin, Naga and Kachin areas, particularly in rural areas, where the majority of the local population is Christian. Various pamphlets denigrating Christianity, allegedly published by the Ministry of Religious Affairs, have been circulated in Chin State, Rangoon, Mandalay, and eastern border areas.¹⁴³

3.12.19 For decades, the Chin have suffered deep-rooted, institutionalised discrimination on the dual basis of their ethnicity and religion. The Chin Human Rights Organisation's documentation shows that over a period of many years, religious freedom violations have often intersected with other serious human rights violations, such as forced labour, torture, and other cruel, inhuman, or degrading treatment. As well as violations of the right to manifest their religion, proselytise, and assemble for religious gatherings, the Chin have also been subjected to induced and coerced conversion by State actors. With more than 70 percent of Chin people living below the poverty line, abject poverty and the ongoing food security crisis in southern Chin State have left the Chin particularly vulnerable to induced and coerced conversion.¹⁴⁴

3.12.20 Burmese Christians living outside the conflict zones of Kachin State and Rakhine (Arakan) State report that conditions improved in 2012, with more regular and open contact with the new government and the Religious Affairs Ministry. However, they continue to experience difficulties in obtaining permission to build new churches, hold public ceremonies or festivals, and import religious literature. In some areas around Rangoon, police restrict how often Burmese Christians can gather to worship or conduct religious training, despite a new law guaranteeing the right of assembly.¹⁴⁵

3.12.21 A government regulation promulgated in early 2008 bans religious meetings in unregistered venues, such as homes, hotels, or restaurants. It has not been strictly enforced in recent years. Limits on charitable and humanitarian activities have existed since 2009 and the government occasionally prohibits Protestants from proselytizing in some areas, particularly among rural Buddhists populations.¹⁴⁶

3.12.22 While numerous contacts in northern Chin State reported a significant easing of restrictions against the Christian majority, there were continued reports that some government officials encouraged or enticed non-Buddhists to convert to Buddhism in southern Chin state. An exiled Chin human rights group released a report claiming that local government officials in southern Chin state enticed Christian families to send their children to Buddhist schools, called NaTaLa schools, in exchange for food and free education for their children. In previous years, those who refused to convert upon completion of schooling were allegedly subjected to forced labor as porters for the military. However, there were no reports that this

¹⁴³ Chin Human Rights Organisation, "Threats to Our Existence": Persecution of ethnic Chin Christians in Burma September 2012 1.4. Discrimination, repression, and persecution of Christians
http://www.chro.ca/images/stories/files/PDF/Threats_to_Our_Existence.pdf

¹⁴⁴ Chin Human Rights Organisation, "Threats to Our Existence": Persecution of ethnic Chin Christians in Burma September 2012, Summary of findings p.114
http://www.chro.ca/images/stories/files/PDF/Threats_to_Our_Existence.pdf

¹⁴⁵ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013
[http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

¹⁴⁶ US Commission on International Religious Freedom 2013 Annual Report; Burma 30 April 2013
[http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf)

practice continued during the year.¹⁴⁷

2.12.23 Christian groups reported greater ease in obtaining permission to buy land or build new churches during the year. In some cases, however, authorities denied permission to build and to repair religious facilities.¹⁴⁸

3.12.24 Some Christian theological seminaries and Bible schools continued to operate, along with several Islamic madrassahs. Some Christian schools did not register with the Myanmar Council of Churches, a group representing 14 Christian denominations, but were able to conduct affairs without government interference.¹⁴⁹

3.12.25 In most regions, Christian and Islamic groups that sought to build small places of worship on side streets or other inconspicuous locations were able to do so only with informal approval from local authorities. There were reports of the destruction of large Christian crosses in Chin state, most of which were on prominent hilltops.¹⁵⁰

3.12.26 Sixty-six Christian churches have been burnt down in Kachin state since the conflict erupted in June 2011, according to the Kachin Women's Association of Thailand (KWAT), a figure that is backed by Myitkyina-based Kachin Baptist Convention. Speaking at a seminar at Chiang Mai University in February 2013, Julia Marip of KWAT said that the burning of churches by Myanmar government forces amounts to religious persecution.¹⁵¹

3.12.27 Those born into a Christian family can expect a life of poverty, discrimination and oppression. They are monitored in all travels, and left out when it comes to education and employment opportunities. Christians also face persecution from local Buddhist monks and from villagers, who see conversion as a betrayal of traditional values. The military junta sometimes camps in the villages and demands what little provisions that Christians have. On Sundays, worship services are often cancelled because the local believers need to run errands for soldiers.¹⁵²

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.12.28 Conclusion. Members of minority religious groups face communal violence and government discrimination. The Burmese authorities restrict religious activities in ways which amounts to persecution in some areas, particularly for minority ethnic groups. Religious groups, particularly ethnic minority Christians and Muslims

¹⁴⁷ US State Department, International Religious Freedom Report 2012: Burma, 20 May 2013, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dliid=208218>

¹⁴⁸ US State Department, International Religious Freedom Report 2012: Burma, 20 May 2013, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dliid=208218>

¹⁴⁹ US State Department, International Religious Freedom Report 2012: Burma, 20 May 2013, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dliid=208218>

¹⁵⁰ US State Department, International Religious Freedom Report 2012: Burma, 20 May 2013, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dliid=208218>

¹⁵¹ Mizzima, Religious persecution, rape still evident in Kachin State, 15 February 2013

<http://www.mizzima.com/special/kachin-battle-report/8912-religious-persecution-rape-still-evident-in-kachin-state.html>

¹⁵² Open Doors, Burma, undated <http://www.opendoors.org.nz/persecutedchristians/countryoverview/burma/>

suspected of engaging in anti-government activity, face intrusive monitoring, arrest, mistreatment, violence, destruction or desecration of property, as well as severe restrictions on worship, education and religious activities. Caseworkers should consider each case carefully, on its individual facts, and in light of the latest available country of origin information. The grant of asylum will be appropriate where the individual is able to establish that he or she will be persecuted for his or her faith.

3.13 Departure and Return

3.13.1 As part of their asylum or human rights, some claimants will express a fear of return to Burma due to having left Burma illegally or in breach of the terms of their exit conditions from Burma. Some claimants will also claim that they cannot return to Burma as they do not have the correct documentation and will therefore be entering Burma illegally and will face imprisonment. Some claimants will further claim that the very fact of making an asylum application in the United Kingdom has increased their risk of persecution or ill-treatment.

3.13.2 Treatment. The government restricted foreign travel of political activists, former political prisoners, and some local staff of foreign embassies. Authorities denied passports and exit permission, although unlike in previous years, late in 2012 they began issuing passports to some persons whose requests had previously been denied. On 19 November 2012, the government issued a public statement stating that it had “eliminated a ‘blacklist’ of persons barred from entering or leaving the country based on their suspected political activity” and established a point of contact in the office of the president for citizens and foreigners to inquire about their status.¹⁵³

3.13.3 The Ministry of Home Affairs refused to issue passports to many former political prisoners, including democracy and human rights activists, public interest lawyers, and journalists, preventing them from travelling abroad.¹⁵⁴

3.13.4 In an email to the COI Service dated 21 December 2011, the FCO commented that:
“In recent months a number of NLD members have been able to travel overseas and return to Burma without interference from the authorities. Following the re-registration of the NLD as an official political party in December 2011, and their likely entry into parliament following by-elections in early 2012, it is likely that NLD members, whether active or inactive, will be able to leave and re-enter the country without significant hindrance. It is unlikely, though not impossible, that inactive NLD members would be questioned on re-entering the country.”¹⁵⁵

3.13.5 In March 2011, Thein Sein invited people living in exile to return to the country and take part in the reform process. In September 2012, Kyaw Kyaw Min who accepted Thein Sein’s offer to come home, became the first former-exile to be prosecuted upon his return to Burma. He was convicted to six months imprisonment for contempt of court while representing democracy activists in

¹⁵³ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

¹⁵⁴ Human Rights Watch, World report 2013: Burma, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/burma>

¹⁵⁵ FCO e-mail dated 21 December 2011 (available from COIS on request)

2007. His clients were arrested during a march calling for the release of Daw Aung San Suu Kyi. He was sentenced in absentia in 2008 but on 28 August he was arrested and sent to Insein prison.¹⁵⁶ According to the Asian Human Rights Commission, the conviction of Saw Kyaw Kyaw Min sends a very bad signal, in two respects. First, it signals to Burmese citizens living abroad, who are interested in returning that they have no guarantees against pending criminal cases being brought against them or new ones initiated. Second, it signals to everyone in the country, as well as abroad, that the courts, police and many other key institutions in Burma continue to operate in much the same way as they did prior to the political reforms.¹⁵⁷

3.13.6 Many of those hundreds who have been returning in recent months are former activists and dissidents and represent a potential threat to a supposedly civilian government that is still backed and supported by the military. The numbers of those returning is likely to increase after the government in August 2012 announced it was removing the names of up to 2,000 people who had been on its visa blacklist, among them former US Secretary of State Madeleine Albright, Ms Suu Kyi's two sons and the veteran Australian reporter John Pilger. It is not clear what punishment would befall anyone who breaks the signed agreement. But campaigners say that despite the flurry of reforms enacted by Thein Sein since an election in November 2010 there have been several incidents that might make exiles think twice before returning.¹⁵⁸ In addition to the August 2012 publication of the names of 2,000 people it the government had removed from its immigration 'blacklist', it also announced that it would not allow citizens accused of treason or who had taken asylum in a foreign country to return home. Reportedly about 4,000 other remain on the notorious list. Burmese dissidents cut from the list cautiously welcomed the move, but were wary that the decision could be reversed at any time and without warning by Thein Sein's government even though it is moving to implement political and other reforms. "Whether or not to go back and work inside Burma will be based on each individual's and group's view. The current situation in Burma is not clear—not clear enough to decide. An arrest could take place at anytime," said Aung Htoo, exiled former secretary of the Burma Lawyers Council.¹⁵⁹

3.13.7 In October 2012 The Independent reported that Burmese exiles taking up the invitation of President Thein Sein to return to their country now that a wave of democratic reforms is underway, have been required to sign written undertakings that they will avoid criticising the government or publishing anything that could "harm the state". Activists claim the government's demand reveals that the changes in Burma only go so far. In the summer of 2011 and again this spring, Thein Sein invited the thousands or even millions of Burmese who had fled the country for "various reasons" to return. Confronted by a shortage of educated workers, including teachers and engineers, he said the government would even help them find jobs or develop businesses. But for some exiles the offer is not without strings. A number of Burmese who left the country to avoid repression or else to find work- especially political activists - have been told they need to sign the five-point undertaking before they will be granted a visa. A copy of the

¹⁵⁶ Burma partnership, 27 August – 2 September: Burma: Come Home But Be Quiet, 3 September 2012

<http://www.burmapartnership.org/2012/09/27-august-2-september-burma-come-home-but-be-quiet/>

¹⁵⁷ Asian Human Rights Commission, Burma: The State of Human Rights in 2012, 10 December 2012, page 5

www.humanrights.asia/resources/hrreport/2012/ahrc-spr-004-2012.pdf/at_download/file

¹⁵⁸ The independent, Burma's exiles can return - if they promise to be good, 19 October 2012

<http://www.independent.co.uk/news/world/asia/burmas-exiles-can-return-if-they-promise-to-be-good-8217108.html>

¹⁵⁹ Radio Free Asia, Burma: Blacklist names released, 30 August 2012

<http://www.rfa.org/english/news/burma/blacklist-08302012184840.html>

agreement, obtained and translated by The Independent, says that to pay back the government's "generosity", exiles must agree to (1) avoid actions that would disrespect the government, (2) not to partake in actions that cause public instability, not to motivate people to partake in actions that cause public instability and not to publish anything critical of the government that could destroy the country's stability, (3) avoid contact with illegal organisations, (4) avoid actions that are against the government and (5) show gratitude to the government and live within the law.¹⁶⁰

3.13.8 Burma Campaign UK reported in September 2011, that the UN Special Rapporteur on Human Rights in Burma warned exiles they could be arrested if they do return; stating that the situation was that those who at the moment may decide to express their opinions against authorities may face the risk of being arrested arbitrarily.¹⁶¹

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

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

Illegal Exit

3.13.10 In a letter updated 26 June 2010, originally dated 15 August 2007, the Foreign and Commonwealth Office (FCO) at the British High Commission, Rangoon, stated that there were three ways a Burmese citizen can legally exit Burma:

- "a) holding a valid passport and valid departure papers (known as 'D-forms')
- b) at legal border crossing points, either with a passport and D-form or with a border crossing card (which you can receive at the border and requires the return of the citizen within 24 hours).
- c) We have heard that the Burmese authorities have recently started issuing 3-year temporary passports at particular crossing points (Myawaddy and Kawthoung), as part of their policy to manage the flow of economic migrants crossing the border. We are still trying to confirm this information."¹⁶²

¹⁶⁰ The independent, Burma's exiles can return - if they promise to be good, 19 October 2012

<http://www.independent.co.uk/news/world/asia/burmas-exiles-can-return--if-they-promise-to-be-good-8217108.html>

¹⁶¹ Burma Campaign UK, Burma Briefing No.15, Political events in Burma: New or recycled? September 2011

<http://burmacampaign.org.uk/images/uploads/15-Political-Events-in-Burma-New-or-Recycled.pdf>

¹⁶² FCO letter dated 26 June 2010 (available from COIS on request)

3.13.11 The FCO letter of 26 June 2010 also noted that “all Burmese citizens exiting Burma legally have to receive an exit stamp. If they are travelling by air, the exit stamp will mark the date of departure and the flight number. If they are crossing at legal border immigration points, the exit stamp will mark the date of departure and the name of the border crossing. The exit stamp does not include information about the date required to return. Nor does it include information about the authorised destination, although if travelling by air, the flight number effectively states the initial destination of travel and D forms state the authorised destination¹⁶³

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

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

It seems that this paragraph was amended in 1990, when the expression ‘not exceeding two years, or with fine, or with both’ was replaced by the expression ‘which may extend from a minimum of six months to a maximum of five years or with fine of a minimum of K.1500 or with both.’¹⁶⁴

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

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

¹⁶³ FCO letter dated 26 June 2010 (available from COIS on request)

¹⁶⁴ Burma Immigration (Emergency Provisions) Act, 1947 [Myanmar], Burma Act XXXI of 1947, 13 June 1947, <http://www.unhcr.org/refworld/docid/3ae6b4fa18.html> and The State Law and Order Restoration Council, Law Amending the Myanmar Immigration (Emergency Provisions) Act, 1947 (The State Law and Order Restoration Council Law No. 2/90) (22 January 1990) <http://www.unhcr.org/refworld/pdfid/3edbb3a94.pdf>

People who return to Burma without a valid passport

- 3.13.14** Under the terms of the Burma Immigration (Emergency Provisions) Act of 1947, section 3 sub section 2, 'no citizen of the Union of Burma shall enter the Union without a valid Union of Burma passport, or a certificate in lieu thereof, issued by a competent authority'¹⁶⁵ and, if a citizen violates this provision, he is automatically liable to 'be punished with imprisonment for a term which may extend from a minimum of six months to a maximum of five years or with fine of a maximum of K.1500 or with both' under the terms of section 13 sub section 1 of the same Act.¹⁶⁶
- 3.13.15** A Foreign and Commonwealth Official (FCO) official at the British Embassy in Burma stated, with regards to a certificate of identity, in a letter dated 2 February 2011, that: A person holding a certificate of identity will be able to travel (e.g. buy plane tickets etc) to Burma. On arrival they are likely to be subjected to questioning from immigration authorities over the lack of passport. This could include being taken to an interrogation centre, where practices such as sleep and food deprivation are known to have occurred, although not necessarily. If no evidence of past crimes or political activity is found, then no action will be taken. A person with only a Myanmar ID card would not be able to buy plane tickets etc. If they arrived at Yangon airport they would certainly be held for questioning, as above, and, even if no charges were held against him/her, they would not be permitted to hold a passport again in the future (unless they have connections/give sufficient bribes etc). Questions would be asked about how they had left Burma in the first place, if found to have exited illegally they could be charged under the illegal immigration law and subject to a prison sentence.¹⁶⁷

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.13.16 Conclusion** HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012 found that a Burmese citizen is in general at real risk of imprisonment in conditions which are reasonably likely to violate his rights under article 3 of the ECHR if he is returned to Burma from the United Kingdom without being in possession of a valid Burmese passport and that it is not reasonably likely that a Burmese citizen in the United Kingdom will be issued with a passport by the Burmese authorities in London, unless he is able to present to the Embassy an expired passport in his name.
- 3.13.17** If the claimant returns to Burma without a valid passport then he/she is likely to be detained and imprisoned under the provisions of the Burma Immigration (Emergency Provisions) Act 1947 section 13(1). Therefore claimants who do not

¹⁶⁵ Burma Immigration (Emergency Provisions) Act, 1947 [Myanmar], Burma Act XXXI of 1947, 13 June 1947, <http://www.unhcr.org/refworld/country,,NATLEGBOD,,MMR,,3ae6b4fa18,0.html>

¹⁶⁶ The State Law and Order Restoration Council, Law Amending the Myanmar Immigration (Emergency Provisions) Act, 1947, (The State Law and Order Restoration Council Law No. 2/90) (22 January 1990) <http://www.unhcr.org/refworld/pdfid/3edbb3a94.pdf>

¹⁶⁷ FCO letter dated 2 February 2011 (available from COIS on request)

have a valid passport or are unable to acquire a replacement passport are likely to face imprisonment on return to Burma. While this is a criminal and not a political act and would not in itself engage the UK's obligations under the 1951 Refugee convention a grant of Humanitarian Protection will usually be appropriate as prison conditions in Burma are generally considered to breach Article 3 of the ECHR.

Risk on return to failed asylum seekers

3.13.18 As outlined above, claimants who have left Burma illegally or who cannot be returned on a valid passport will be imprisoned if returned to Burma in conditions which are reasonably likely to violate his rights under article 3 of the ECHR. HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012 found that if it comes to the attention of the Burmese authorities that the person who has left or attempts to enter Burma illegally is also a failed asylum seeker that is reasonably likely to have a significant effect upon the length of the prison sentence imposed for his illegal exit and/or entry. To return such a person from the United Kingdom would accordingly be a breach of Article 33 of the Refugee Convention. Therefore, if it appears from the individual facts and circumstances of a case that if returned the Burmese authorities will be aware that the claimant is a failed asylum seeker, bearing in mind that the person is highly likely to be interrogated on return then a grant of asylum will be appropriate.

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

Legal exit and return

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

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

3.14 Prison conditions

- 3.14.1** Applicants may claim that they cannot return to Burma due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Burma are so poor as to amount to torture or inhuman treatment or punishment.
- 3.14.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.
- 3.14.3 Consideration.** Although conditions in some areas reportedly improved, prison and particularly labour camp conditions continued to be harsh and life-threatening. Prison food, clothing, and medical supplies were scarce and of poor quality. Bedding often was inadequate, sometimes consisting of a single mat, wooden platform, or laminated plastic sheet on a concrete floor. Prisoners did not have access to potable water. In many cases family members supplemented prisoners' official rations with medicine and basic necessities. Inmates reportedly paid wardens for basic necessities including clean water, prison uniforms, plates, cups, and utensils.¹⁶⁸
- 3.14.4** The Correctional Department operated an estimated 42 prisons and more than 100 labour camps. A human rights group and prominent international NGO estimated there were approximately 65,000 prisoners, 57,000 male and 8,000 female. The number of juvenile detainees was estimated to be a few hundred. Except for Insein Prison, the country's largest prison, overcrowding reportedly was minimal, as authorities were said to transfer prisoners to labour camps as a space-saving measure.¹⁶⁹
- 3.14.5** Pretrial detainees were held together with convicted prisoners, and political prisoners were occasionally held together with common criminals. Reports claimed that political prisoners faced better treatment in 2012 than in previous years.¹⁷⁰
- 3.14.6** Detainees were unable to access adequate medical care; in many respects this was true of the general population as well. Prisoners suffered from health problems including malaria, heart disease, high blood pressure, tuberculosis, skin diseases, and stomach problems--the result of unhygienic conditions and spoiled food. HIV/AIDS infection rates in prisons reportedly were high due to communal use of syringes for medical injections and sexual abuse by infected prisoners. Former prisoners reported that prison authorities designated some long-term prisoners as unofficial "wardens" to supervise and control other prisoners. Prison authorities reportedly gave these wardens control of incarcerated youths for sexual exploitation or for transfer to other prisoners in exchange for bribes. The sexual abuse by these wardens of prisoners as young as 15 and 16 contributed to the

¹⁶⁸ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

¹⁶⁹ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

¹⁷⁰ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

high rates of HIV/AIDS infection. Former prisoners also complained of being held in aging, poorly maintained physical structures that provided no protection from the elements and were infested with rodents, snakes, bacteria, and mould.¹⁷¹

- 3.14.7** There were reports of custodial deaths, including the 12 February 2012 death of a man from Rangoon's Hlaing Tharyar township. Media sources, human rights activists, and lawyers said that the man died in Insein Prison one day after his transfer to the prison from a local police station where he had been physically abused during two days of interrogation.¹⁷²
- 3.14.8** There were some alternatives to incarceration for nonviolent offenders, including fines and "community arrests" requiring convicted persons to stay within their community and report regularly to authorities. There were no rehabilitation programs. Prisoners and detainees had access to visitors; family members generally were allowed one or two visits per month. Prisoners and detainees sometimes could submit complaints to judicial authorities without censorship or negative repercussion. However, not all prisoners were allowed to worship freely. Imprisoned monks reported that authorities denied them permission to keep Buddhist Sabbath (Uposatha), wear robes, shave their heads, or eat on a schedule compatible with the monastic code. Authorities generally did not investigate credible allegations of inhumane conditions.¹⁷³
- 3.14.9** During 2012 the government did not permit media or other independent groups to monitor prison conditions. In November 2012 the government made a public commitment to restore unfettered International Committee of the Red Cross (ICRC) access to prisons and prisoners, but unfettered access had not been granted by year's end.¹⁷⁴
- 3.14.10** During 2012 the government allowed ICRC officials to conduct water and sanitation projects in three major prisons and agreed to expand the reach of the project to cover additional prisons.¹⁷⁵
- 3.14.11** In March 2013, the Special Rapporteur on the Situation of Human Rights in Myanmar stated that he continued to be concerned about the ongoing practice of torture happening in places of detention in Myanmar.¹⁷⁶ According to the Asian Legal Resource Centre, torture is not confined to political prisoners, but rather is systematic and ongoing.¹⁷⁷
- 3.14.12** Local political prisoner networks estimate that there are around 250-350 political prisoners remaining in jail, although there is no consensus on precise figures. On 18 November 2012, following President Barack Obama's visit, the Burmese

¹⁷¹ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

¹⁷² U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

¹⁷³ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

¹⁷⁴ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

¹⁷⁵ U.S. Department of State, 2012 Human Rights Report: Burma, 19 April 2013 Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204190>

¹⁷⁶ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 6 March 2013 paragraph 11

<http://www.unhcr.org/refworld/docid/513f10a37e.html>

¹⁷⁷ UN Human Rights Council, Written statement submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status; Myanmar: Savage torture in ordinary criminal cases, 13 February 2013 http://www.ecoi.net/file_upload/1930_1363189680_g1310996.pdf

government announced that it would allow the International Committee of the Red Cross to have full access to its jails. The FCO quarterly summary states that the UK Government continues to urge for all remaining political prisoners to be released, and welcomes the establishment of a representative and independent Investigation Committee to oversee the remaining cases. The FCO will continue to work with the Burmese government to ensure that it meets its obligations under international law related to this issue.¹⁷⁸

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

4. Minors claiming in their own right

4.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to and it is appropriate for the minor to return to them; or (b) there are adequate alternative reception and care arrangements. Caseworkers should refer to the Asylum Instruction: [Processing an Asylum Application from a Child](#), which is the main guidance document on UASC return consideration.

4.2 Caseworkers should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

4.3 At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in Burma. Those who cannot be returned should be considered for leave as a UASC as set out in the relevant [Asylum Instruction](#).

5. Medical treatment

5.1 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).

5.2 The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the

¹⁷⁸ FCO, Quarterly updates; Burma 31 December 2012 <http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/burma/quarterly-updates-burma/>

country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

- 5.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
- 5.4** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 5.5** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave. Caseworkers must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

6. Returns

- 6.1** There is no policy which precludes the enforced return to Burma of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 6.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 6.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 6.4** Burmese nationals may return voluntarily to any region of Burma at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving

the UK under one of the Assisted Voluntary Return (AVR) schemes.

- 6.5** The AVR scheme is implemented on behalf of UKBA by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Burma. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Burmese nationals wishing to avail themselves of this opportunity for assisted return to Burma should be put in contact with Refugee Action Details can be found on Refugee Action's web site at: www.choices-avr.org.uk.

**Country Specific Litigation Team
Operational Policy and Rules Unit
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