



RESPONSES TO INFORMATION REQUESTS (RIRs)

[New Search](#) | [About RIR's](#) | [Help](#)

07 August 2007

MMR102582.E

Myanmar: Treatment of failed refugee claimants who return to Myanmar, particularly those who engaged in political activities while outside Myanmar (2005 - August 2007)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

An April 2007 United Kingdom (UK) Border and Immigration Agency Operational Guidance Note indicates that according to the UK Foreign and Commonwealth Office, those who return to Myanmar [Burma] illegally without a valid passport are subject to "substantial prison sentences" and those who are recognized as political activists face additional charges and severe sentences of up to 30-40 years (UK 26 Apr. 2007, Para. 3.10.7). The same source notes that Myanmar authorities keep detailed records of people legally leaving Myanmar through the use of exit stamps and would thus be likely to know if someone returning had left Myanmar illegally (ibid., Para. 3.10.15). In addition, the Operational Guidance Note states that "[a]ny Burmese citizen who leaves Burma illegally is likely to be detained and imprisoned if returned to Burma" (ibid.). Similarly, Amnesty International (AI) reports that "[f]orcibly returned asylum-seekers face arrest and interrogation under torture" (27 June 2007). The UK Asylum and Immigration Tribunal (AIT) found in a case heard in November 2005 that

if it comes to the attention of the Burmese authorities that a person who left Burma illegally or who returned without the correct documentation is a failed asylum seeker, that it is reasonably likely to have a significant effect upon the length of the prison sentence imposed for his illegal exit and/or entry. (UK 26 Apr. 2007, Para. 3.10.13)

However, the AIT adds that those who exit and enter Myanmar legally may not face "persecution or ill-treatment" upon returning to Myanmar even if the authorities believe that they made a claim for asylum, unless they are considered a political opponent (ibid., Para. 3.10.19).

A projects officer with the Asian Legal Resource Centre (ALRC), an non-governmental organization (NGO) that has general consultative status with the Economic and Social Council of the United Nations (UN 12 Feb. 2004; ALRC 13 Nov. 2001) and that monitors human rights cases in Myanmar (ibid. 30 July 2007), provided the following information to the Research Directorate in correspondence dated 30 July 2007:

[I]t is the position of the ALRC that failed refugee claimants, and in particular those who have engaged in political activities while outside of Myanmar, would have a well-founded fear of persecution if they are repatriated to that country. We have established this position from observation of a number of cases where persons who were repatriated under such circumstances were arrested or disappeared from the airport upon arrival. We have also assisted in obtaining refugee status through the good offices of the UNHCR for a number of other persons on these grounds.

It is important to understand that the nature of the state in Myanmar is highly arbitrary, and therefore any decisions made concerning repatriations to that country from Canada should be done

with extreme caution. Two persons with apparently similar circumstances may be treated completely differently by the Myanmar authorities, which do not operate according to the rational methods that may be found in established and organised jurisdictions. Thus, it should not be imputed from one case -i.e. where someone is able to return home without facing threats - that the same will happen in another, or at another time.

The following information was provided to the Research Directorate by a Country Analyst for Asia of the Internal Displacement Monitoring Centre (IDMC) in correspondence dated 27 July 2007. The Country Analyst specified that the information provided was her own viewpoint based on her extensive experience covering Myanmar.

[T]he situation for returnees varies depending on a number of factors. It is also difficult to obtain information on the conditions of failed refugee claimants as once back in Burma they have very limited means of communicating with outsiders (all phone calls and emails inside Burma are monitored; yahoo and hotmail are banned, so people have to rely on state run email domains which are very closely scrutinized).

What we do know is that there are cases when people have faced severe repercussions after return. One well known case is that of a Burmese ethnic man, from the Chin minority, whose name is Stanley Van Tha. After his asylum claim was rejected by Swiss authorities, Stanley Van Tha was deported under Swiss police escort to Rangoon airport on 15 April 2004. He was arrested upon arrival and detained in Insein jail. On 17 August 2004, he was sentenced to 19 years imprisonment by the Rangoon Eastern District Court (2004, Criminal Case No. 38):

- A 7-year sentence under the Burma Emergency Act of 1950, Article 5(J), Stanley Van Tha had claimed asylum in Switzerland. The court ruled that he had acted to undermine the security of the Burmese Union and the restoration of law and order, an offence under s. 5(j) of the Emergency Provisions Act, 1950. He had travelled illegally from Burma to Bangkok, and then from Bangkok to Zurich, where he had claimed asylum and used a letter of recommendation he had requested from a political activist recognized as a refugee in the United States. The court based its reasons for this conviction solely on those events. It did not make any finding that Mr. Van Tha had engaged in political activities inside or outside Burma. He was sentenced to seven years imprisonment for this offence, the maximum permitted.

- A 7-year sentence under the Penal Code Article 468 as he was found guilty of forging documents since his passport included stamps which were not original. These stamps were a Burmese exit stamp and forged visa. According to the judgment, the Burmese authorities keep lists of those who leave Burma on a properly issued exit stamp.

- A 5-year sentence under the Burma Immigration Act of 1947, Section 13(1) for illegal entry into the Union of Burma. This was despite the fact that Mr. Van Tha was in possession of a passport issued in his own name. (27 July 2007)

The UK Operational Guidance Note corroborates the fact that Stanley Van Tha was sentenced to 19 years imprisonment upon being returned to Myanmar by Swiss authorities after his refugee claim was rejected in Switzerland (26 Apr. 2007, Para. 3.10.5).

A program manager with extensive experience on Myanmar who works for Inter Pares, a registered Canadian charity that promotes humanitarian assistance and human rights protection (25 Sept. 2006), provided the following information to the Research Directorate during a telephone interview on 27 July 2007. The Program Manager explained that a Myanmar national who is a business person or who is part of the regime or closely connected to it would be less likely to have problems upon returning to Myanmar after a claim for refugee status was denied. Yet, the Program Manager added that it is very difficult to get information on the treatment of failed refugee claimants who return to Myanmar and that she has not heard of any specific case where a Myanmar national was returned to Myanmar after his or her claim for refugee status was rejected, except for the case of Stanley Van Tha.

An official from the Canada Border Services Agency (CBSA) provided the following information to the Research Directorate in correspondence dated 13 December 2005:

The removal from Canada of any inadmissible person falls under the purview of the Canada Border Services Agency (CBSA)... At no point during the removal process are foreign authorities informed that an individual has made a refugee claim in Canada. To support a request for a Travel Document

from a foreign embassy or consulate, a removal order is provided as it confirms the CBSA's legislative requirement to seek the cooperation of a foreign government in issuing a Travel Document. A removal order contains no information regarding an application for protection.

Additional information on the treatment of failed refugee claimants who return to Myanmar could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

References

Amnesty International (AI). 27 June 2007. "Malaysia: Fear of Forcible Return/III-Treatment." (ASA 28/001/2007) <<http://web.amnesty.org/library/Index/ENGASA280012007?open&of=ENG-MYS>> [Accessed 1 Aug. 2007]

Asian Legal Resource Centre (ALRC). 30 July 2007. Correspondence from a projects officer.

_____. 13 November 2001. "Background of ALRC." <<http://www.alrc.net/doc/mainfile.php/background/2/>> [Accessed 30 July 2007]

Canada. 13 December 2005. Canadian Border Services Agency (CBSA). Correspondence from an official.

Country Analyst for Asia, Internal Displacement Monitoring Centre (IDMC). 27 July 2007. Correspondence.

Inter Pares. 27 July 2007. Telephone interview with a program manager.

United Kingdom (UK). 26 April 2007. Home Office. Border and Immigration Agency. "Operational Guidance Note: Burma." <<http://www.ind.homeoffice.gov.uk/documents/countryspecificasylumpolicyogns/burmaogn?view=Binary>> [Accessed 26 July 2007]

United Nations (UN). 12 February 2004. Economic and Social Council. "Written Statement Submitted by the Asian Legal Resource Centre." (E/CN.4/2004/NGO/29) <<http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/29d6c8298a951ceec1256e4d00473da0?Opendocument>> [Accessed 30 July 2007]

Additional Sources Consulted

Oral sources: The International Organization for Migration (IOM), Rights and Democracy, a consultant with the Irish Centre for Human Rights and International Institute for Criminal Investigation and Refugees International did not provide information within the time constraints of this Response.

The United States Campaign for Burma did not have information on the subject.

Internet sites, including: Amnesty International, Canadian Centre for Victims of Torture (CCVT), European Country of Origin Information Network (ecoi.net), Freedom House, Human Rights Watch (HRW), Internal Displacement Monitoring Centre (IDMC), International Organization for Migration (IOM), Mizzima News, Myanmar Digest, *The Myanmar Times and Business Review* [Rangoon], Office of the United Nations High Commissioner for Human Rights (OHCHR), Office of the United Nations High Commissioner for Refugees (UNHCR), Refugees International, United Kingdom Foreign and Commonwealth Office (FCO), United States Campaign for Burma, World News Connection.


[Top of Page](#)

[Important Notices](#)