

GUIDANCE NOTE ON THE INTERNATIONAL PROTECTION NEEDS OF PEOPLE FLEEING MYANMAR

May 2024

Introduction

1. Political reforms starting in 2010 led to the establishment of a mixed military-civilian government in Myanmar in 2011, as the country embarked on a transition to democracy after decades of military rule.¹ General elections held in 2015 were a milestone in the transition process.² At the same time, the military retained significant political power through the 2008 constitution, which reserved key ministries and parliamentary seats for military appointees.³ The complexities of Myanmar's political landscape were underscored by persisting ethnic conflicts, human rights abuses, and challenges to minority and nationality rights, culminating in 2016-2017 in large-scale violence and human rights violations against members of the stateless Rohingya ethnic minority, forcing hundreds of thousands of them to flee their homes.⁴
2. The victory by the National League for Democracy (NLD) in the 2020 general elections was contested by the military based on allegations of electoral fraud.⁵ On 1 February 2021, the military deposed the NLD government, declared a state of emergency, and assumed all judicial, administrative, and legislative powers through the State Administration Council (SAC).⁶ An alliance of NLD politicians, activists and representatives of several ethnic minority groups formed an alternative National Unity Government (NUG) in exile.⁷ While segments of the population took to the streets and engaged in a civil disobedience movement against these developments, the military clamped down on the protests.⁸

Security and Human Rights Situation

3. The state of emergency imposed by the military in February 2021 remains in place, following a series of six-month extensions, most recently on 31 January 2024. Under a Martial Law Order issued in March 2021, civilians can be tried by military tribunals for a wide range of offences committed in the townships where martial law applies.⁹ As of March 2024, martial law applies in 61 out of 330 townships, affecting more than 8.2 million people.¹⁰ According to the UN High Commissioner for Human Rights, as of March 2024 the killing of more than 4,603 civilians by the military had been documented since February 2021,

¹ Bertelsmann Stiftung, *BTI 2024 Country Report Myanmar*, 19 March 2024, www.ecoi.net/en/document/2105929.html.

² The Carter Center, *Myanmar: 2015 General Election Final Election Report*, 9 January 2017, <https://electionstandards.cartercenter.org/2017/01/09/myanmar-final-election-report/>.

³ International Institute for Democracy and Electoral Assistance, *A New Constitution for Myanmar: Towards Consensus on an Inclusive Federal Democracy*, 2022, www.idea.int/sites/default/files/publications/a-new-constitution-for-myanmar.pdf, pp. 13-14.

⁴ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights: Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar*, A/HRC/32/18, 20 June 2016, <https://reliefweb.int/report/myanmar/report-united-nations-high-commissioner-human-rights-situation-human-rights-rohingya>.

⁵ Reuters, *Crisis in Myanmar after Army Alleges Election Fraud*, 1 February 2021, www.reuters.com/article/us-myanmar-politics-explainer/explainer-crisis-in-myanmar-after-army-alleges-election-fraud-idUSKBN2A113H/.

⁶ Bertelsmann Stiftung, *supra* footnote 1.

⁷ Wilson Center, *Myanmar's National Unity Government and Its Prospects for Military Victory*, 22 June 2021, www.wilsoncenter.org/blog-post/myanmars-national-unity-government-and-its-prospects-military-victory.

⁸ OHCHR, *Myanmar: UN Human Rights Expert Issues Report and Urges Decisive, Unified Action to Put an End to Brutality*, 4 March 2021, www.ohchr.org/en/press-releases/2021/03/myanmar-un-human-rights-expert-issues-report-and-urges-decisive-unified.

⁹ Bertelsmann Stiftung, *supra* footnote 1.

¹⁰ The Irrawaddy, *Number of Townships Placed Under Martial Law by Myanmar Junta Rises to 61*, 5 March 2024, www.irrawaddy.com/news/burma/number-of-townships-placed-under-martial-law-by-myanmar-junta-rises-to-61.html. For a map of all townships in Myanmar, see Myanmar Information Management Unit, *Myanmar States/Regions and Townships*, 17 November 2023, <https://themimu.info/news/updated-mimu-country-maps-0>.

while more than 20,000 individuals remained in detention for political reasons.¹¹ Some detainees have been sentenced to death.¹² Some of those detained have allegedly been subjected to torture and other forms of ill-treatment, including beatings and gender-based violence, which in some cases has resulted in the death of the individuals concerned.¹³

4. In the last quarter of 2023, the conflict involving the military, ethnic armed groups (EAGs), and People's Defence Forces (PDFs), the military wing of the NUG, significantly escalated, impacting regions in the northeast, northwest, southeast, as well as Rakhine in the west.¹⁴ Some of the EAGs, notably the Three Brotherhood Alliance and their allies, launched simultaneous military operations across various fronts, leading to intense clashes with the Myanmar military.¹⁵ In November 2023 the year-long informal ceasefire between the military and the Arakan Army collapsed, triggering heightened hostilities.¹⁶ Urban areas faced heavy fighting, with shelling and aerial bombardment resulting in civilian casualties, disruption of essential services, and significant displacement.¹⁷ In central Myanmar, the PDFs have intensified their attacks on the military, while the Arakan Army has seized military bases in western areas neighbouring India and Bangladesh, and Karen groups have launched attacks on critical highways vital for cross-border trade with Thailand.¹⁸ By December 2023, fighting between the military and EAGs and PDFs persisted across much of the country.¹⁹ Civilians have borne the brunt of the violence, with the military targeting civilians and civilian infrastructure using indiscriminate aerial bombardments and artillery strikes.²⁰
5. On 10 February 2024 the military announced the entry into force of the People's Military Service Law (PMSL), first adopted under military rule in 2010.²¹ According to the law, male citizens aged 18 to 35 and female citizens aged 18 to 27 are subject to mandatory conscription for up to 24 months, extendable to 5 years during a state of emergency.²² "Professional" men and women, encompassing doctors, engineers, technicians, as well as individuals with any form of specialized expertise, can be conscripted up to the ages of 45 and 35 respectively.²³ While the law provides for some exemptions and grounds for postponement of military service, those who evade military service are subject to prison sentences of up to five years or a fine or both.²⁴ The military announced that the first round of conscription would start after the Thingyan festival in mid-April 2024, prompting many persons within the age brackets specified in the PMSL to attempt to leave the country.²⁵ By the end of March 2024 there were reports of individuals being called up and lists of potential conscripts being prepared by local

¹¹ OHCHR, *Myanmar: Human Rights Situation Has 'Morphed into a Never-Ending Nightmare,' Says Türk*, 1 March 2024, www.ohchr.org/en/statements-and-speeches/2024/03/myanmar-human-rights-situation-has-morphed-never-ending-nightmare.

¹² UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, 9 March 2023, <https://undocs.org/en/A/HRC/52/66>, para. 25.

¹³ OHCHR, *supra* footnote 11; OHCHR, *Myanmar: Human Rights Situation Worsens as Military Lashes out Indiscriminately amid Losses – Türk*, 30 January 2024, www.ohchr.org/en/press-releases/2024/01/myanmar-human-rights-situation-worsens-military-lashes-out-indiscriminately. For reports of sexual violence and other forms of gender-based violence and harassment, see UN Human Rights Council, *supra* footnote 12, para. 72.

¹⁴ OCHA, *Myanmar: Intensification of Clashes Flash Update No. 4 (As of 14 November 2023)*, 15 November 2023, <https://reliefweb.int/report/myanmar/myanmar-intensification-clashes-flash-update-4-14-november-2023-enmy>.

¹⁵ "On 27 October 2023, the Three Brotherhood Alliance—comprised of the Arakan Army, Ta'ang National Liberation Army (TNLA), and Myanmar National Democratic Alliance Army (MNDAA)—launched Operation 1027, targeting SAC bases in the region." UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar (advance unedited version)*, 14 March 2024, www.ohchr.org/en/documents/thematic-reports/ahrc5565-situation-human-rights-myanmar-report-special-rapporteur, para. 12.

¹⁶ OCHA, *supra* footnote 14; International Crisis Group (ICG), *A New Escalation of Armed Conflict in Myanmar*, 17 November 2023, www.crisisgroup.org/asia/south-east-asia/myanmar/new-escalation-armed-conflict-myanmar.

¹⁷ OCHA, *Myanmar Humanitarian Update No. 35 | 2023 Year in Review*, 12 January 2024, www.unocha.org/publications/report/myanmar/myanmar-humanitarian-update-no-35-2023-year-review; OCHA, *supra* footnote 14.

¹⁸ ICG, *Crisis Watch Monthly Updates: Myanmar*, April 2024 and earlier, [www.crisisgroup.org/crisiswatch/database?location\[\]=45](https://www.crisisgroup.org/crisiswatch/database?location[]=45).

¹⁹ OCHA, *Myanmar: Intensification of Clashes Flash Update No. 10 (As of 15 December 2023)*, 8 February 2024, <https://reports.unocha.org/en/country/asia-pacific/card/1luXfAkVWV/>; see also, International Institute for Strategic Studies, *Myanmar Conflict Map*, January 2024, <https://myanmar.iiss.org>.

²⁰ Action on Armed Violence, *Myanmar: 12 Killed and at Least 30 Injured by Artillery Shelling in Sittwe's Myoma Market, Rakhine*, 3 March 2024, <https://reliefweb.int/report/myanmar/myanmar-12-killed-and-least-30-injured-artillery-shelling-sittwe-myoma-market-rakhine>; see also OCHA, *supra* footnote 19; and OHCHR, 30 January 2024, *supra* footnote 13.

²¹ OHCHR, *Myanmar: Military Junta Even Greater Threat to Civilians as it Imposes Military Draft, Warns UN Expert*, 21 February 2024, www.ohchr.org/en/press-releases/2024/02/myanmar-military-junta-even-greater-threat-civilians-it-imposes-military.

²² Republic of the Union of Myanmar, *People's Military Service Law (State Peace and Development Council Law No. 27/ 2010)*, 4 November 2010, Articles 2(b), 3 and 4. A non-official English translation of the law is available at www.asianlii.org/mm/legis/laws/pmslpadcln272010638/.

²³ *Ibid.*, Article 2(d).

²⁴ *Ibid.*, Articles 23 and 24. For exemption from military service see Article 22; for postponement of military service see Article 15.

²⁵ OHCHR, *supra* footnote 21.

administrators.²⁶ Even before the announcement of the entry into force of the PMSL, forced recruitment by the military was already reported to be widespread, including through kidnapping of civilians.²⁷ The army is reported to use villagers as porters and human shields.²⁸

6. Other armed groups are also reported to have intensified their recruitment efforts, with recent reports highlighting the imposition of quotas by EAGs for the supply of recruits from villages,²⁹ as well as incidents of extortion, sexual violence, abduction, and forced recruitment of civilians fleeing conflict zones and seeking refuge in areas controlled by EAGs.³⁰ Concerns persist regarding the recruitment of children³¹ and gender-based violence³² by all parties to the conflict. Reports express particular concerns with regard to the situation of the Rohingya, a stateless Muslim ethnic minority from Myanmar.³³

Humanitarian Situation

7. The humanitarian situation inside Myanmar has further deteriorated since the military take-over in February 2021, with one-third of the population in need of humanitarian aid.³⁴ The Chin, Magway, Mandalay, Rakhine, and Sagaing States/Regions are still grappling with the aftermath of Cyclone Mocha that struck in May 2023.³⁵ The renewed fighting, reduced agricultural production, record high food prices and the effects of Cyclone Mocha have all contributed to high levels of food insecurity, with 12.9 million people in urgent need of food assistance.³⁶ There are significant obstacles to access to health care, particularly among rural and marginalized communities, due to a shortage of health workers, inadequate infrastructure, and shortages of essential medicines and equipment.³⁷ The surge in conflict-induced displacement and the fragile security environment have continued to disrupt education services over the past three years, which will have long-term impacts on Myanmar's children.³⁸ By the end of 2023, approximately 4.5 million children needed support for education in emergencies, and an estimated one-third of school-age children were not enrolled in any form of learning.³⁹ Humanitarian access has been affected by the security situation,⁴⁰ as well as by arbitrary arrests of humanitarian workers by various parties to the conflict, with 142 such arrests between

²⁶ The Irrawaddy, *Myanmar Resistance Groups Assassinate 10 Junta Officials Linked to Forced Conscription*, 26 March 2024, www.irrawaddy.com/news/burma/myanmar-resistance-groups-assassinate-10-junta-officials-linked-to-forced-conscription.html.

²⁷ UN Human Rights Council, *supra* footnote 15, paras 40-42; OHCHR, *supra* footnote 21.

²⁸ UN News, *Myanmar: Mandatory Conscription Shows Junta's 'Desperation', Rights Expert Says*, 21 February 2024, <https://news.un.org/en/story/2024/02/1146802>.

²⁹ See for example: ICG, *Treading a Rocky Path: The Ta'ang Army Expands in Myanmar's Shan State*, 4 September 2023, www.crisisgroup.org/asia/south-east-asia/myanmar/b177-treading-rocky-path-taang-army-expands-myanmars-shan-state.

³⁰ HRW, *World Report 2024: Myanmar*, 11 January 2024, www.hrw.org/world-report/2024/country-chapters/myanmar; HRW, *Myanmar: Armed Group Abuses in Shan State*, 21 December 2023, www.hrw.org/news/2023/12/21/myanmar-armed-group-abuses-shan-state.

³¹ UN General Assembly, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2023, <https://undocs.org/en/A/77/895>, para. 138.

³² HRW, 11 January 2024, *supra* footnote 30.

³³ On the issue of Rohingya being trapped in hostilities between parties, see: OHCHR, 30 January 2024, *supra* footnote 13. Regarding detention and forced recruitment of Rohingya, see: UN, *Statement Attributable to the Spokesperson for the Secretary-General – on Myanmar*, 18 March 2024, www.un.org/sg/en/content/sg/statement/2024-03-18/statement-attributable-the-spokesperson-for-the-secretary-general-myanmar. Regarding allegations of recruitment of Rohingya by the Myanmar military, see: Voice of America, *Video Shows Rohingya Forcibly Recruited Into Myanmar Military*, 14 March 2024, www.voanews.com/a/video-shows-rohingya-forcibly-recruited-into-myanmar-military-17528194.html; On the use of Rohingyas as human shields by EAGs, see: Dhaka Tribune, *The Rohingya in the Shadow of the Arakan Army*, 2 March 2024, www.dhakatribune.com/opinion/longform/340772/the-rohingya-in-the-shadow-of-the-arakan-army. Regarding the living conditions and restrictions to freedom of movement of the Rohingyas in Rakhine state, see: HRW, 11 January 2024, *supra* footnote 30.

³⁴ OCHA, *Myanmar Humanitarian Needs and Response Plan 2024*, December 2023, www.unocha.org/publications/report/myanmar/myanmar-humanitarian-needs-and-response-plan-2024-december-2023-enmy, p. 3.

³⁵ UNDRR, *Extremely Severe Cyclonic Storm Mocha, May 2023, Myanmar: Global Rapid Post-Disaster Damage Estimation (GRADE) Report*, 22 January 2024, www.preventionweb.net/publication/extremely-severe-cyclonic-storm-mocha-may-2023-myanmar-global-rapid-post-disaster-0.

³⁶ OCHA, *supra* footnote 34, pp. 52-54; FAO, *GIEWS Update: The Republic of the Union of Myanmar - The Current Critical Food Insecurity Situation Could Deteriorate in the Second Half of 2023*, 4 August 2023, www.fao.org/documents/card/en/c/cc7195en.

³⁷ OCHA, *supra* footnote 34, pp. 55-57; WHO, *Ensuring "Health for All" in Myanmar: The Need for Urgent Action*, 7 April 2023, www.who.int/myanmar/news/detail/07-04-2023-ensuring-health-for-all-in-myanmar-the-need-for-urgent-action.

³⁸ UNICEF, *Myanmar Humanitarian Situation Report No. 11*, 14 February 2024, www.unicef.org/media/152121/file/Myanmar-Humanitarian-SitRep-End-of-Year-2023.pdf, p. 2.

³⁹ OCHA, *supra* footnote 34, pp. 49-51.

⁴⁰ OCHA, *Lack of Access and Funding Hampering Aid to 18 Million People in Myanmar, UN Humanitarian Chief Martin Griffiths Says Following Visit to the Country*, 17 August 2023, <https://reliefweb.int/report/myanmar/lack-access-and-funding-hampering-aid-18-million-people-myanmar-un-humanitarian-chief-martin-griffiths-says-following-visit-country>.

January and November 2023.⁴¹ In addition, fuel shortages have impaired transportation, telecommunications, agriculture, and industrial sectors.⁴²

Forced Displacement

8. The heightened levels of conflict and violence since October 2023 have led to a substantial increase in the number of internally displaced persons (IDPs) in the country.⁴³ The deteriorating situation has also triggered cross-border movements to neighbouring countries.⁴⁴
9. As of 29 April 2024, a total of 3 million persons were internally displaced in Myanmar, including 2.7 million displaced by conflict and violence since February 2021.⁴⁵ Since 1 February 2021, 125,000 new arrivals from Myanmar have been recorded in the Asia-Pacific region, bringing the total number of those who have fled Myanmar to 1.3 million.⁴⁶ The number of individuals from Myanmar seeking international protection is most likely underreported, due notably to limitations in access to registration.

International Protection Needs

10. Against the background of the intensification of the conflict in Myanmar, the widespread violence, and serious human rights violations committed against civilians by all parties to the conflict, UNHCR continues to call on all States to allow civilians fleeing Myanmar access to their territories, to guarantee the right to seek asylum, and to ensure respect for the principle of *non-refoulement* at all times.⁴⁷ Pushbacks at land and maritime borders are inconsistent with the principle of non-refoulement. UNHCR recalls that the search-and-rescue regime established under international maritime law needs to be implemented consistently with the requirements of international refugee and human rights law. Rescued persons need to be disembarked as soon as possible in a place of safety where their basic human needs can be met, including food, shelter and medical needs.⁴⁸ Individuals forced to flee Myanmar should normally not be detained for reason of their illegal entry or presence.⁴⁹
11. UNHCR calls on States to register all individuals who seek international protection and issue documentary proof of registration to all concerned. To preserve the civilian character of asylum, States would need to assess the situation of arrivals carefully so as to identify those involved in military activities and separate them from the civilian refugee population.⁵⁰

Eligibility for International Refugee Protection

12. All claims of nationals and former habitual residents of Myanmar seeking international protection should be processed in fair and efficient procedures in accordance with international refugee law. Based on recent developments in Myanmar, including the announced entry into force of the PMSL, UNHCR is

⁴¹ OCHA, 12 January 2024, *supra* footnote 17.

⁴² UNICEF, *supra* footnote 38.

⁴³ OCHA, 12 January 2024, *supra* footnote 17, p. 1.

⁴⁴ UNHCR, *Myanmar Emergency Update*, 5 February 2024, <https://data.unhcr.org/en/documents/details/106848>, p. 1.

⁴⁵ UN Myanmar, *Statement by the Resident and Humanitarian Coordinator a.i. for Myanmar: More than 3 Million People Forced to Flee their Homes in Myanmar*, 3 May 2024, <https://reliefweb.int/report/myanmar/statement-resident-and-humanitarian-coordinator-ai-myanmar-3-may-2024>.

⁴⁶ UNHCR Operational Data Portal, *Myanmar Situation* (last updated as of 29 April 2024), <https://data.unhcr.org/en/situations/myanmar>.

⁴⁷ UNHCR, *Legal Considerations on the Roles and Responsibilities of States in Relation to Rescue at sea, Non-refoulement, and Access to Asylum*, 1 December 2022, www.refworld.org/policy/legalguidance/unhcr/2022/en/124184, Section 3.

⁴⁸ *Ibid.*, Section 2.

⁴⁹ Seeking asylum is not an unlawful act. Detention of asylum seekers should always remain a measure of last resort with liberty being the default position. Should detention be considered, it should be defined by law, non-discriminatory and limited in time. It should be necessary, reasonable in all circumstances and proportionate to a legitimate purpose. Procedural safeguards should be in place and the conditions of detention should be humane and dignified with independent monitoring and inspection. Alternatives to detention should always be considered before detention is implemented. See UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention pursuant to its mandate, as contained in the Statute of the Office of the United Nations High Commissioner for Refugees*, 2012, www.refworld.org/policy/legalguidance/unhcr/2012/en/87776.

⁵⁰ UNHCR, *Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum*, December 2018, www.refworld.org/policy/legalguidance/unhcr/2018/en/122651; Executive Committee of the High Commissioner's Programme, *Conclusion on the Civilian and Humanitarian Character of Asylum No. 94 (LIII)* - 2002, 8 October 2002, www.refworld.org/policy/exconcl/excom/2002/en/46718.

concerned about increased international protection needs for people fleeing Myanmar.⁵¹ UNHCR considers that persons who had to flee Myanmar due to the currently prevailing situation of widespread human rights violations in the context of the conflict between the military, EAGs and PDFs, are likely to be in need of international refugee protection under Article 1 of the 1951 Convention Relating to the Status of Refugees (1951 Convention),⁵² or under the broader refugee criteria under UNHCR's mandate,⁵³ or in regional instruments.⁵⁴

13. The 1951 Convention forms the cornerstone of the international refugee protection regime. Accordingly, a sequential approach is preferred, whereby refugee status is initially assessed under the 1951 Convention definition. However, the broader refugee criteria contained in regional instruments may be applied directly when this is more practical and efficient, including in group situations or specific regional contexts, as long as the 1951 Convention standards of treatment apply.⁵⁵ UNHCR stands ready to provide technical assistance and operational support to States to put in place adequate case processing modalities.⁵⁶

Constraints on Assessing International Protection Needs

13. Given the obstacles to information gathering and reporting in Myanmar, UNHCR calls on decision-makers to refrain from drawing adverse inferences from the absence of verified country of origin information to support and corroborate all aspects of the evidence provided by an applicant. In the current context in Myanmar, where access to conflict-affected areas is restricted,⁵⁷ it will frequently be the case that human rights violations and abuses remain undocumented or underreported. The lack of country of origin information describing particular incidents or patterns of violations and abuse should therefore not in itself be a reason to doubt the credibility of the applicant's statements where the applicant's statements are otherwise coherent and consistent.
14. In addition, the humanitarian crisis in Myanmar must not be allowed to overshadow the situation of widespread human rights violations in the country. Individuals fleeing the country may refer in the first instance to their immediate needs for survival as the reason for their flight. This should not preclude a detailed examination of their claim for international protection. With reference to the shared burden of proof, UNHCR calls on decision-makers to ensure that asylum applicants are given an opportunity to provide a full and complete account of the reasons that forced them to flee, including possible fears of persecution upon return.

⁵¹ For guidance on claims for international protection based on military service and forced recruitment, see: UNHCR, *Guidelines on International Protection No. 10: Claims to Refugee Status Related to Military Service within the Context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/13/10/Corr. 1, 12 November 2014, www.refworld.org/policy/legalguidance/unhcr/2014/en/101233.

⁵² UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, UN Treaty Series, Vol. 189, p. 137, www.refworld.org/legal/agreements/unga/1951/en/39821 and UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, UN Treaty Series, Vol. 606, p. 267, www.refworld.org/legal/agreements/unga/1967/en/41400.

⁵³ UNHCR's competence to provide international protection to refugees extends to individuals who are outside their country of origin or of habitual residence and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order. In this regard, see: UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, www.refworld.org/reference/annualreport/unhcr/2005/en/58155; UNHCR, *Note on International Protection*, 7 September 1994, A/AC.96/830, www.refworld.org/policy/unhcrnotes/unhcr/1994/en/39142; UNHCR, *Note on the Mandate of the High Commissioner for Refugees and His Office*, October 2013, www.refworld.org/policy/legalguidance/unhcr/2013/en/94483; UNHCR, *MM (Iran) v. Secretary of State for the Home Department - Written Submission on Behalf of the United Nations High Commissioner for Refugees*, 3 August 2010, C5/2009/2479, www.refworld.org/jurisprudence/amicus/unhcr/2010/en/75841, para. 10.

⁵⁴ Broader refugee criteria under regional instruments include: Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees ("Bangkok Principles")*, 31 December 1966, www.refworld.org/legal/resolution/aalco/1966/en/18604, Article 1(2); Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* ('OAU Convention'), 10 September 1969, 1001 UNTS 45, www.refworld.org/legal/agreements/oaau/1969/en/13572, Article 1(2); Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, *Cartagena Declaration on Refugees*, 22 November 1984, www.refworld.org/legal/resolution/trii/1984/en/64184, Conclusion 3. Applicants in EU Member States may qualify for subsidiary protection: European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast)*, OJ L. 337/9-337/26, 20 December 2011, www.refworld.org/legal/reglegislation/council/2011/en/84781, Articles 2(f), 15.

⁵⁵ UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, www.refworld.org/policy/legalguidance/unhcr/2016/en/113881, para. 88.

⁵⁶ UNHCR, *Aide-Memoire & Glossary of Case Processing Modalities, Terms and Concepts Applicable to RSD under UNHCR's Mandate (The Glossary)*, 2020, www.refworld.org/policy/legalguidance/unhcr/2020/en/119486.

⁵⁷ UN Human Rights Council, *Situation of Human Rights in Myanmar since 1 February 2021*, 15 November 2023, <https://undocs.org/en/A/HRC/53/52>.

Internal Flight or Relocation Alternative

15. In view of the volatility of the situation throughout Myanmar, UNHCR does not consider it appropriate to deny international protection to Myanmar nationals and former habitual residents of Myanmar on the basis of an internal flight or relocation alternative.⁵⁸

Exclusion Considerations

16. Among people fleeing Myanmar there may be individuals who have been associated with acts that bring them within the scope of the exclusion clauses contained in Article 1F of the 1951 Convention. In such cases, it will be necessary to examine carefully any issues of individual responsibility for crimes which may give rise to exclusion from international refugee protection.⁵⁹

Changed Circumstances as a Ground for Fresh or Subsequent Applications or for *Sur Place* Claims

17. UNHCR calls on States to ensure that persons originating from Myanmar who were outside the country but who did not have, until the most recent escalation of the conflict, a need to apply for asylum, are able to lodge a *sur place* claim based on the new risks they may face due to the changed circumstances in the country. UNHCR also calls on asylum States to ensure that nationals and former habitual residents in Myanmar whose claim for international protection was previously rejected are able to lodge a fresh or subsequent claim, on the basis that the current situation in Myanmar amounts to changed circumstances that may give rise to a need for international protection as refugees or otherwise. In light of the primacy of the 1951 Convention, UNHCR calls on asylum States to allow persons originating from Myanmar who received complementary forms of international protection that are not equivalent in terms of legal status and access to rights to refugee protection, to lodge a new claim for refugee protection in light of the changed circumstances in Myanmar.

Statelessness

18. Rohingya individuals will generally meet the definition of a “stateless person” contained in Article 1 of the 1954 Convention relating to the Status of Stateless Persons,⁶⁰ in view of the Myanmar’s citizenship law and its discriminatory application.⁶¹ UNHCR calls on States to ensure that Rohingya individuals are not denied access to asylum procedures, and are accorded the same standard of protection as refugees who have a nationality, and that due consideration is given to their lack of a nationality.

⁵⁸ “Only when the situation of armed conflict and violence and its impact is geographically limited and confined to a specific part of the country would it be relevant to assess whether an internal flight or relocation alternative exists. (...) It would be inappropriate to equate the exercise of a certain administrative authority and control over territory by (...) non-state actors, with national protection provided by a state. Such control is often transitional or temporary and without the range of functions required of a state (...) Specifically, non-state entities and bodies do not have the attributes of a state. Their ability to enforce the law is limited.” UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, www.refworld.org/policy/legalguidance/unhcr/2016/en/113881. See also UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, reissued April 2019, www.refworld.org/policy/legalguidance/unhcr/2019/en/123881, para. 91; UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, www.refworld.org/policy/legalguidance/unhcr/2003/en/32047.

⁵⁹ UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, www.refworld.org/policy/legalguidance/unhcr/2003/en/14733.

⁶⁰ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, UN Treaty Series, Vol. 360, p. 117, 28 September 1954, www.refworld.org/legal/agreements/unga/1954/en/32744.

⁶¹ Socialist Republic of the Union of Burma, *Citizenship Law*, 1982, www.refworld.org/legal/legislation/natlegbod/1982/en/49622. A list of 135 “national races” drawn up by colonial administrators more than 100 years ago was reinstated under military rule and used as the basis of citizenship from 1989. Bertelsmann Stiftung, *BTI 2024 Country Report Myanmar*, 19 March 2024, www.ecoi.net/en/document/2105929.html; and Yangon, Ministry of Information, *State Law and Order Restoration Council Chairman Commander in Chief of the Defence Services General Saw Maung’s Addresses and Discussions in Interview with Foreign Correspondents*, 1989, pp. 182-183 (p. 247 in English translation); “Our Union of Myanmar where 135 national races reside”, *Working People’s Daily* (Burmese edition), 26 September 1990, in ICG, *Identity Crisis: Ethnicity and Conflict in Myanmar*, 28 August 2020, www.crisisgroup.org/asia/south-east-asia/myanmar/312-identity-crisis-ethnicity-and-conflict-myanmar, p. 7 (footnote 33). See also, UNHCR, *The Displaced and Stateless of Myanmar in the Asia-Pacific Region*, January 2021, <https://reporting.unhcr.org/myanmar-displaced-and-stateless-asia-pacific-region>.

Temporary Protection and Stay Arrangements

19. In countries without national asylum systems, UNHCR encourages States to provide a legal basis of stay to people originating from Myanmar, such as forms of temporary protection or other stay arrangements, with appropriate safeguards.⁶² UNHCR commends States that have already introduced such arrangements for Myanmar nationals and former habitual residents, and encourages States to maintain these arrangements, until such time that it can be determined, on the basis of an objective assessment, that the human rights and security situation in Myanmar have durably improved to enable voluntary, safe, and dignified returns. Until such time, persons benefiting from temporary protection or other stay arrangements from Myanmar should have access to basic services and fundamental rights on an equal and non-discriminatory basis, including civil registration,⁶³ access to health care, access to education, family unity, freedom of movement, access to shelter, and the right to work.

Non-Return Advisory

20. As the situation in Myanmar is volatile and may remain uncertain for some time to come, coupled with the humanitarian emergency in the country, UNHCR calls on States to suspend the forcible return of nationals and former habitual residents of Myanmar, including those who have had their asylum claims rejected. The bar on forcible return serves as a minimum standard and needs to remain in place until such time as the security, rule of law, and human rights situation in Myanmar has significantly improved to permit a safe and dignified return of those determined not to be in need of international protection.
21. Myanmar's neighbours have a decades-long history of providing protection and assistance to refugees. UNHCR calls on them to continue upholding their international legal obligations and humanitarian tradition of safeguarding the lives of all those forced to flee. UNHCR and its partners stand ready to step up support to national and local authorities in the region to ensure that refugees receive the protection and assistance they need.

⁶² UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, www.refworld.org/policy/legalguidance/unhcr/2014/en/74916.
⁶³ Ibid.; Executive Committee of the High Commissioner's Programme, *Conclusion on Civil Registration No. 111 (LXIV)-2013*, 17 October 2013, www.refworld.org/policy/exconcl/excom/2013/en/18494.