

**Human Rights Council****Fifty-second session**

27 February–31 March 2023

Agenda item 4

Human rights situations that require the Council's attention**Situation of human rights in Myanmar****Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews****Summary*

Two years after the Myanmar military launched an unconstitutional coup d'état and formed the State Administration Council, the country is in freefall. As opposition groups gain strength and the control of the State Administration Council over territory and the people of Myanmar erodes, the military has doubled down on its brutal tactics, sowing violence and chaos across an ever-widening sphere of conflict. In recent months, the military has stepped up aerial attacks, bombing villages, schools, medical facilities and encampments for internally displaced persons. The campaign of the State Administration Council of mass arson continues, with roughly 58,000 homes and civilian structures burned since the coup. More than 1.3 million people have been displaced in the past two years, and more than 3,000 civilians have been killed.

The State Administration Council continues to suppress all forms of dissent as it attempts to impose a military-dominated future on the people of Myanmar. More than 16,000 political prisoners are now behind bars. The State Administration Council has sought to legitimize its efforts to crush civic space and control local and international organizations by establishing a draconian Organization Registration Law. Despite extending a nationwide state of emergency through July 2023, the junta continues to make plans to hold sham elections in a desperate attempt to claim legitimacy and gain international recognition.

The humanitarian and human rights crisis in Myanmar has had a destabilizing effect on the region. Since the coup, hundreds of thousands of people have fled to neighbouring countries in search of safety and opportunity. Countries and communities hosting refugees from Myanmar deserve credit for offering shelter and support to people who, in many cases, have been literally forced to run for their lives. However, considered in its entirety, the international community's treatment of those fleeing Myanmar has been wholly inadequate. Myanmar nationals in neighbouring countries enjoy few legal protections and face the risk of arrest, detention, deportation, pushbacks at land and sea, and obstruction of their access to the Office of the United Nations High Commissioner for Refugees, refugee status determination and resettlement. Higher income countries have failed to share responsibility for the crisis, offering paltry resettlement quotas and inadequate contributions to humanitarian relief programmes.

* The present report was submitted after the deadline so as to include the most recent information.



In this report, the Special Rapporteur calls on Member States to fulfil their obligations toward people from Myanmar by offering shelter and support, refraining from acts that endanger their human rights and working towards durable solutions for refugees and other Myanmar nationals outside their country.

Contents

	<i>Page</i>
I. Introduction	4
II. Escalating human rights and humanitarian crisis.....	5
A. Attacks on civilians	5
B. Displacement and humanitarian needs	6
C. Arrest and detention	7
D. Civic space and fundamental freedoms	8
E. Plans of the State Administration Council for a sham election	9
III. International response to those fleeing violence and human rights violations in Myanmar.....	9
A. Pushbacks at land borders	10
B. Deportations	12
C. Rohingya continue their flight by land and sea	13
D. Lack of legal protections for refugees	14
E. Arrest and detention	15
F. Visas and resettlement.....	16
G. Access to education, livelihoods, health care and other services	17
H. Humanitarian assistance	18
IV. Recommendations.....	19

I. Introduction

1. Two years after an unconstitutional coup d'état, Myanmar is in the midst of a devastating human rights and humanitarian crisis. The military's systematic attacks on civilians have precipitated a spiral of violence that is gripping the entire country. The State Administration Council, as the junta is known, has hollowed out State institutions, leading to the collapse of government services and the rule of law. The economy of Myanmar has imploded.

2. On 21 December 2022, the Security Council adopted resolution 2669 (2022), in which it called for respect for human rights in Myanmar, an end to violence, the release of political prisoners, and the upholding of "democratic institutions and processes". While the resolution was a clear rebuke to the State Administration Council and an acknowledgment of the dire situation in the country, the Security Council did not invoke its powers under Chapter VII of the Charter of the United Nations to impose a global arms embargo or economic sanctions. Nor did it refer the situation in Myanmar to the International Criminal Court or take other concrete steps to promote democracy and human rights in Myanmar.¹

3. Meanwhile, Member States have failed to act in a principled and strategic manner to isolate and disempower the State Administration Council. Governments that have expressed opposition to the coup and support for the people of Myanmar have not convened a coalition of States to coordinate their actions, as they did in the response to the invasion of Ukraine by the Russian Federation. Important measures taken to date, such as the imposition of sanctions, have been largely disjointed, unevenly enforced and, thus, less effective than they needed to be.

4. Expressions of concern by world leaders do not mitigate the suffering of the people of Myanmar. The military's campaign of terror and violence has intensified, with fighter jets and helicopters indiscriminately bombing and strafing villages and camps for internally displaced persons. Civilians continue to suffer extrajudicial killings, torture, sexual violence and other human rights violations, many of which amount to crimes against humanity and war crimes. Children are suffering.² More than 1.3 million people have been displaced since the coup. Poverty and the obstruction of humanitarian aid by the State Administration Council have left many families standing on the precipice of starvation.

5. It is no surprise that hundreds of thousands of people have decided to seek freedom, safety and opportunity outside Myanmar. According to United Nations figures, approximately 80,000 Myanmar refugees have fled to other countries in the region since the coup. Hundreds of thousands more have utilized regular and irregular pathways to leave the country.

6. The international community's failed response to the crisis in Myanmar extends to Member States' treatment of those fleeing deprivation, violence and human rights violations. Some Governments have forcibly returned refugees and other Myanmar nationals to Myanmar despite the risk of imprisonment, torture or even execution, violating the principle of non-refoulement under international law. Regional Governments have failed to mount an effective response to the perilous boat journeys taken by Rohingya refugees and others, leading to hundreds of preventable deaths at sea. Governments have restricted access of the Office of the United Nations High Commissioner for Refugees (UNHCR) to recent arrivals; arrested, detained and extorted refugees and migrants from Myanmar; obstructed resettlement to third countries; and hindered the delivery of cross-border aid into Myanmar.

7. Paltry refugee resettlement quotas and a weak international refugee system have left the neighbours of Myanmar sheltering refugee populations indefinitely. Member States have underfunded the humanitarian response to the crisis, increasing instability and contributing to displacement and international migration. In March, the World Food Programme (WFP)

¹ See United Nations, "Myanmar: action needed to stop carnage, says UN expert after adoption of Security Council resolution", press release, 22 December 2022. Available at <https://www.ohchr.org/en/press-releases/2022/12/myanmar-action-needed-stop-carnage-says-un-expert-after-adoption-security>.

² See A/HRC/50/CRP.1.

slashed already meagre food rations for Rohingya refugees in Bangladesh by 17 per cent, citing a \$125 million funding shortfall. WFP warned that, absent fresh funding commitments, further rations cuts would be necessary as soon as April. The 2023 Myanmar Humanitarian Response Plan, which describes priorities for humanitarian assistance in the country, was only 2 per cent funded by the end of February.

8. The latter half of the present report focuses on the failing international response to those fleeing violence and human rights violations in Myanmar. The Special Rapporteur calls on the neighbours of Myanmar to fulfil their obligations towards people from Myanmar by ensuring their fundamental rights and refraining from sending anyone back to Myanmar against their will. He urges Member States to work with United Nations agencies, humanitarian organizations and community-based organizations to develop a humane, lawful and rights-based approach to addressing the needs of all Myanmar nationals. He also calls on higher-income countries to do more, increasing refugee resettlement quotas, opening other channels for lawful migration and robustly funding humanitarian initiatives.

9. Senior General Min Aung Hlaing has clearly signalled his intention to escalate indiscriminate violence and unyielding repression in response to growing opposition to military rule. Despite the military's ruthlessness and brutality, however, there is growing evidence that the control of the State Administration Council over the country is slipping. The heroic resistance of the people of Myanmar deserves stronger and more principled support from Member States.

10. Until democracy is restored, the crisis in Myanmar will continue to sow chaos in the region. The movement of people out of Myanmar will increase as violence and deprivation deepen in the country. The Special Rapporteur calls on the international community to move past rhetorical condemnation and adopt a coordinated, comprehensive strategy to isolate and disempower the Myanmar military.

11. It is imperative that the international community take stock of its failed response to the crisis in Myanmar and set a new course of action that will not only help reverse Myanmar's tragic downward trajectory but also support millions of Myanmar nationals both inside and outside the borders of Myanmar.

II. Escalating human rights and humanitarian crisis

12. Two years on from the coup, the strategy of the State Administration Council, which is centred on oppression and violence, has not changed. However, rather than suppressing dissent, this strategy has done the opposite, fuelling public opposition and eroding the control of the State Administration Council over the country. As described in the Special Rapporteur's recent paper,³ the military has lost ground in its battles with people's defence forces and ethnic resistance organizations, calling into question the sustainability of the rule of the State Administration Council. While the Myanmar public cheers the military's losses, people continue to suffer as the junta doubles down on its brutal tactics and sows violence and chaos across an ever-widening sphere of conflict.

A. Attacks on civilians

13. Indiscriminate attacks and the targeting of civilian populations have been hallmarks of the post-coup strategy of the State Administration Council. Attacks on civilians have continued apace in recent months. According to the Assistance Association for Political Prisoners, as at 7 March 2023, 3,111 civilians had been killed by the military since the coup.⁴ This figure almost certainly does not capture all categories of civilian casualties, such as killings by opposition forces or pro-junta vigilante groups, nor does it fully capture the extent of civilian deaths linked to fighting in ethnic areas.

³ [A/HRC/52/CRP.2](#).

⁴ Assistance Association for Political Prisoners, "Daily briefing in relation to the military coup", 7 March 2023. Available at <https://aappb.org/?p=24390>.

14. In the latter half of 2022, as people's defence forces gained strength and increasingly challenged the military's control of territory, the State Administration Council stepped up its use of air power to target opposition groups and civilian populations. The Armed Conflict Location & Event Data Project recorded 207 airstrikes by the military in the second half of 2022, compared with 105 in the first half of 2022 and 90 in all of 2021. A recent investigation identified 135 "airwar incidents" between July and December 2022, most or all of which involved multiple air strikes.⁵ Civilian homes, schools, medical facilities and religious buildings were damaged in those attacks, which often appeared to be in retaliation for people's defence forces operations targeting the military. The National Unity Government has reported that 460 civilians have been killed by military airstrikes since the coup.⁶

15. On 23 October 2022, military jets shelled a concert being held in Hpakant Township, Kachin State, to celebrate the anniversary of the formation of the Kachin Independence Organization. At least 60 people were reportedly killed, including Kachin performers and local villagers. The military reportedly blocked the transport of injured concertgoers to nearby hospitals.

16. In his February 2022 conference room paper on arms transfers by States Members of the United Nations to the Myanmar military,⁷ the Special Rapporteur described how China and the Russian Federation have supplied the State Administration Council with military jets and helicopters used in attacks on civilians. There is strong evidence that those types of jets and helicopters continue to be used in attacks on civilians, including the attack on the concert in Hpakant.

17. In recent months the military has extended its nationwide campaign of mass arson. According to the Institute for Strategy and Policy–Myanmar, State Administration Council forces destroyed more than 16,000 homes and civilian buildings in Sagaing Region alone between November 2022 and mid-January 2023. Nearly 58,000 civilian structures have been destroyed since the coup.

18. The military has also continued to kill civilians in ground assaults on villages throughout the country. Civilians and captured opposition fighters have been executed and tortured to death while in the custody of junta forces. In November 2022, soldiers reportedly tortured, executed and dismembered 18 individuals, including both people's defence forces fighters and civilians, in Monywa Township, Sagaing Region. In late February and early March 2023, a column of soldiers reportedly executed at least 17 people in southern Sagaing Region, including both people's defence force fighters and civilians, some of whom were minors and women. The soldiers reportedly mutilated and dismembered many of the bodies.

19. Anti-junta forces have also been responsible for extrajudicial killings and human rights abuses. In December 2022, the National Unity Government condemned the June 2022 execution of an alleged State Administration Council informant by people's defence force fighters after a video of the killing went viral online.

B. Displacement and humanitarian needs

20. The Myanmar military's aerial and ground attacks, arson campaign and rampant human rights violations have continued to displace populations within Myanmar and have forced people to flee to neighbouring countries. According to UNHCR, more than 1.3 million people have been displaced within Myanmar since the coup, driving total displacement in the country over 1.6 million. Independent estimates of displacement, including by local organizations serving displaced populations, suggest that the actual total could be much

⁵ See Myanmar Witness, "Eyes on the skies: the dangerous and sustained impact of airstrikes on daily life in Myanmar", 31 January 2023. Available at <https://www.myanmarwitness.org/reports-videos/eyes-on-the-skies>.

⁶ National Unity Government, "Statement on the events relating to the bombing of Chin National Front's Headquarters at Camp Victoria", 12 January 2023. Available at <https://www.facebook.com/mohrmyanmar/photos/pcb.501624225445347/501624152112021/>.

⁷ A/HRC/49/CRP.1.

higher. The United Nations has warned that there are no signs that displacement is slowing down and that 1.4 million additional people could be displaced in 2023.

21. Displacement and economic collapse have created dire conditions in the country. A total of 25 million people, nearly half of Myanmar's population, now live in poverty, and 17.6 million require humanitarian assistance.⁸ Displacement, landmine contamination, movement restrictions and skyrocketing prices for fertilizer and other agricultural inputs continue to impact food production. A total of 15.2 million people will likely experience food insecurity in 2023.

22. The military has systematically restricted the delivery of humanitarian aid to displaced persons and populations in areas controlled by opposition armed groups. The United Nations reports that access to populations in need remains heavily restricted. Fifteen aid workers were killed in Myanmar in 2022.⁹ Beginning in September 2022, the military blockaded large swathes of Rakhine State, impacting commercial trade in food, medicines and other supplies as well as the delivery of humanitarian aid to the large population of internally displaced persons in Rakhine State. An informal ceasefire in December allowed trade and some aid deliveries to resume, although humanitarian access is still limited.

23. At the beginning of 2023, 3.7 million children remained out of school.¹⁰ The health system in Myanmar has collapsed, leaving many, including children, mothers and pregnant women, without access to reliable care. Instead of working to rebuild damaged institutions, the State Administration Council continues to attack doctors, nurses, hospitals and clinics. Insecurity Insight recorded 286 attacks on health workers and facilities in 2022, of which 192 were perpetrated by the military.¹¹ Many doctors and nurses, including those treating opposition fighters, have been arrested, convicted and sentenced to lengthy prison terms.

24. Nurses from Myanmar told the Special Rapporteur about the extreme danger they face caring for the people of Myanmar. One nurse told the Special Rapporteur the following:

Nurses, including me, have been living in constant fear of arrest, getting killed or [being] tortured by the junta. Hundreds of nurses and doctors had to leave [our] families, homes and work and give up everything we have in our lives. But nurses have been continually working for the people with whatever they have and wherever they are. Although we are on the run and have to leave our workplaces, we still commit ourselves [to] helping people with health-care needs.

C. Arrest and detention

25. Mass arbitrary detention continues to be a foundation of the strategy of the State Administration Council to suppress opposition to military rule. According to the Assistance Association for Political Prisoners, 16,380 political prisoners are in the custody of the State Administration Council.¹² Junta-controlled courts have continued to hand down death sentences. At present, 103 political prisoners are on death row and at risk of execution, while 41 people have been sentenced to death in absentia.

26. While the State Administration Council vigorously publicized the amnesty of more than 12,000 prisoners on 17 November 2022 and 4 January 2023 – Myanmar's National Day and Independence Day, respectively – the Assistance Association for Political Prisoners has indicated that only about 700 of those released were political prisoners.

⁸ United Nations Office for the Coordination of Humanitarian Affairs, *Myanmar Humanitarian Needs Overview 2023* (January 2023), p. 4. Available at <https://reliefweb.int/report/myanmar/myanmar-humanitarian-needs-overview-2023-january-2023>.

⁹ Aid Worker Security Database. Available at <https://aidworkersecurity.org/>.

¹⁰ United Nations Office for the Coordination of Humanitarian Affairs, *Myanmar Humanitarian Needs Overview 2023*, p.78.

¹¹ See Insecurity Insight, *Attacked and Threatened: Health Care at Risk* database. Available at <https://map.insecurityinsight.org/health> (accessed on 6 March 2023).

¹² See Assistance Association for Political Prisoners, "Daily briefing in relation to the military coup", 7 March 2023. Available at <https://aappb.org/?p=24390>.

27. Sham trials continue, with many political prisoners handed lengthy prison sentences on charges relating to incitement, treason, terrorism and contact with “unlawful” organizations. Criminal proceedings against State Counsellor Aung San Suu Kyi wrapped up in December 2022 with conviction on five corruption charges, increasing her cumulative sentence to 33 years’ imprisonment.

28. On 4 December 2022, the former president of the Kachin Baptist Convention, Hkalam Samson, was arrested at Mandalay International Airport while attempting to fly to Thailand for medical treatment. He was interrogated, placed on a return flight to Myitkyina the following day and then rearrested upon his arrival. Hkalam Samson was involved in the delivery of humanitarian aid and had previously called for the military to be held accountable for its human rights violations, including during an audience with the former President of the United States of America, Donald Trump. He is currently being held in Myitkyina Prison, charged with incitement, contact with an unlawful organization and violations of the Counter-Terrorism Law. He is reportedly in poor health, and his family has raised concerns about his lack of access to medical treatment.

D. Civic space and fundamental freedoms

29. On 28 October 2022, the State Administration Council decreed the draconian Organization Registration Law. It mandates that all non-profit organizations and associations – local and international – register and provide extensive information on their members, activities and sources of funding. The registration boards, which are controlled by the military, have broad discretion to reject applications based on vaguely defined criteria. Registered organizations are saddled with extensive reporting requirements, and regime officials are granted expansive powers to investigate groups and seize their property. A long list of vaguely defined prohibitions – including that organizations must not directly or indirectly harm the sovereignty, law and order, security and ethnic unity of the State – further constrain their operations. Establishing or working with an unregistered organization and other violations of the law carry criminal penalties of up to five years’ imprisonment.

30. Many local activists, aid workers, and human rights defenders told the Special Rapporteur that registering under the new law is an impossibility: there is little to no chance that their applications would be accepted and filing an application would likely cause them to be targeted or arrested. The law may have been designed to fracture civil society and drive a wedge between local organizations and their international funders. If so, it is already having the intended effect. Many civil society representatives told the Special Rapporteur about their distrust of international groups that had registered and concerns that information provided to registered funders could be shared with State Administration Council officials. Some have been pressured by donors to register or have lost funding because they did not register. An official from a civil society organization involved in the delivery of humanitarian aid told the Special Rapporteur the following:

If we register, there will be a backlash, but if we don’t register, we are illegal. We [civil society organizations] are the ones doing humanitarian aid... We can be identified as terrorists, even though we are helping the people... Now that the military has imposed this law, the [funding] organizations will ask for a lot of things, like registration and bank account information. [But if we] register, we won’t be able to do effective humanitarian aid at the ground level. The [international non-governmental organizations] should think about how to help and how to send the financial support to the ground level.

31. For their part, officials of international organizations expressed concerns that failing to register, or working with unregistered groups, could have serious consequences for their staff and partners on the ground, including arrest and prosecution. One official told the Special Rapporteur that international non-governmental organizations were struggling to manage risks to staff while maintaining relationships with partners, and that they felt “cornered from all sides”.

32. The State Administration Council has continued its efforts to establish a digital dictatorship in Myanmar.¹³ Internet shutdowns regularly accompany military offensives targeting civilian populations, with all townships in the country affected at some point in 2022 and many communities not having Internet connections for the entire year. The State Administration Council has forged ahead with its plans to require the registration of SIM cards and mobile phone IMEI numbers, which will greatly enhance surveillance capabilities. Pro-military actors have used Telegram and other channels to harass and publicly identify activists and human rights defenders, with women being disproportionately impacted.¹⁴

E. Plans of the State Administration Council for a sham election

33. The efforts of the State Administration Council to crush civic space and fundamental freedoms underscore the absurdity of its plans to hold elections. As the Special Rapporteur highlighted in his January 2023 conference room paper, it is impossible to hold genuine elections when opposition leaders are imprisoned, in hiding, exiled or dead, when journalistic work is criminalized and when anyone can be arrested merely for expressing political opinions.¹⁵ It is abundantly clear that the State Administration Council lacks the constitutional or democratic legitimacy to oversee elections and furthermore does not have the administrative capacity to carry them out.

34. Two years after the coup, the military-controlled National Defence and Security Council decided to extend the nationwide state of emergency a further six months and place dozens of additional townships under martial law. To date, the State Administration Council has not indicated how the extension affects its timeline for elections, which it previously claimed would be held by August 2023. The junta has nevertheless forged ahead with preparations for the elections.

35. On 26 January 2023, the State Administration Council established the Political Parties Registration Law, which appears designed to eradicate the National League for Democracy, hobble ethnic political parties and ensure that military-appointed parliamentarians and military-backed parties can together form the next Government. The law imposes onerous registration requirements, including that parties seeking to take part in the election nationwide must have at least 100,000 members within 90 days of registration and open an office in half of Myanmar's townships within 180 days. It also bars participation by individuals that have been convicted of a crime and that are members of, or have contacted or supported, organizations designated as "unlawful" or "committing terrorist acts". The National Unity Government, the people's defence forces, the National Unity Consultative Council and many ethnic-based organizations have been declared unlawful and labelled as terrorists by the State Administration Council. The National League for Democracy and many other parties have declared that they will not register under the law or participate in these so-called "elections".

III. International response to those fleeing violence and human rights violations in Myanmar

36. Decades of violence, political repression, economic strife and systematic human rights violations have led to an exodus of people from Myanmar to other countries in the region. Prior to the coup, more than 1.1 million refugees from Myanmar resided in neighbouring countries, with millions more living abroad as regular or irregular migrants.¹⁶ The dangers and deteriorating conditions that followed the 2021 coup have generated a steady flow of

¹³ See Access Now, "Weapons of control, shields of impunity: Internet shutdowns in 2022", 28 February 2023. Available at <https://www.accessnow.org/internet-shutdowns-2022/>.

¹⁴ See Myanmar Witness, Sisters to Sisters and Centre for Information Resilience, "Digital battlegrounds: politically motivated abuse of Myanmar women online", January 2023. Available at https://www.myanmarwitness.org/_files/ugd/e8f7c0_48cd6d5a341b490b843d05baf7f8d0a7.pdf.

¹⁵ See A/HRC/52/CRP.2.

¹⁶ UNHCR, Refugee Data Finder. Available at <https://www.unhcr.org/refugee-statistics/download/?url=61Zeo8> (accessed on 6 March 2023).

increasingly desperate people over the Myanmar border. Many have fled the oppression and brutality of the State Administration Council, seeking safety, shelter and asylum abroad. Others have sought employment or educational opportunities not available at home because of the economic and social collapse of the country.

37. In late 2022, the International Organization for Migration estimated that 40,000 people were departing Myanmar every month.¹⁷ Hundreds of thousands have left the country since the coup. Some have crossed land borders on foot, and others have risked their lives by making perilous boat journeys at sea. Many have used smuggling and trafficking networks. Thousands have relocated to Australia, North America, Europe or elsewhere using various types of visas or humanitarian channels.

38. According to official United Nations figures, 79,384 Myanmar refugees have fled to other countries in the region since the coup.¹⁸ These figures likely do not include thousands of refugees and asylum-seekers that have not contacted UNHCR or local authorities. United Nations data and estimates by civil society organizations suggest that approximately 50,000 refugees have fled to north-eastern India since the coup, with a smaller number making their way to New Delhi and other regions. More than 20,000 villagers fleeing fighting in eastern Myanmar have crossed into Thailand, most of whom have subsequently returned to Myanmar, and local organizations estimate that up to 30,000 additional refugees and asylum-seekers could be sheltering in Mae Sot and other locations throughout Thailand. Thousands of refugees have arrived in Malaysia and Indonesia since the coup.

39. With such a large proportion of the population facing violence, oppression and human rights violations, the human rights and refugee protection concerns associated with Myanmar nationals outside Myanmar are varied and complex. A person may be a refugee and entitled to protection under refugee law, even if that individual has not been registered or recognized as such by a Government or UNHCR.¹⁹ Many Myanmar nationals who have travelled on valid visas, have registered as migrant workers or have availed themselves of other regular or irregular pathways for migration may nevertheless be refugees. All Myanmar nationals in other countries, whether they can claim refugee status or not, are entitled to the protections afforded by international human rights law.

40. Countries and communities hosting refugees from Myanmar deserve credit for offering safety and shelter to people who, in many cases, have literally fled for their lives. Governments have taken many positive steps since the coup: extending visas, opening humanitarian pathways for resettlement, regularizing irregular migrants and adopting new protection schemes. As important as they are, however, these initiatives are piecemeal measures that do not match the magnitude of the crisis.

41. Considered as a whole, the international community has failed to mount a humane response to the exodus from Myanmar, leaving many refugees and migrants in limbo, unable to return home, at risk and lacking access to basic rights and services, and unable to plan for the future. Many of the neighbours of Myanmar have – in actions detailed in the present section – violated the principle of non-refoulement, a fundamental tenet of international law that obliges States not to return anyone to a territory where they could face persecution or other serious human rights violations.

A. Pushbacks at land borders

42. In the wake of the February 2021 coup, the Governments of countries neighbouring Myanmar immediately recognized that political persecution, violence and human rights

¹⁷ International Organization for Migration, “Myanmar crisis response plan 2023”. Available at https://crisisresponse.iom.int/sites/g/files/tmzbd11481/files/appeal/pdf/2023_Myanmar_Crisis_Response_Plan_2023.pdf.

¹⁸ UNHCR, “Myanmar situation”, Operational Data Portal. Available at <https://data.unhcr.org/en/situations/myanmar> (accessed on 6 March 2023).

¹⁹ See the definitions of refugee provided in article 31 (1) of the Convention Relating to the Status of Refugees and by UNHCR in the *UNHCR Resettlement Handbook* (Geneva, 2011), p. 81 (available at www.unhcr.org/46f7c0ee2.pdf).

violations could result in new flows of refugees and other Myanmar nationals into their territories. Even though they already hosted refugees and migrants from Myanmar, they acted quickly to restrict border crossings, at times pushing people back across borders into conflict zones. Given the country's long and porous borders, many continued to cross, albeit using more dangerous routes.

43. According to the Government of Thailand, 22,200 villagers fleeing armed conflict and military attacks on civilians in eastern Myanmar have sought safety and shelter in Thailand. In line with standard operating procedures adopted by their Government, Thai authorities directed new arrivals to so-called "temporary safety areas" controlled by the Royal Thai Army. The temporary safety areas reportedly utilized repurposed agricultural buildings and other substandard structures to house refugees temporarily. Others arriving in Thailand have received support from local communities, taking shelter in churches or other community buildings.

44. The Government of Thailand has asserted that all of those who have crossed into Thailand have returned to Myanmar voluntarily. However, UNHCR and humanitarian actors have been denied access to the temporary safety areas and have been unable to confirm that returns were voluntary. They have also been unable to screen those returned for vulnerability or protection needs.

45. The Special Rapporteur heard multiple reports, including from refugees themselves, that Thai authorities informed refugees that they had to return to Myanmar as soon as there was no more audible gunfire or shelling, a pattern that seems to reflect the Government's de facto border policy. A teacher told the Special Rapporteur that he and nearly 100 students were forced back into Myanmar despite continued shelling in Myanmar and pleas to Thai authorities to consider the safety of the children. The Special Rapporteur also spoke to a woman who fled to Thailand after the Myanmar military shelled a displaced persons camp where she was staying in Myanmar. She said: "When we first arrived there, we begged them not to push us back. There were continuous airstrikes in Myanmar. We begged them to allow us to stay a few more days, but they did not allow us. We felt like they didn't treat us as humans. They forced us to go back."

46. India's central Government has also sought to prevent refugees fleeing violence and human rights violations from entering India. In March 2021, India's Minister of Home Affairs ordered the Assam Rifles – a government paramilitary force responsible for security in north-eastern India – and the State governments of Nagaland, Manipur, Mizoram and Arunachal Pradesh to "take appropriate action as per law to check illegal influx from Myanmar into India".²⁰ Five months later, in August, India's Minister of State in the Ministry of Defence announced that 5,796 "Myanmar nationals/refugees" had been "pushed back".²¹

47. In September 2022, as fighting between the military and the Arakan Army intensified in Rakhine State, the Foreign Minister of Bangladesh stated that the Government had sealed its border with Myanmar, adding, "we won't take any more Rohingya people".²² Data from the Border Guard Bangladesh indicate that it forced back 537 individuals to Myanmar in 2022.²³

48. In past decades, tens of thousands of Myanmar nationals fled to the Yunnan Province in China to escape military attacks and human rights violations. The Special Rapporteur is not aware of any significant flows of refugees into China since the coup. In recent years, Chinese authorities have erected fencing, sometimes metres high and topped with barbed wire, along hundreds of kilometres of the China-Myanmar border. Communities living

²⁰ See "Stop illegal influx from Myanmar, centre tells north-eastern States," *The Hindu*, 12 March 2021. Available at <https://www.thehindu.com/news/national/stop-illegal-influx-from-myanmar-mha-tells-ne-states/article34054308.ece>.

²¹ See <https://pqars.nic.in/annex/254/AU2268.pdf>.

²² See Faisal Mahmud, "Tensions as Bangladesh accuses Myanmar of firing in its territory", *Aljazeera*, 23 September 2022. Available at <https://www.aljazeera.com/news/2022/9/23/tensions-as-bangladesh-accuses-myanmar-of-firing-in-its-territory>.

²³ See Border Guard Bangladesh (BGB), "Statistics on detention and repatriation of Myanmar nationals by the BGB (January to December 2022)". Available at <http://www.bgb.gov.bd/site/page/14887513-883b-47d4-91e1-3ee1c7dc57ca/Human-Traffic> (accessed on 9 February 2023).

nearby report loudspeaker warnings not to approach the border. China's zero-coronavirus disease (COVID-19) policy resulted in the closure of official border crossings and strenuous efforts to curtail illegal cross-border movements, which may have impacted humanitarian movements.

B. Deportations

49. Neighbouring countries have formally deported tens of thousands of Myanmar nationals since the coup, threatening their lives and safety and violating the principle of non-refoulement. In October 2022, responding to mounting deportations of vulnerable people to Myanmar, the United Nations High Commissioner for Human Rights called for a moratorium on forced returns of refugees and migrants to Myanmar.²⁴

50. According to the United Nations, Governments have deported thousands of people back to Myanmar every month since the coup.²⁵ Although many of these individuals may have been migrants who lacked documentation or overstayed visas, the dire socioeconomic conditions in Myanmar and the violence and oppression of the State Administration Council increases the risk of human rights abuses for all involuntary returnees. Neighbouring countries have, by-and-large, failed to carry out individual determinations of the human rights risks faced by those who have been returned, likely leading to the refoulement of persons deserving of protection under international law. Deportations have resulted in human rights harms, including violations of economic and social rights and the right to family life. Authorities have also knowingly deported refugees registered with UNHCR and others at severe risk of arbitrary arrest, torture and other human rights violations by the State Administration Council or the military.

51. The State Administration Council has proactively sought assistance from Governments in the region to secure the return of activists, participants in the civil disobedience movement, military deserters and other junta opponents. In October 2022, according to Myanmar State media, the Deputy Minister for Home Affairs asked for cooperation from INTERPOL and law enforcement officials from Indonesia, Malaysia and Thailand to arrest and repatriate wanted individuals, including "terrorists hiding in foreign countries".²⁶

52. Malaysian immigration authorities have reportedly deported more than 3,000 Myanmar nationals since the coup. In February 2021, just weeks after the coup, Malaysia deported 1,086 Myanmar nationals who arrived by boat, including at-risk women, unaccompanied children and other vulnerable individuals, in violation of a court order halting their deportation. Deportations have continued from Malaysia despite calls from UNHCR, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and others to halt the forced repatriation of all Myanmar nationals and specific interventions by UNHCR on behalf of individuals. Officials of the Embassy of Myanmar met with the Immigration Department of Malaysia to expedite the return of Myanmar nationals prior to a series of deportations in September and October 2022. Some of those returned were individuals who had registered with UNHCR but were not yet in possession of UNHCR documentation. An October 2022 deportation included six military deserters, who could face the death penalty and are likely to have been tortured after being handed over to the State Administration Council. In December 2022, a Malaysian court lifted a stay order that had halted the deportation of 114 Myanmar nationals for almost two years. The group, which reportedly included children and other vulnerable people, was returned to Myanmar in January 2023.

²⁴ See Office of the United Nations High Commissioner for Human Rights (OHCHR), "Forced returns to Myanmar must stop immediately, says Türk", press release, 26 October 2022. Available at <https://www.ohchr.org/en/press-releases/2022/10/forced-returns-myanmar-must-stop-immediately-says-turk>.

²⁵ Office for the Coordination of Humanitarian Affairs, *Myanmar Humanitarian Needs Overview 2023*, p. 37.

²⁶ See "Myanmar delegation attends 90th INTERPOL General Assembly in India", *Global New Light of Myanmar*, 25 October 2022. Available at <https://www.gnlm.com.mm/myanmar-delegation-attends-90th-interpol-general-assembly-in-india/>.

United Nations officials and journalists following the deportations have not been able to find information concerning the whereabouts or conditions of many vulnerable deportees after they were forced back to Myanmar, including the deserters returned in October 2022.

53. On 22 March 2022, the Government of India forcibly repatriated a Rohingya woman more than a year after she was detained by authorities in Jammu and Kashmir.²⁷ The woman – as well as her husband and three children, who were not deported – were all registered as refugees with UNHCR. Lawyers working with refugee populations in India have filed cases in several jurisdictions to try to prevent further deportations. In November 2022, India's Home Minister reportedly tasked intelligence officials with arresting and deporting 100 “illegal migrants” in each State.²⁸ Human rights defenders remain concerned about the fate of hundreds of detained Myanmar nationals.

54. Thailand currently deports hundreds of Myanmar nationals each week at various border crossings. More than 30,000 people were deported from Tak Province alone in 2022. At present, Thai authorities do not screen deportees for human rights risks or assess their requests for protection. In some cases, UNHCR has successfully intervened on behalf of people with refugee protection concerns to prevent deportation. Nevertheless, the Special Rapporteur has received reports of individuals affiliated with the pro-democracy movement, who likely have valid refugee claims, being deported to Myanmar.

C. Rohingya continue their flight by land and sea

55. For years, Rohingya have undertaken desperate and life-threatening journeys by land and sea to escape persecution and genocidal attacks in Rakhine State and increasingly difficult conditions in refugee camps in Bangladesh. The situation in Rakhine State remains dire, with the Rohingya population suffering systematic discrimination, extreme deprivation, severe restrictions on movement, and scant access to livelihoods, education and health care. The military coup has further dimmed hopes of the safe, voluntary and dignified return of Rohingya from Bangladesh to Myanmar. Meanwhile, conditions for many in the refugee camps continue to deteriorate as they face ration cuts, spiralling violence, reported abuse by some Bangladeshi authorities and government restrictions on freedom of movement and access to education and livelihoods.

56. Seeking safety, freedom and opportunity, many Rohingya are choosing to risk their lives to travel to Malaysia or other locations in Southeast Asia. They are incredibly vulnerable to aggravated smuggling, human trafficking, debt-bondage, forced labour and other forms of exploitation and abuse. Girls and young women are at particular risk of trafficking for the purpose of forced marriage.

57. Rohingya seeking to leave Rakhine State have been arrested by State Administration Council officials and charged with immigration offenses resulting in sentences of two to five years' imprisonment. The risks associated with such journeys were highlighted by the discovery of the bodies of 13 Rohingya men and boys in Yangon in December 2022. The bodies had been abandoned near a trash pile and showed signs of trauma. The victims presumably died while in the custody of smugglers or traffickers.

58. In 2022, at least 39 boats carrying more than 3,500 Rohingya people departed from Myanmar and Bangladesh.²⁹ Nearly half of those on board were women and girls. Passengers faced overcrowded conditions on unseaworthy vessels and severe deprivation of food and water. Many boats experienced mechanical failures, and some drifted at sea for weeks. One boat carrying 180 individuals is believed to have sunk at sea, with no survivors. In total, 348 people are believed to have died making journeys by sea in late 2022.

²⁷ See Human Rights Watch, “India: Rohingya deported to Myanmar face danger”, 31 March 2022. Available at <https://www.hrw.org/news/2022/03/31/india-rohingya-deported-myanmar-face-danger>.

²⁸ See Vijaita Singh, “Amit Shah directs officials to identify 100 ‘infiltrators’ in every state and deport them”, *The Hindu*, 13 November 2022. Available at <https://www.thehindu.com/news/national/amit-shah-directs-targeted-crackdown-against-infiltrators/article66132438.ece>.

²⁹ See UNHCR, “Protection at sea in South-East Asia – 2022 in review”, Operational Data Portal, 17 January 2023. Available at <https://data.unhcr.org/en/documents/details/98170>.

59. The Special Rapporteur has received credible reports that pushbacks at sea continue to occur, although few details are available. In June 2022, the navy of Thailand affirmed its policy of not allowing boats carrying Rohingya to land, but rather providing food, water and supplies and directing the boats on to Malaysia or Indonesia.³⁰ Thai navy boats have also reportedly approached disabled boats and departed without providing assistance. Calls by UNHCR, the Special Rapporteur and others to launch search and rescue missions for boats in distress largely went unheeded.³¹ Crucially, there has not been any proactive or coordinated regional effort to locate and assist boats in international waters.

60. A 2016 presidential regulation in Indonesia that empowers authorities to rescue and disembark refugees and migrants arriving by sea has been credited with facilitating the rescue and disembarkation of boats with Rohingya refugees. Indonesia fishing boats have also been involved in rescues.

61. In December 2022, the Sri Lankan navy rescued a group of 105 Rohingya refugees after local fishermen spotted a boat adrift at sea. They were subsequently placed in an immigration detention centre. The Government of Sri Lanka has provided UNHCR and the International Committee of the Red Cross access to the detainees, and it is understood that they will eventually be released into the community.

D. Lack of legal protections for refugees

62. South and Southeast Asia are notable for the large number of countries that have not ratified the Convention relating to the Status of Refugees or its Protocol, which set out Governments' obligations with regard to the treatment of refugees. Bangladesh, India, Indonesia, Malaysia and Thailand have not signed the Convention. The failure of so many relevant countries to ratify the Convention has deprived the international community of a common foundation for upholding the rights of Myanmar refugees and asylum-seekers and has provided Governments with a talking point for dismissing their obligations towards refugees, even if their actions violate other treaty commitments or international human rights standards.

63. Bangladesh, India, Indonesia, Malaysia and Thailand all lack comprehensive national refugee legislation, leaving the treatment of refugees and asylum-seekers to be governed by immigration laws. These laws are overly reliant on the criminalization of people in irregular situations, imposing custodial sentences and deportation with few legal or procedural safeguards.³² This heightens the risk that migrants, refugees and asylum-seekers will face harassment, extortion, arrest, detention, deportation, labour exploitation and other abuses.

64. In 2019, the Cabinet of Thailand approved the establishment of a national screening mechanism to identify individuals needing protection. In October 2022, the Cabinet approved a notification that sets out the criteria and methods for identifying protected persons under the mechanism. The notification explicitly excludes Myanmar nationals in established refugee camps or who are registered as migrant workers from protection under the mechanism. Applicants could also be denied protection because of their "political behaviour" or on "national security" grounds, raising concerns that most or all Myanmar nationals will be excluded from protection under the mechanism regardless of the risks they face in Myanmar or the harms they would face if removed from Thailand. The mechanism has yet to be implemented. In October 2022, Thailand also passed a long-awaited Prevention and

³⁰ See Human Rights Watch, "Thailand: allow newly arrived Rohingya access to asylum", 7 June 2022. Available at <https://www.hrw.org/news/2022/06/07/thailand-allow-newly-arrived-rohingya-access-asylum>.

³¹ See OHCHR, "Coordinated regional action urged to stop Rohingya deaths at sea: UN expert", press release, 22 December 2022. Available at <https://www.ohchr.org/en/press-releases/2022/12/coordinated-regional-action-urged-stop-rohingya-deaths-sea-un-expert>.

³² See OHCHR, *Pathways to Migration Protection: A Mapping of National Practice for Admission and Stay on Human Rights and Humanitarian Grounds in Asia and the Pacific* (2022). Available at <https://bangkok.ohchr.org/wp-content/uploads/2022/05/Pathways-to-migrant-protection.pdf>.

Suppression of Torture and Enforced Disappearance Act, which contains a robust non-refoulement provision.

65. Without formal legal status, refugees and asylum-seekers in some countries are afforded a limited degree of protection by registering with UNHCR. Malaysian authorities generally release those with UNHCR documentation from detention after verification. In Thailand, UNHCR regularly intervenes on behalf of refugees and asylum-seekers with whom it has had previous contact to prevent prolonged detention and deportation to Myanmar.

66. Myanmar refugees and asylum-seekers have faced major barriers to accessing UNHCR and refugee status determination in many countries in the region. UNHCR does not have offices in north-eastern India, meaning that Myanmar nationals entering Manipur or Mizoram must travel more than 2,000 kilometres to Delhi without documentation, risking arrest and detention, if they want to register with UNHCR. Community leaders in Malaysia told the Special Rapporteur that many refugees had been waiting months or years for UNHCR documentation, or have had their applications rejected, leaving them vulnerable to exploitation, arrest and detention. The Government of Thailand does not permit UNHCR to register or conduct refugee status determination for Myanmar nationals.

67. Some Governments have also restricted UNHCR access to refugees. In Thailand, UNHCR has not been given access to new arrivals from Myanmar since the coup. In Malaysia, UNHCR has not had access to immigration detention centres since 2019, limiting the ability to screen detained refugees and asylum-seekers, including those arrested upon their arrival in Malaysia.

68. Subnational policies and community practices often fill the gaps left by inadequate national and international protection. The Mizoram State government has acted unilaterally to issue identification cards to refugees and asylum-seekers from Myanmar, providing protection against arrest and allowing them to move freely within the State. Myanmar nationals in Malaysia told the Special Rapporteur that communities have created their own community cards, which provide some protection from harassment and detention for individuals who are unable to obtain United Nations documentation.

E. Arrest and detention

69. Lacking formal legal protections and often unable to access refugee status determination processes, those fleeing Myanmar are often criminalized under immigration law and face the constant threat of arrest and detention. Their vulnerability also leads to extortion and other forms of harassment.

70. Myanmar nationals who had arrived in Thailand since the coup told the Special Rapporteur that they had remained confined to their apartments for months on end, fearing interactions with Thai police that could lead to harassment, extortion, arrest or detention. A refugee who fled to Thailand because of very specific threats to his life told the Special Rapporteur: “Being illegally present in [Thailand] is a very dangerous situation. Even mentally, I don’t feel very safe. I cannot move around, so I have to stay in one place for safety.”

71. Elaborate protection rackets have emerged from the complex and unofficial interactions among Thai authorities, community leaders and undocumented Myanmar nationals. These schemes impose costs – financial and otherwise – on those who are sheltering in Thailand as well as the networks that support them. UNHCR staff have at times managed to intervene on behalf of detained individuals who have previously contacted UNHCR, helping to secure release from police custody or an immigration detention centre. The Special Rapporteur has also received reports of Thai police retaliating against individuals who contact UNHCR for assistance. It is imperative that Thailand replace informal protection schemes that prey on the vulnerabilities of migrants, refugees and asylum-seekers with formal legal protections.

72. Rohingya persons in Thailand are generally treated as a security threat and face the possibility of prolonged and indefinite detention. According to credible reports received by the Special Rapporteur, more than 600 Rohingya, including approximately 200

unaccompanied minors, are currently being held in Thai immigration detention centres and shelters. Some have been detained since 2015. The detention centres are reportedly staffed by males, and sexual harassment of female detainees remains a risk.

73. An unknown number of Myanmar nationals are currently in immigration detention centres in Malaysia. The Ministry of Home Affairs reported there were approximately 1,300 detained Myanmar nationals in August 2022. Conditions in the detention centres are reportedly dire. According to the Ministry of Home Affairs, 150 people, including 7 children, died in immigration detention centres in 2022. In April 2022, 6 Rohingya persons, including 3 children, died during a mass escape of over 500 Rohingya refugees from a Malaysian immigration detention centre. Rohingya in Malaysia, including children, face the possibility of indefinite detention, as they cannot be sent back to Myanmar. The Special Rapporteur has received credible information that some UNHCR-registered refugees or asylum-seekers have been held in detention facilities for six years and remain indefinitely detained.

74. Malaysian authorities generally release from detention individuals with UNHCR documentation after their identity and documentation have been verified. Previously, UNHCR was able to conduct screening within immigration detention centres and then secure the release of individuals identified as refugees or asylum-seekers. However, UNHCR has been denied access to immigration detention centres since 2019 and has not been able to systematically secure the release of detained refugees and asylum-seekers since then, including the more than 1,000 Myanmar nationals who were arrested upon their arrival at the land or sea borders of Malaysia in 2022. The Special Rapporteur was denied permission to visit immigration detention centres during his May 2022 mission to Malaysia.

75. India has also detained refugees and asylum-seekers from Myanmar. In November 2022, UNHCR reported that nearly 600 Rohingya refugees were detained in India.³³ Many have been detained for two years or more. In January, authorities in Manipur State reportedly arrested approximately 81 people from Myanmar, charging them with illegally entering the country. In February, a Manipur court ruled that the detained persons were refugees and could not be deported.³⁴ However, the group remains in detention and one detainee, a 32-year-old man, reportedly died in a detention centre in February.

76. The 2016 presidential regulation of Indonesia and an immigration circular prescribe that refugees should not be kept in immigration detention centres but rather should be transferred to shelters for refugees run by the Government and international organizations. However, the freedom of movement of some refugees, particularly Rohingya in Aceh Province, has been severely restricted.

F. Visas and resettlement

77. In the months following the 2021 coup, many high-profile activists, civil society leaders, political figures and other vulnerable individuals left Myanmar for North America, Europe, Australia and other locations that offered safety from the crackdown by the State Administration Council and the risks facing Myanmar nationals in neighbouring countries. Australia, for example, granted 1,600 offshore humanitarian visas between July 2021 and 30 June 2022. In many cases, travel to foreign countries was enabled by collaboration between civil society organizations, international non-governmental organizations and Governments. These efforts saved lives and helped to sustain the pro-democracy movement in Myanmar. The beneficiaries of such efforts were primarily those with pre-existing connections to foreign Governments and international organizations. However, thousands of peaceful protesters, participants in the civil disobedience movement, military defectors and supporters

³³ See UNHCR, India fact sheet, November 2022. Available at <https://reporting.unhcr.org/document/4211>.

³⁴ See Apoorva Mandhani and Karishma Hasnat, “‘No option to return’ – Manipur court says 71 Myanmarese held are refugees, not illegal immigrants”, *The Print*, 18 February 2023. Available at <https://theprint.in/judiciary/no-option-to-return-manipur-court-says-71-myanmarese-held-are-refugees-not-illegal-immigrants/1378277/>.

of the pro-democracy movement did not have access to such pathways and are still facing threats in Myanmar or neighbouring countries.

78. Some Governments also took actions to provide protection for Myanmar nationals already in their territories at the time of the coup. The Government of the Republic of Korea allowed Myanmar nationals with expiring visas to apply for new visas conferring the right to reside and work in the Republic of Korea. Japan permitted Myanmar nationals already in Japan to extend their stay. The Government of Australia has designated Myanmar nationals a priority caseload in its humanitarian programme, reducing wait times for those currently residing in Australia who arrived on a valid visa.

79. Resettlement is an essential mechanism for addressing the humanitarian and protection needs of refugees. However, the processes that enable resettlement can be long and opaque, and the total number of resettled Myanmar nationals is wholly inadequate relative to the number requiring protection. According to UNHCR data, 994 refugees from Myanmar were resettled in 2021, and 3,158 were resettled in 2022.³⁵ While these figures do not encompass humanitarian pathways for migration such as those noted above, they nonetheless underscore the inadequacy of the international community's response to the needs of Myanmar refugees. Strikingly, despite the great increase in need since the coup, the UNHCR resettlement totals for 2021 and 2022 are a fraction of the approximately 5,000 to 25,000 Myanmar refugees resettled every year from 2007 to 2019.

80. The low resettlement totals reflect a broken international refugee system and the failure of high-income countries to share responsibility for addressing the global refugee crisis. Less than 60,000 refugees were resettled in 2022, despite there being more than 26 million refugees globally, according to UNHCR figures.

81. In December 2022, the United States announced that it was opening a resettlement programme for Rohingya refugees in coordination with UNHCR and the Government of Bangladesh.³⁶ The willingness of both Governments to embrace resettlement as a durable solution for Rohingya refugees is an extremely positive development. However, without an expanded commitment from the United States and similar efforts by other countries, the numbers resettled will likely only address a fraction of the need.

82. Rather than facilitating resettlement and complementary pathways, some host countries have obstructed onward travel by refugees and asylum-seekers. For example, for more than one year, India has reportedly refused to issue exit permits to Myanmar nationals who entered the country irregularly, despite the fact that they were approved for travel to third countries.

G. Access to education, livelihoods, health care and other services

83. Inadequate legal protections and restrictions on the operations of UNHCR and humanitarian agencies severely inhibit access of refugees, asylum-seekers and migrants from Myanmar to livelihoods and services. Since they have no formal legal status, Governments and international actors are unable to determine the size of populations of Myanmar nationals, let alone assess their protection and humanitarian needs. This shortcoming has major implications for vulnerable communities and populations with specific needs, including disabled people, women, children and elderly persons. Without evidence of needs, many institutional donors will not fund projects, leaving communities to manage as best they can.

84. The lack of access to education, livelihoods and health care is one of the chief concerns of Myanmar nationals who have fled abroad for safety. A Rohingya refugee in Malaysia told the Special Rapporteur: "I came to Malaysia to live in peace. I came to try to find a better future, but after coming here and living here [I realize that] there is no future for

³⁵ See UNHCR, Resettlement Data Finder. Available at <https://rsq.unhcr.org/en/#c9LI> (accessed on 14 February 2023).

³⁶ See United States Department of State, "Resettlement initiative for vulnerable Rohingya refugees in Bangladesh", press release, 13 December 2022. Available at <https://www.state.gov/resettlement-initiative-for-vulnerable-rohingya-refugees-in-bangladesh/>.

us ... Our children growing up here have nothing to do: no studying, no job ... They will have no future.”

85. Without legal status or documents, many Myanmar nationals are not authorized to work, putting them at risk of labour exploitation. Undocumented children are often unable to attend government schools. Some refugee and migrant communities have developed educational programmes for their own children, but these are sorely underfunded and often do not meet the needs of the communities. Many children have no opportunities for schooling. Medical care is often inaccessible or prohibitively expensive, raising concerns about access to essential health care, including vaccines and care for the elderly and persons with disabilities.

86. These challenges raise specific concerns for women and girls. Lacking income opportunities and legal protections, they are particularly vulnerable to human trafficking and sexual exploitation. Refugee and migrant women and girls are often unable to access sexual and reproductive health services and prenatal and postnatal care or receive treatment or support when suffering from domestic abuse or violence.

87. Some Governments have implemented programmes that have opened access to services for refugees and asylum-seekers from Myanmar. In Malaysia, refugees with UNHCR documents are entitled to a 50 per cent discount off foreigner rates at government hospitals. Indonesia allows refugee children to attend government schools and has worked with humanitarian agencies to provide low-cost health care. In India, the Mizoram State government has allowed children to attend government schools and has issued identification cards that help facilitate access to health care and employment opportunities. In 2005, Thailand opened its education system to all children, regardless of their citizenship or immigration status. While thousands of migrant and refugee children have benefited from this policy, many refugees have trouble accessing education because of discrimination, bureaucracy, language barriers and instability owing to their undocumented status.

88. Many Rohingya in refugee camps and on Bhasan Char Island in Bangladesh have been systematically denied access to education, livelihoods and health care and face myriad other challenges to their survival and well-being. These difficulties were addressed in the summary by the Special Rapporteur of the findings of his December 2021 mission to Bangladesh, which is contained in annex II to his report to the Human Rights Council at its forty-ninth session.³⁷

H. Humanitarian assistance

89. As described above, the humanitarian needs of people who have fled violence and human rights violations in Myanmar – both refugee and migrant populations in neighbouring countries and internally displaced persons – are immense and likely to increase. The international community’s response to those needs has been wholly inadequate, with devastating consequences for the people of Myanmar.

90. The Myanmar Humanitarian Response Plan for 2022, which outlined humanitarian programming for the United Nations country team and its partners, described funding needs of \$826 million to implement projects reaching 6.2 million people.³⁸ By the end of the year, donors had provided only 41 per cent of required funds. This shortfall was one of the largest proportional funding gaps in the world in 2022. Humanitarian organizations have repeatedly told the Special Rapporteur that planned life-saving programmes were not being implemented because of unmet funding needs. Approximately 2 million of the people targeted for assistance in 2022 were not reached. In 2023, \$764 million is being requested to fund programmes to reach 4.5 million people prioritized for life-saving support,

³⁷ A/HRC/49/76.

³⁸ See Office for the Coordination of Humanitarian Affairs, *Humanitarian response plan: Myanmar* (January 2022). Available at <https://data.unhcr.org/en/documents/details/90693>.

approximately a quarter of the total population with humanitarian needs.³⁹ Despite the scaling back of expectations, the 2023 Plan will also be severely underfunded without a significant increase in support from donors. By the end of February 2023, only 2 per cent of the 2023 Plan had been funded.

91. Programmes to meet the humanitarian needs of refugee communities in neighbouring countries are similarly underfunded. Donors provided only 63 per cent of the \$881 million required for the Rohingya Humanitarian Crisis Joint Response Plan for 2022, which targets Rohingya refugees and host communities in Bangladesh.⁴⁰ On 1 March 2023, WFP cut rations for Rohingya refugees by 17 per cent, citing a \$125 million funding shortfall.⁴¹ WFP stated that, without fresh funding commitments, additional rounds of cuts would be necessary as soon as April, potentially leaving refugees to survive on rations valued at \$0.27 per day. Rohingya refugees in Bangladesh are already suffering from widespread malnutrition, with 40 per cent of Rohingya children experiencing stunted growth. The UNHCR programme in Thailand was only 54 per cent funded in 2022.⁴²

92. Security concerns and the obstruction of aid deliveries have severely restricted the international community's humanitarian response in Myanmar. In 2022, approximately three-quarters of beneficiaries reached by the food security cluster – a grouping of United Nations agencies and humanitarian organizations – were in Yangon Region and Rakhine State. Assistance outside the areas controlled by the State Administration Council is often provided by cash transfers. As described in the Special Rapporteur's report of 3 October 2022,⁴³ civil society organizations are filling gaps in areas that cannot be reached by humanitarian actors. Many groups that have traditionally focused on human rights documentation and advocacy have shifted time and resources toward the delivery of humanitarian assistance.

93. The international community's approach to humanitarian aid still appears to be disproportionately focused on official programmes running through Yangon at the expense of community-based networks and initiatives that are able to reach the most vulnerable populations. Cross-border humanitarian assistance has become a necessary tool to reach displaced populations, which are often sheltering in ethnic areas on the country's periphery. Neighbouring countries have by-and-large refused to authorize aid deliveries across borders and have restricted the activities of civil society organizations moving assistance through unofficial channels. Even so, humanitarian actors working in border areas and regions controlled by opposition groups told the Special Rapporteur that there was much greater capacity to deliver aid and that funding was the limiting factor.

IV. Recommendations

94. **The Special Rapporteur calls on the military junta to immediately end attacks on civilians and other human rights violations, halt the use of anti-personnel landmines, release all political prisoners, dissolve the State Administration Council, stand down so that a legitimate government reflecting the will of the people can be formed and cooperate with international accountability mechanisms.**

95. **The Special Rapporteur calls on the Security Council to pass a resolution that: (a) imposes a comprehensive arms embargo on Myanmar, including on transfers of jet**

³⁹ See Office for the Coordination of Humanitarian Affairs, *Humanitarian response plan: Myanmar* (January 2023). Available at <https://myanmar.un.org/en/216732-myanmar-humanitarian-response-plan-2023-january-2023>.

⁴⁰ See Office for the Coordination of Humanitarian Affairs, Financial Tracking Service, "Rohingya Humanitarian Crisis Joint Response Plan 2022". Available at <https://fts.unocha.org/appeals/1082/summary> (accessed on 16 February 2023).

⁴¹ See OHCHR, "Myanmar: UN expert decries launch of 'shameful, catastrophic cuts' in food aid for Rohingya in Bangladesh", press release, 2 March 2023. Available at <https://www.ohchr.org/en/press-releases/2023/03/myanmar-un-expert-decries-launch-shameful-catastrophic-cuts-food-aid>.

⁴² See UNHCR, Thailand fact sheet, 31 December 2022. Available at <https://reliefweb.int/report/thailand/unhcr-thailand-fact-sheet-31-december-2022>.

⁴³ A/77/494.

fuel to the military; (b) imposes targeted economic sanctions on the Myanmar military, its leaders and its sources of revenue; and (c) refers the situation in Myanmar to the International Criminal Court.

96. The Special Rapporteur calls on all Member States to work together to exert strong, sustained pressure on the State Administration Council by:

(a) Coordinating efforts to deprive the State Administration Council of weapons, finances and legitimacy, including by preventing the transfer or sale of weapons, dual-use technology and aviation fuel to the Myanmar military; imposing targeted economic sanctions on individuals and entities providing arms and munitions to the Myanmar military; and sanctioning the Myanmar Foreign Trade Bank, the Myanmar Oil and Gas Enterprise and other key sources of revenue;

(b) Depriving the State Administration Council of legitimacy by refusing recognition before international bodies, including the United Nations, and by refusing to invite, or disinviting, State Administration Council officials from international forums and functions;

(c) Supporting efforts to hold perpetrators of atrocity crimes accountable in impartial and independent courts, including the International Criminal Court, the International Court of Justice and national courts in countries with universal jurisdiction laws;

(d) Publicly stating that the State Administration Council lacks the authority to hold credible elections, while refusing to engage or otherwise support the State Administration Council in conducting elections.

97. The Special Rapporteur calls on all Member States to work together to protect the rights of people fleeing violence and human rights violations in Myanmar by:

(a) Ratifying and implementing the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and international human rights treaties;

(b) Expanding programmes for the resettlement of refugees from Myanmar, including Rohingya refugees, while supporting activists, journalists and human rights defenders to leave Myanmar and seek asylum in third countries;

(c) Adopting, implementing and enforcing fair and non-discriminatory national asylum policies that protect the rights of refugees and asylum-seekers, including by respecting the principle of non-refoulement and ensuring that detention of foreign nationals is utilized only as a last resort.

98. The Special Rapporteur recommends that Bangladesh, China, India, Indonesia, Malaysia, Thailand and Sri Lanka:

(a) Refrain from blocking Myanmar nationals fleeing violence from crossing land borders, avoid collective expulsions and ensure that any returns of such individuals are safe, voluntary and dignified;

(b) In line with the call by the United Nations High Commissioner for Human Rights, halt all deportations of Myanmar nationals;

(c) Coordinate and proactively carry out search and rescue efforts for Rohingya and other refugees and migrants in the Bay of Bengal and the Andaman Sea;

(d) Provide UNHCR and other human rights and humanitarian actors access to areas where people who have fled Myanmar are located, including border areas and government-sanctioned encampments, shelters and immigration detention centres;

(e) Ensure screening of all individuals in immigration detention centres in accordance with international standards and release individuals with international protection concerns;

(f) Ensure safe passage of individuals seeking to access UNHCR offices;

(g) Facilitate the timely departure of Myanmar nationals approved for resettlement or travel to third countries;

(h) **Reform immigration law to provide for rights-based alternatives to detention and ensure that children are never detained as a result of their or their parents' migration status;**

(i) **Adopt policies to remove barriers to livelihoods, education, health care and other services for Myanmar nationals.**

99. **The Special Rapporteur recommends that India give UNHCR unfettered access to refugees and asylum-seekers throughout the country, including in Mizoram and Manipur States.**

100. **The Special Rapporteur recommends that Malaysia open access to immigration detention centres to UNHCR and domestic oversight bodies.**

101. **The Special Rapporteur recommends that Thailand amend criteria for protection under the national screening mechanism to remove all exclusions that prevent Myanmar nationals from accessing protection under the mechanism.**

102. **The Special Rapporteur recommends that United Nations country teams in countries hosting refugees and migrants from Myanmar prioritize the needs of those communities throughout their programming.**

103. **The Special Rapporteur recommends that United Nations agencies, international donors and international humanitarian organizations:**

(a) **Increase humanitarian assistance to the people of Myanmar, including by fully funding the Myanmar Humanitarian Response Plan and the Rohingya Humanitarian Crisis Joint Response Plan;**

(b) **Ensure a proportional response to humanitarian needs in Myanmar that prioritizes reaching displaced and vulnerable populations, including by engaging with the National Unity Government, ethnic resistance organizations and civil society organizations to reach areas that are inaccessible to Yangon-based agencies;**

(c) **Increase support to Myanmar civil society organizations;**

(d) **Increase support to organizations and agencies working to protect the rights of persons from Myanmar in third countries, including support to map the needs of vulnerable groups, including women, children, and elderly and disabled people;**

(e) **Prioritize the ongoing review of organizations' and agencies' policies and procedures in the light of the current situation in Myanmar, with the goal of enabling support to unregistered organizations, flexible reporting requirements, the transfer of funds outside Myanmar's formal banking system and the delivery of cross-border aid to internally displaced persons.**