

WRITTEN COMMUNICATION TO:

SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN MYANMAR
WORKING GROUP ON ARBITRARY DETENTION
SUBCOMMITTEE ON THE PREVENTION OF TORTURE
SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS
SPECIAL RAPPORTEUR ON MINORITY ISSUES

THE DETENTION OF MYANMARESE ASYLUM SEEKERS IN INDIA

Submitted in January 2024

Joint Submission by

Global Detention Project (GDP)

1-3 rue de Varembé,
1202 Geneva,
Switzerland

W: www.globaldetentionproject.org
E: admin@globaldetentionproject.org
T: +41 (0) 22 548 14 01

Asia Pacific Refugee Rights Network

43/7-8, Silom Surawong Condominium
Floor 5, Soi Anuman Ratchathon Surawong Road,
Bangrak
Bangkok 10500
Thailand

W: www.aprrn.org
E: info@aprrn.org
T: +66 (0) 2 234 2679

ABOUT ASIA PACIFIC REFUGEE RIGHTS NETWORK

The Asia Pacific Refugee Rights Network (APRRN) is an open and growing network consisting of more than 240 civil society organisations and individuals from 28 countries committed to advancing the rights of refugees in the Asia Pacific region.

APRRN aims to advance the rights of refugees and other people in need of protection through joint advocacy, capacity strengthening, resource sharing, and outreach. APRRN envisions a region in which all people in need have equal and adequate access to assistance and protection, and to timely durable solutions. We envision a region in which refugee communities, civil society, UNHCR, States (including those outside the region) and other actors collaborate effectively towards the common purpose of protection.

ABOUT THE GLOBAL DETENTION PROJECT

The Global Detention Project (GDP) is committed to ending arbitrary and harmful migration-related detention practices around the world, and to ensuring respect for the fundamental human rights of all migrants, refugees, and asylum seekers. To achieve this, we seek to:

- Increase public knowledge and awareness of immigration detention policies.
- Expand coverage of immigration detention by human rights monitoring bodies and other international agencies.
- Expand partnerships with local and international civil society organisations working to end arbitrary and harmful immigration detention practices.
- Strategically target research and advocacy so that it effectively challenges arbitrary and harmful detention laws and policies.

To the attention of:

- **Special Rapporteur on the Situation of Human Rights in Myanmar**
- **Working Group on Arbitrary Detention,**
- **Subcommittee on the Prevention of Torture,**
- **Special Rapporteur on the Human Rights of Migrants,**
- **Special Rapporteur on Minority Issues**

The Global Detention Project and the Asia Pacific Refugee Rights Network, in collaboration with civil society partners in India, wish to bring to your urgent attention the deteriorating situation in India faced by people fleeing the conflict in neighbouring Myanmar, in particular with respect to their arrest, detention, and forced removal.

Since the February 2021 coup d'état in Myanmar, the military junta has perpetrated countless human rights violations, targeting anyone who questions the legitimacy of the coup, including activists, human rights defenders, journalists, and opposition leaders. As the Special Rapporteur on the situation of human rights in Myanmar has noted, the coup has severely exasperated a pre-existing humanitarian situation, forcing tens of thousands of people to flee the country, adding to the already massive population of Myanmar refugees residing in neighbouring countries.¹

Since the coup, India has become an increasingly important destination for refugees, particularly along its northeastern border. However, India's reception of these refugees is severely complicated by both its prejudicial citizenship law, which marginalises Muslims fleeing persecution from abroad (like Myanmar's heavily persecuted Rohingya Muslim minority), as well as the country's lack of domestic legal framework to distinguish refugees from undocumented immigrants. India treats anyone without valid travel documentation as an illegal immigrant who is liable to arrest, detention, and deportation. Hundreds of such detainees are denied access to UNHCR, blocked from seeking international protection, and often subjected to prolonged administrative custody.² Refugees are also at risk of arrest and detention if they attempt the arduous journey to Delhi to register with UNHCR, for which they need valid documents. Importantly, the Special Rapporteur on Myanmar highlighted this lack of UNHCR access in his March 2023 report, which urged the Indian government to allow such access.³

Numerous aspects of these detentions reveal their fundamental arbitrariness and illegality, including *inter alia* their discriminatory application, lack of legitimate purpose or judicial sanction, poor conditions of detention, lack of time limits or indefinite detention, punitive function, and use against a vulnerable population. The Working Group on Arbitrary Detention's authoritative *Revised Deliberation No. 5 on the deprivation of liberty of migrants*⁴ underscores the arbitrariness of these measures:

- *Paragraph 10:* "The irregular entry and stay in a country by migrants should not be treated as a criminal offence, and the criminalization of irregular migration will therefore always exceed the

¹ Special Rapporteur on the situation of human rights in Myanmar, Call for contributions.

² Radio Free Asia, *More than 170 Myanmar refugees arrested in India's Manipur state since January*, 17 March 2023, <https://www.rfa.org/english/news/myanmar/refugees-03172023161746.html>

³ OHCHR, Human Rights Council 52nd session, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, 9 March 2023, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session52/advance-version/A_HRC_52_66_AdvanceUnditedVersion.docx [Accessed on 6 October 2023].

⁴ The Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on the deprivation of liberty of migrants*, 2018, <http://tinyurl.com/36vhew3h>

legitimate interests of States in protecting their territories and regulating irregular migration flows. Migrants must not be qualified or treated as criminals or viewed only from the perspective of national or public security and/or health.”

- *Paragraph 12*: “Any form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort ... [and] only if justified by a legitimate purpose, such as documenting entry and recording claims or initial verification of identity.”
- *Paragraph 13*: “[D]etention in the course of migration proceedings ... must be ordered and approved by a judge or other judicial authority.”
- *Paragraph 21*: “Detaining someone solely on the basis of a distinction such as race, colour, sex, language, religion, political or other opinion, national or social origin, economic position, birth, nationality or any other status will always be arbitrary.”
- *Paragraph 25*: “A maximum detention period in the course of migration proceedings must be set by legislation, and such detention shall be permissible only for the shortest period of time. Excessive detention in the course of migration proceedings is arbitrary.”
- *Paragraph 38*: “The conditions of their detention must be humane, appropriate and respectful, noting the non-punitive character of the detention in the course of migration proceedings.”
- *Paragraph 41*: “Detention of migrants in ... situations of vulnerability or at risk ... must not take place.”

THE DETENTION OF MYANMARESE ASYLUM SEEKERS IN INDIA

Since Myanmar’s military coup, India has seen a rise in arrivals of asylum seekers across its north-eastern border, particularly into the states of Manipur and Mizoram. According to UNHCR, 59,300 Myanmar nationals have entered north-eastern states since February 2021.⁵ This does not take into account the several thousand Myanmar nationals who were living in these states even before the events of 2021. Many asylum seekers remain in hiding, as they are afraid of being arrested and detained as illegal migrants, particularly in Manipur.⁶

Mizoram houses the largest number of Myanmar nationals, with estimates ranging from 35,000-65,000.⁷ In Manipur, the government’s various estimates range from 2,000 Myanmar nationals⁸ (who have been identified by a committee and sent to shelter homes) to 5,000⁹. Other estimates suggest up to 10,000 in the state in October 2022,¹⁰ with a likely rise since then, including about 4,363 individuals who have taken shelter in recent days

⁵ UNHCR, *Myanmar Emergency Overview Map: Number of people displaced since Feb 2021 and remain displaced (as of 15 Jan 2024)*, available at: <https://data-newprod.unhcr.org/en/documents/details/106137> [Accessed on 21 January 2023].

⁶ Human Rights Watch, *India: Release Detained Myanmar Asylum Seekers*, 28 July 2021, available at: <https://reliefweb.int/report/india/india-release-detained-myanmar-asylum-seekers> [Accessed on 1 June 2023]

⁷ Hindustan Times, *Fresh influx of Myanmar nationals reported in Mizoram since April 12 airstrikes*, 20 April 2023, available at: <https://www.hindustantimes.com/cities/others/over-500-myanmar-nationals-enter-mizoram-s-farkawn-village-following-airstrike-by-myanmar-military-says-village-level-committee-on-myanmar-refugees-myanmarrefugees-mizoram-campvictoria-myanmarmilitary-chinnationalarmy-humanitarianassistance-101681985470307.html> [Accessed on 1 June 2023]; Print, *Mizoram is helping Myanmar Refugees and Suu Kyi’s MPs. But it is running out of money*, 9 November 2022, available at: <https://theprint.in/feature/mizoram-is-helping-myanmar-refugees-and-suu-kyis-mps-but-it-is-running-out-of-money/1206058/> [Accessed on 6 June 2023]

⁸ Times of India, *2000 illegal Myanmar nationals in Manipur: Chief Minister N Biren Singh*, 3 May 2023, available at: <https://timesofindia.indiatimes.com/city/imphal/2000-illegal-myanmar-nationals-in-manipur-chief-minister-n-biren-singh/articleshow/99946903.cms?from=mdr> [Accessed on 1 June 2023]

⁹ Economic Times, *Manipur government to house Myanmar refugees at designated centres*, 30 March 2023, available at: <https://economictimes.indiatimes.com/news/india/manipur-govt-to-house-myanmar-refugees-at-designated-centers/articleshow/99122061.cms> [Accessed on 1 June 2023]

¹⁰ Outlook, *Influx of Chin refugees deepens the divide in Manipur*, 25 October 2022, available at: <https://www.outlookindia.com/national/influx-of-the-chin-refugees-deepens-the-divide-in-manipur-news-232302> [Accessed on 1 June 2023]

following fresh violence in the Chin state.¹¹

Although the Indian government has condemned the violence in Myanmar,¹² it directed the north-eastern states to “sensitize all law enforcement and intelligence agencies for taking prompt steps in identifying the illegal migrants and initiate the deportation processes expeditiously and without delay and to take appropriate action as per law to check the illegal influx from Myanmar into India.”¹³

The state of Mizoram has provided humanitarian aid to asylum seekers crossing the Myanmar-Mizoram border.¹⁴ The state of Manipur, however, has followed the central government’s directive. For instance, it has been detaining undocumented Myanmar nationals within its territory and has created a detention centre within the complex of Sajiwa Central Prison in Imphal, the state capital, with plans to open similar detention centres for foreign nationals in the three border districts of Churachandpur, Chandel, and Tengnoupal.¹⁵ Prior to this, there were instances of government properties being designated as temporary detention centres (such as that at Sadbhavna Mandap in Churachandpur district) to house Myanmar asylum seekers.¹⁶

As of May 2023, more than 400 Myanmar nationals were reportedly being held in those facilities, although there are plans to increase detainee numbers to more than 2,000 Myanmar nationals.¹⁷ Reports also indicate that more people have been detained than were given lawful court order, meaning that many people fleeing Myanmar may have been detained outside any official judicial process. Earlier this year the Manipur State Human Rights Commission inspected the central jail in the state capital of Imphal and found many Myanmar nationals detained beyond their period of punishment. They were further ordered to either be released to detention centres or deported.¹⁸

¹¹ *Amid unrest, 4,363 more take refuge in Manipur in few days*, TOI (18 Dec., 2023), available at: http://timesofindia.indiatimes.com/articleshow/106074450.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst [Accessed on 21 January 2023]

¹² Indian Express, *India condemns violence in Myanmar, urges maximum restraint*, 1 April 2021, available at: <https://indianexpress.com/article/india/india-condemns-myanmar-violence-military-coup-7254023/> [Accessed on 27 November 2023]

¹³ PIB, *Illegal Influx of People*, 27 July 2021, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1739494>. [Accessed on 1 June 2023]

¹⁴ Deccan Herald, *No change in Mizoram government’s policy towards Myanmar refugees*, 7 December 2023, available at: <https://www.deccanherald.com/india/mizoram/no-change-in-mizoram-governments-policy-towards-myanmar-refugees-2801754> [Accessed on 8 December 2023]

¹⁵ Indian Express, *23 Myanmar nationals held in Manipur*, 8 April 2023, available at: <https://indianexpress.com/article/india/23-myanmar-nationals-held-in-manipur-8544915/> [Accessed on 1 June 2023]

¹⁶ NE Now, *3 Myanmar Nationals escape from Churachandpur Jail*, 24 January 2023, (Sadbhavna Mandap, New Lamka which was declared as a temporary prison under the Prison Act, 1984 by the State Government on April 1, 2021), available at: <https://nenow.in/neighbor/myanmar/manipur-3-myanmar-nationals-escape-from-churachandpur-jail.html> [Accessed on 27 January 2023]

¹⁷ Outlook, *Manipur facing threat of illegal immigration from Myanmar, ILP much: Biren Singh*, 8 April 2023, available at: <https://www.outlookindia.com/national/manipur-facing-threat-of-illegal-immigration-from-myanmar-ilp-must-biren-singh-news-283136> [Accessed on 1 June 2023]

¹⁸ The Print, *75 Myanmar nationals moved from Manipur jail to detention after human rights body visit, What it found*, 1 September 2023, available at: <https://theprint.in/india/75-myanmar-nationals-moved-from-manipur-jail-to-detention-after-human-rights-body-visit-what-it-found/1740507/> [Accessed on 10 November 2023]

INDIAN LEGISLATIVE FRAMEWORK PROMOTES ARBITRARY DETENTION

1) India's Legal Framework for Refugee Protection

Although not a signatory to the 1951 Refugee Convention, India allows UNHCR to process refugee claims for certain nationalities, including those from Myanmar and Afghanistan. However, UNHCR does not have a presence in the north-eastern states of India, thereby forcing those seeking protection to undertake the long journey to New Delhi, risking detection by state authorities along the way.

India does not have a domestic legislative framework for the management of asylum, and continues to deploy colonial-era legislation including the Foreigners Act of 1946 and the Passports Act of 1967 to manage the presence of all non-citizens entering the country without the requisite travel documentation. These provide that anyone on Indian soil without the required travel documentation (e.g. visa) is considered an illegal immigrant and risks arrest, prosecution, punitive and administrative detention, and deportation (Sections 3¹⁹ and 14²⁰ of the Foreigners Act of 1946, and the Passports Act of 1967).

2) Arrest, Detention, and Deportation of Foreigners

As per a 1958 directive of the Union Government, the powers to arrest, detain, and deport under the Foreigners Act are vested in States and Union Territories.²¹ Therefore, these governments can exercise powers to detain and deport foreign nationals. Various classes of foreigners can be prosecuted and imprisoned for migration violations as well as placed in removal detention:

- Foreign nationals found without valid stay documents who are awaiting deportation;
- Foreign nationals who have completed their sentence following criminal proceedings against them;
- Foreign nationals who have been acquitted by a court but do not possess valid travel documents who were detained while awaiting deportation.²²

3) Punitive Imprisonment and Indefinite Detention

India permits immigration detention for exceedingly long periods, without a specific time limit. Penalty provisions provided in the Foreigners Act 1946 (Sec 14, 14A) stipulate a specific time-frame of sentencing, leaving the imposition of a sentence from six months to three years at the discretion of judicial officers. In cases where a person is arrested under the Foreigners Act, they first serve a sentence as punishment upon conviction after which or simultaneously the administrative process for deportation is initiated. Arrested migrants are generally unable to secure bail because of the prohibitive conditions on bail as well as lack of residence, and end up continuing to be kept in administrative detention pending removal after completing their

¹⁹ Section 3 (i) Foreigners Act: The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.

²⁰ Section 14 of Foreigners Act: Penalty for contravention of provisions of the Act, etc. — Whoever. — (a) remains in any area in India for a period exceeding the period for which the visa was issued to him; (b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder; (c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

²¹ Ministry of Home Affairs, Notifications S.O. Nos. 590 & 591 [F.No. 4/3/56-(I)F.] dated 19th April, 1958.

²² Ministry of Home Affairs, Model Detention Centre Manual, 2019.

initial sentence, which has no established time limit.

Delays in completing administrative processes for deportation often cause detention to become indefinite. This has been frequently observed by high Courts in Delhi²³ as well as in Assam.²⁴ Foreigners have been detained for years, despite it being mandated that the administrative process is to be begun three months before the completion of a sentence.²⁵ According to experts consulted for this submission, in West Bengal sentences are usually for less than two years, while in the North-East they tend to be between two and three years usually in cases where the person has not been released on bail.

4) Poor Detention Conditions

The Ministry of Home Affairs' 2019 Model Detention Centre Manual provides that the detention centre/holding centre camp should provide all facilities required to maintain standards of living in consonance with detainees' human dignity.²⁶ However, detention centres have been reported to have **poor conditions of stay**.²⁷ This includes lack of cleanliness/hygiene, non-functioning toilets, lack of basic provisions like clothes and food prepared in a healthy and safe manner, lack of communication with families and counsel, and lack of medical facilities (in particular lack of mental health facilities).

Sources in India informed us that in West Bengal, there is no dedicated immigration detention centre and asylum seekers are locked up in prisons alongside people serving sentences for unrelated crimes. In Assam, where millions of people stand to be disenfranchised because of the state's racially charged national Register for Citizens (NRC), immigration detention centres remain under construction. States in the North-East In some states, including Manipur, official reserve a section of a prison for immigration purposes. Medical services are particularly poor, with medical staffing falling below the recommended level of 3,570 staff members—according to 2022 prison statistics, on 31 December 2022 there were only 2,125 medical staff members working in India's prisons.²⁸

5) Immigration Detention of Children

As many experts and UN human rights bodies agree, children should never be placed in immigration-related detention because it is never in their best interests. However, among the Myanmarese asylum seekers arriving in India, there are either accompanied or unaccompanied children facing prolonged detention. This occurs either in Child Care Institutions operated by either government agencies or private agencies. Many are often

²³ Lal Tlan Lawm v. Union of India & Anr, Delhi High Court, W.P. (CRL) 1327/2015, order dt. 6 August 2015.

²⁴ In Re: Contagion of Covid-19 Virus in Prisons and Director General (Prisons), [I.A No. 179931 of 2022] [Suo Moto Writ Petition (C) No. 01/2020]

²⁵ Ministry of Home Affairs, Government of India, Consolidated Instructions regarding procedure to be followed for deportation/ repatriation of a foreign national, No. 25022/ 19/2014- F.I., dt. 25 April 2014

²⁶ Ministry of Home Affairs, Manual on Detention, 2019. Facilities to be provided to inmates: Electricity with generator, drinking water (including water coolers), hygiene, accommodation with beds (adequate cubic contents of air, floor space, lighting, ventilation and climatic protection), communication facilities, provision for kitchen, drainage and sewage facilities, fire safety systems, sufficient open space to facilitate resident movement in a secure environment, segregated accommodation for male and female detainees, ensuring family unity, medical facilities including a mobile medical dispensary, CCTV cameras for monitoring purposes. Staff should be trained to ensure that the detainees are treated with due dignity. Further, scales of diet are to be as per the Model Prison Manual, 2016. The Manual also gives a breakdown of the size of infrastructure for a 50 persons camp to accommodate all the above spaces.

²⁷ Article 14, *Rohingya refugees recall desperate conditions with no legal recourse in Delhi detention centre*, 12 October 2022, available at: <https://article-14.com/post/rohingya-refugees-recall-desperate-conditions-with-no-legal-recourse-in-delhi-detention-centre-6345c105f3851> [Accessed on 8 June 2023]

²⁸ National Crime Records Bureau, "PSI Year Wise 2022," accessed 23 January 2024, <https://ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=>

separated from their families for extended periods, a situation widely recognised as contrary to the “best interests” of the child.²⁹ Being a signatory to the Convention on the Rights of the Child (CRC) and with a domestic framework in place through the Juvenile Justice Law and system, India is obligated to ensure that refugee children have access to protection, and humane and considerate treatment without discrimination. It is strongly urged that these children should be promptly reunited with their families or communities, thereby preventing unnecessary detention.

VIOLATION OF NON-REFOULEMENT AND JUDICIAL RESPONSE

Most people who flee across the largely porous Indo-Myanmar border do so on foot and without travel and stay documents, leaving them at risk of detection, arrest/detention, and deportation. Most asylum seekers from Myanmar remain undocumented in the north-eastern states of Manipur and Mizoram for fear of arrest and forced removal.

The denial of access to institutions mandated to process refugee claims as well as the lack of legal infrastructure to process such claims is a violation of Article 14 of the Universal Declaration of Human Rights (*everyone has the right to seek and to enjoy in other countries asylum from persecution*) to which India is a signatory. Further, deportation of these asylum seekers and refugees violates the principle of *non-refoulement*, as they remain at risk of persecution in Myanmar, where violence as well as arbitrary arrests continue. Further *non-refoulement* is customary international law and India is bound by it even if the country is not a signatory to the Refugee Convention of 1951 or the 1967 Protocol.

The courts in India have given judgments over the years to clarify points of law regarding the right to asylum and *non-refoulement*. In *Nandita Haksar v. State of Manipur*,³⁰ the Manipur High Court held that although India may not be a signatory to the 1951 Refugee Convention, its obligations under other international declarations/covenants, read with Article 21 (Right to Life) of the Constitution, encompass the principle of *non-refoulement*:

“Therefore, though India may not be a signatory to the Refugee Convention of 1951, its obligations under other international declarations/covenants, read with Article 21 of our Constitution, enjoins it to respect the right of an asylum seeker to seek protection from persecution and life or liberty-threatening danger elsewhere.”³¹

While hearing the bail plea of 71 Myanmar nationals in a local court of the Judicial Magistrate in Moreh, Manipur,³² the judge acknowledged the ongoing conflict in Myanmar and the fact that the Myanmar nationals were, in fact, fleeing persecution. She further ordered for them to

²⁹ Paul, A. (2023). Beyond Access: Legal Aid for Child Refugees in India. In: Bajpai, A., Tushaus, D.W., Prasad, M.R.K. (eds) Human Rights and Legal Services for Children and Youth. Springer, Singapore. https://doi.org/10.1007/978-981-99-5551-0_11

³⁰ *Nandita Haksar v. State of Manipur*, High Court of Manipur, W.P.(CrI.) NO. 6 OF 2021 with MC[W.P.(CrI.)] NO.1 OF 2021 and MC[W.P.(CrI.)] NO.2 OF 2021, judgment dt. 3 May 2021, available at: https://drive.google.com/file/d/1MIJytk_oKYi2qAh2uTrtiqsjJPWnz4v/view [Accessed on 2 June 2023]

³¹ *Nandita Haksar v. State of Manipur*, High Court of Manipur, W.P.(CrI.) NO. 6 OF 2021 with MC[W.P.(CrI.)] NO.1 OF 2021 and MC[W.P.(CrI.)] NO.2 OF 2021, judgment dt. 3 May 2021, available at: https://drive.google.com/file/d/1MIJytk_oKYi2qAh2uTrtiqsjJPWnz4v/view [Accessed on 2 June 2023]

³² *State of Manipur v. Thankghoilen Haokip & 70 others*, FIR No. 04 (01) 2023 MRH PS, Order of the Judicial Magistrate First Class at Moreh, Tengnoupal District, Manipur, order dt. 27 January 2023

be able to access UNHCR in order to undergo Refugee Status Determination (RSD). But without the appropriate policy framework, the risk of arrest and indefinite detention continues.

The question of non-*refoulement* was raised in the case of *Mohammad Salimullah vs Union of India* in the context of the deportation of Rohingyas to Myanmar. While an interim order in the case allowed for deportation, the principal challenge (that the deportation of Rohingyas would amount to a breach of India's obligations under international law, specifically those of the principle of non-*refoulement*) remains pending.³³

In the meantime, the government of India continues to argue that it is not bound by the non-*refoulement* norm despite both its obligations under relevant provisions in other treaties to which it is a party, including the ICCPR and the ICERD, as well as the growing chorus of expert and judicial opinion stipulating to the contrary. As the Special Rapporteur on racism noted in an amicus brief concerning India's treatment of Rohingya refugees, "States may never derogate from their commitments not to refool individuals. The violation of non-*refoulement* represents a gross violation of human rights law and settled international law."³⁴

RECOMMENDATIONS

We urge you to consider issuing the following recommendations to the government of India:

- **Immediately cease the arbitrary detention of all Myanmar nationals, including children,** and implement legal and policy reforms that ensure that immigration detention is always used as a last resort, and based on individual assessment of each case to establish the necessity and proportionality of each detention decision.
- **Stop the arbitrary criminalisation of immigration infractions** by amending the law to remove punitive measures like prison sentences for irregular entry and stay in the country.
- **Consider adopting the 1951 UN Refugee Convention;** in the meantime:
 - cease the deportation and *refoulement* of people fleeing Myanmar, in line with India's international treaty obligations and customary international law;
 - direct all relevant national and state authorities to identify asylum seekers as a distinct class of foreigners in need of international protection;
 - allow UNHCR access to the north-eastern region of India so that it can adequately operate its role as the first point of contact for refugees from Myanmar;
 - give asylum seekers access to asylum procedures and expedite the asylum determination process;
 - ensure access for detained asylum seekers to timely and appropriate legal aid,³⁵ through collaboration with district legal service centres to ensure sustained

³³ Katrak, Malcolm, and Shardoool Kulkarni. 2021. "Refouling Rohingyas: the supreme court of India's uneasy engagement with international law". *Journal of Liberty and International Affairs* 7 (2):116-27. <https://doi.org/10.47305/JLIA21720116k>.

³⁴ UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, "Legal Opinion on India's obligations under International Law to not deport Rohingyas," United Nations, 12 July 2019.

³⁵ Echoing the Principle 6 of the recently drafted New Delhi Principles on The Role Of Judiciary In Ensuring Equal Access To Justice For All In The Global South available here: https://nalsa.gov.in/rfac2023/pdf/CJRT_outcomeDocument.pdf

- engagement;
- remove the requirement of sureties for asylum seekers seeking bail given the vulnerability of their profiles.
- **Ensure that all detention sites meet international standards** and amend the 2019 Model Manual on Detention to include regular inspections in line with the 2016 Model Prison Manual's provisions for the inspection of prisons.
- **Ensure that vulnerable groups are never placed in immigration detention**, including all asylum seekers from Myanmar.
- **Ensure that detention time limits are kept to a minimum and never become indefinite.**
- **Guarantee the right to access detention centre for independent institutions.**
- **Ensure the eradication of racial profiling and other discriminatory practices in migration control activities.**