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"We Can't Go Back Now": How Japan's Refugee Recognition System Denies Rights and Shirks Obligations to Refugees Fleeing the 2021 Myanmar Coup D'état

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**“WE CAN’T GO BACK NOW”:
HOW JAPAN’S REFUGEE RECOGNITION
SYSTEM DENIES RIGHTS AND SHIRKS
OBLIGATIONS TO REFUGEES FLEEING THE
2021 MYANMAR COUP D’ÉTAT**

JONATHAN MORRISEY**

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* Phrase drawn from an anonymous Myanmar woman seeking refugee status in Japan. *Japan Permits Continued Stay of Myanmar Residents due to Coup*, KYODO NEWS (May 28, 2021), <https://english.kyodonews.net/news/2021/05/4dca5f8eefc1-japan-permits-continued-stay-of-myanmar-residents-due-to-coup.html>.

** Junior Staff Member, American University International Law Review, Volume 37; J.D./M.A. in International Affairs Candidate, May/December 2023, American University Washington College of Law/School of International Service. From my heart, I would like to thank my family, the staff of the Law Review, and Professor Anita Sinha for their endless support and guidance. This Comment is dedicated to the memories of my grandfather Richard Cole Morrisey and uncle Thomas Richard Daniels, inspirational gentlemen and models of leadership and compassion.

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I. INTRODUCTION

The February 2021 coup d'état¹ of the democratic Myanmar government sent shockwaves through the country and across Southeast Asia.² Myanmar communities abroad protested in

1. Coup d'état (coup) [French: stroke of state] refers to "a sudden and decisive action in politics, especially one resulting in a change of government illegally or by force." *Coup d'état*, DICTIONARY.COM, <https://www.dictionary.com/browse/coup-d-etat> (last visited Jan. 5, 2022).

2. See generally Rebecca Ratcliffe, *Myanmar Opposition Announces 'Defensive War' against Junta*, GUARDIAN (Sept. 7, 2021), <https://www.theguardian.com/world/2021/sep/07/myanmar-opposition-announces-defensive-war-against-junta> (describing the resistance against the military Junta by the pro-democracy opposition); Russell Goldman, *Myanmar's Coup, Explained*, N.Y. TIMES (Jan. 10, 2022), <https://www.nytimes.com/article/myanmar-news-protests-coup.html> (reporting that people are training with firearms and grenades, families are fleeing into India, and the country is now on the verge of a civil war);

solidarity while governments took action to protect their Myanmar residents from deportation.³ In Japan, the Ministry of Justice granted an Emergency Refuge Measure to thousands of Myanmar residents, permitting conditional visa extensions due to the coup.⁴ Nonetheless, some Myanmar residents in Japan sought stronger protections in the form of refugee status.⁵ Japan is a party to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees and, accordingly, provides a path to refugee recognition through its domestic law.⁶ However, the country is known for having a stringent refugee application procedure with extremely low acceptance rates.⁷

Ted Regencia, *Myanmar Coup Displaces Thousands as Global Refugee Numbers Rise*, AL JAZEERA (June 18, 2021), <https://www.aljazeera.com/news/2021/6/18/unhcr-urges-action-as-refugees-hit-record-high-of-82-4-million> (reporting that the Myanmar coup has displaced an estimated 680,000 people).

3. Ryusei Takahashi, *Thousands Take to the Streets in Tokyo to Protest Myanmar Coup*, JAPAN TIMES (Feb. 14, 2021), <https://www.japantimes.co.jp/news/2021/02/14/national/myanmar-protest-tokyo/> (describing a march in Tokyo by Myanmar expatriates protesting the coup); *Japan Permits Continued Stay of Myanmar Residents due to Coup*, KYODO NEWS (May 28, 2021, 12:31 PM), <https://english.kyodonews.net/news/2021/05/4dca5f8eefc1-japan-permits-continued-stay-of-myanmar-residents-due-to-coup.html> (reporting Japan's six-month residency extension for Myanmar expatriates, as well as asylum seekers); see also Michele Kelemen, *U.S. Offers Protected Status for People from Myanmar as Coup Leaders Crack Down*, NPR (Mar. 12, 2021, 4:00 PM), <https://www.npr.org/2021/03/12/976442142/u-s-offers-protected-status-for-people-from-myanmar-as-coup-leaders-crack-down> (reporting that the United States has extended temporary protected status to people from Myanmar who fear returning home).

4. Hongoku Jōsei o Fumaeta Zairyū Myanmā Hito e no Kinkyū Kinan Sochi [Emergency Refuge Measure for Myanmar Residents Due to the Situation in Their Home Country], Immigration Services Agency of Japan (May 28, 2021), <https://www.moj.go.jp/isa/content/001349360.pdf> [hereinafter Emergency Refuge Measure].

5. See *id.* (listing the number of individuals from Myanmar seeking refugee recognition in March, 2021 at 2,944).

6. Convention Relating to the Status of Refugees, Jul. 28, 1951, 189 U.N.T.S. 137 [hereinafter Refugee Convention]; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; Accession by Japan to the Protocol Relating to the Status of Refugees, Jan. 1, 1982, 1259 U.N.T.S. 406 [hereinafter Refugee Protocol]; Shutsu'nyūkoku kanri oyobi nanmin nintei hō [Immigration Control and Refugee Recognition Act] [ICRRA] Cabinet Order No. 319 of 1951, arts. 1, 2-3-2, as last amended by Amend. of Act No. 63 of 2019.

7. Naoko Hashimoto, *Why Does Japan Recognize So Few Refugees?*,

This Comment argues (1) that the circumstance of the coup qualifies Myanmar asylum seekers as refugees, (2) that the Emergency Refuge Measure is insufficient protection of refugee rights, and (3) that, generally, Japan continues to violate the Convention and Protocol despite a series of amendments to its domestic refugee law.⁸

Part II provides a background on the relevant portions of the Convention and Protocol, Japan's accession to and implementation of the Convention and Protocol, Japan's refugee practice, and the 2021 Myanmar coup d'état and resulting refugee crisis. Part III analyzes (1) how the Myanmar asylum seekers are refugees under the Convention and Protocol, (2) how Japan has failed to recognize Convention refugees and provide associated rights, and (3) how the grant of special permission to stay in Japan is insufficient protection of Myanmar refugees under the Convention and Protocol. Part IV recommends that Japan should extend rights to asylum seekers under the Emergency Refuge Measure to grant them proper complementary protection, establish a uniform definition of refugee in line with international understandings, and reconfigure its refugee status determination procedure to properly administer recognition of refugees.

II. BACKGROUND

A. THE 1951 CONVENTION AND 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES

The plight of refugees and State responses date back through history.⁹ The 1951 Convention Relating to the Status of Refugees

REFUGEE L. INITIATIVE: RLI BLOG ON REFUGEE LAW AND FORCED MIGRATION (May 1, 2018), <https://rli.blogs.sas.ac.uk/2018/05/01/why-does-japan-recognise-so-few-refugees/> (reporting a refugee acceptance rate of 0.2%).

8. This Comment refers to individuals who qualify as refugees under the definition provided by the Convention simply as "refugees," individuals seeking Convention refugee status as "asylum seekers," and those officially recognized as refugees by the government as "recognized refugees." See *UNHCR Master Glossary of Terms*, UNHCR, <https://www.unhcr.org/glossary/> (last visited Feb. 10, 2022).

9. See generally Terje Einarsen, *Drafting History of the 1951 Convention and 1967 Protocol*, in *THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES*

(the Convention) was the result of dedicated efforts to establish an international refugee system in which the parties agreed to define, accept, and guarantee rights to qualifying refugees.¹⁰ The scope of the Convention was broadened in 1967 with the acceptance of the 1967 Protocol Relating to the Status of Refugees (the Protocol), which dropped certain temporal and geographical limitations.¹¹

This Section explains relevant components of the Convention and Protocol, as well as other refugee protection mechanisms. This includes (1) the applicable definition of a refugee under Article 1(A)(2) of the Convention as modified by the Protocol, (2) refugee related rights and state obligations under the Convention, and (3) basic alternative protections for asylum seekers outside the Convention and Protocol.

i. Defining a Refugee

Article 1(A)(2) of the Convention defines a refugee as:

[Any person who,] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence[,], is unable or, owing to such fear, is unwilling to return to it.¹²

AND ITS 1967 PROTOCOL: A COMMENTARY 37, 40–48 (Andreas Zimmermann et al. eds., 2011) [hereinafter COMMENTARY] (briefing historical incidents of religious and political persecution and the resulting practice of asylum before the 1951 Convention); *see also* OSAMU ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN 9–16 (2008) (briefing the history of refugee practices in Japan before the 1951 Convention).

10. Refugee Convention, Preamble, *supra* note 6.

11. Refugee Protocol, *supra* note 6, art. I(2) (“For the purpose of the present Protocol, the term ‘refugee’ shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words ‘As a result of events occurring before 1 January 1951 and . . .’ and the words ‘. . . as a result of such events’, in Article 1(A)(2) were omitted.”); *see* Einarsen, *supra* note 9, at 68–69. (explaining how nearly every party to the original Convention is also party to the Protocol, meaning the temporal limitations and all but a few geographical limitations of the Convention have been eliminated).

12. Refugee Convention, *supra* note 6, art. 1(A)(2). The exact text has been

This establishes five elements for a person to qualify as a refugee for purposes of the Convention.¹³ The first, “owing to well-founded fear of being persecuted,” is among the more contentious elements, as states differ in interpreting “persecution.”¹⁴ The United Nations High Commissioner of Refugees (UNHCR)¹⁵ suggests an analysis that considers the refugee’s subjective conception of their situation along with the objective analysis of the situation.¹⁶ The second element is “for reasons of race, religion, nationality, membership of a particular social group or political opinion,”¹⁷ for which the UNHCR expects the examiner to determine if one or more of these reasons exists.¹⁸

The third element is “outside the country of his nationality . . .

modified to include language of the chapeau and to omit the clauses made irrelevant by the Protocol. Refugee Protocol, *supra* note 6, art. I(2); *see supra* note 11 and accompanying text.

13. Refugee Convention, *supra* note 6, art. 1(A)(2); *see* UNITED NATIONS HIGH COMM’R FOR REFUGEES [UNHCR], HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS AND GUIDELINES ON INTERNATIONAL PROTECTION UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, paras. 35–110, U.N. Doc. HCR/1P/4/ENG/REV. 4 (2019) [hereinafter HANDBOOK] (identifying and explaining eight factors in Article 1(A) of the Convention for defining a refugee, including two made irrelevant for States that adopted the Protocol and one exclusionary factor relating to individuals with multiple nationalities that is otherwise irrelevant, leaving five identifiable elements in the text of Article 1(A)(2) of the Convention).

14. Refugee Convention, *supra* note 6, art. 1(A)(2); *see* HANDBOOK, *supra* note 13, para. 51 (explaining that despite attempts, there has been no agreed upon definition of “persecution,” but concluding that serious violations of human rights for reasons provided in the Convention should constitute persecution).

15. The UNHCR is a United Nations humanitarian and social organ tasked with overseeing the international protection of refugees through the UN and global governments. Statute of the Office of the United Nations High Commissioner for Refugees, G.A. Res. 428(V) of 14 Dec. 1950, annex chs. 1–2, U.N. Doc. A/RES/428(V).

16. HANDBOOK, *supra* note 13, paras. 37–50; *see* Andreas Zimmermann & Claudia Mahler, *Article 1 A, para. 2*, in COMMENTARY, *supra* note 9, at 281, 338–39 (comparing the subjective-objective approach, which requires an assessment of the applicant’s personality, with the purely objective approach, in which the subjective fear is considered evident and only the well-foundedness of the fear and risk of persecution are analyzed).

17. Refugee Convention, *supra* note 6, art. 1(A)(2).

18. *See* HANDBOOK, *supra* note 13, paras. 66–67 (providing that the examiner must analyze the applicant’s reasons for fear of persecution and potentially overlapping criteria to determine if the Convention definition applies).

or . . . outside the country of his former habitual residence.”¹⁹ While refugees are often those who flee to another country out of fear, some individuals may also become refugees during a residence abroad due to a change in circumstances.²⁰ The latter individuals are called refugees “sur place” and are subject to extra considerations regarding the circumstances or development of their well-founded fear.²¹ Examining the text of Article 1(A) of the Convention, there is no requirement for the “well-founded fear” to have developed before the refugee is “outside the country” from which they seek protection.²² The drafting history of the Convention suggests support for the inclusion of refugee “sur place” as refugees covered by the Article 1(A) definition.²³ The United States and Member States of the European Union, among others, have explicitly afforded Convention protections to refugees “sur place” while other States have implicitly accepted the concept through accepting “sur place” claims.²⁴

In evaluating refugee “sur place” claims, there may not be evidence to support the element “well-founded fear” which, at the time of departure, did not exist.²⁵ The UNHCR recommends special attention be provided as to the change in circumstances and whether it created a situation where the alleged persecuting party’s attention would be brought against the asylum seeker.²⁶

The fourth element of the refugee definition refers to both a national’s incapacity to receive protection or unwillingness to do so based on the well-founded fear mentioned earlier.²⁷ The fifth element applies the same considerations for individuals considered stateless.²⁸

19. Refugee Convention, *supra* note 6, art. 1(A)(2).

20. HANDBOOK, *supra* note 13, paras. 94–96.

21. *See id.* (defining a refugee “sur place” and explaining basic circumstances that may lead to this type of refugee).

22. *See* Refugee Convention, *supra* note 6, art. 1(A)(2); Zimmermann & Mahler, *supra* note 16, at 325–27.

23. Zimmermann & Mahler, *supra* note 16, at 325–27.

24. *Id.* at 327–29.

25. *See* HANDBOOK, *supra* note 13, para. 94 (noting that refugees “sur place” may not have left the country necessarily illegally or with a “well-founded fear”).

26. *Id.* para. 96.

27. Refugee Convention, *supra* note 6, art. 1(A)(2).

28. *Id.*; *see* HANDBOOK, *supra* note 13, paras. 101–05 (regarding the final phrase as analogous to the preceding phrase, resulting in similar considerations and the same protection for both nationals and stateless refugees).

Individuals that meet these elements and fall under no exclusionary criteria are refugees regardless of formal determinations by governments.²⁹ Refugee recognition by states is, therefore, a declaratory process of a status earned by prior circumstances.³⁰ While refugees may be recognized on a case-by-case basis, most refugees worldwide have been granted recognition on a *prima facie* basis.³¹ Those seeking international protection but whose refugee status remains undetermined are commonly referred to as asylum seekers.³²

ii. Refugee Related Rights and State Obligations

State parties have a few obligations to refugees under the Convention.³³ Article 16 requires States to provide refugees with free access to courts or administrative bodies.³⁴ Articles 17 through 19 mandate that States allow refugees the right to work in various

29. Refugee Convention, *supra* note 6, art. 1(A)(2) para. 2, (C)–(F); HANDBOOK, *supra* note 13, para. 28 (“A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition . . . Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition but is recognized because he is a refugee.”); see James C. Hathaway & Anne K. Cusick, *Refugee Rights Are Not Negotiable*, 14 GEO. IMMIGR. L.J. 481, 488–91 (2000) (explaining the non-derogability of State obligations); see also Walter Kälin et al., *Article 33, para. 1*, in COMMENTARY, *supra* note 9, at 1327, 1370–71 (citing various UNHCR statements explaining how the principle of non-refoulement necessarily applies to asylum seekers as well as recognized refugees).

30. See HANDBOOK, *supra* note 13, para. 28 (providing that formal status is merely a recognition or declaration of an existing status).

31. HANDBOOK, *supra* note 13, at 204, paras. 1–3 & n.3 (“[I]n 2012, 1,121,952 refugees were recognized [pursuant to a *prima facie* approach] and 239,864 were recognized individually.”).

32. UNHCR *Master Glossary of Terms*, *supra* note 8.

33. See Hathaway & Cusick, *supra* note 29, at 488–98 (determining that the language of the Convention and its drafting history establish firm obligations on parties that vary mainly based on a refugee’s attachment to the state, such as presence in a territory or residency, but cannot be ignored outside specific provisions of the Convention).

34. Refugee Convention, *supra* note 6, art. 16; Björn Elberling, *Article 16*, in COMMENTARY, *supra* note 9, at 931, 933–34 (explaining how this largely uncontroversial provision is central to both ensuring the rights of refugees are sustained but also assigning this responsibility to the states, rather than international bodies like the UNHCR).

professions,³⁵ while Article 24 mandates the provision of labor and social security rights.³⁶

States are also prohibited from certain restrictive actions against refugees. Under Article 26, refugees are to be permitted freedom of movement within the territory of the host.³⁷ Article 31 prevents states from penalizing refugees for unlawful entry, provided the refugees shows good cause for their illegal entry.³⁸ Article 32 prohibits States from expelling refugees without due process of law.³⁹ Moreover, under Article 33's non-refoulement provision, States are forbidden from expelling or returning individuals to territories where they face threats to life or freedom,⁴⁰ which forms the "cardinal principle[]" of

35. See Refugee Convention, *supra* note 6, arts. 17–19 (obliging permission to seek 'wage-earning employment' (article 17), to self-employ (article 18), or to seek 'liberal professions' requiring degrees (article 19)).

36. See *id.* art. 24 (requiring access to labor rights and welfare); see also Eve Lester, *Article 24*, in COMMENTARY, *supra* note 9, at 1057, 1060 (remarking that the fairly detailed provisions regarding labor and welfare rights in article 24 of the Convention are designed to account and provide for the circumstances of the refugee and their family, which may have split because of the refugee status).

37. Refugee Convention, *supra* note 6, art. 26; see also Reinhard Marx, *Article 26*, in COMMENTARY, *supra* note 9, at 1147, 1148–49, 1161–64 (noting that the language of the article implies a mandatory obligation, but only that refugees are afforded the same freedom of movement as other non-citizens, so certain restrictions may apply, and that this obligation extends to asylum seekers, where other provisions of the Convention permit detention if there is a national security or security threat).

38. Refugee Convention, *supra* note 6, art. 31 (providing that if "[the refugees] present themselves without delay to the authorities and show good cause for their illegal entry or presence," the (il)legality of their entry or presence should not be penalized); see also Gregor Noll, *Article 31*, in COMMENTARY, *supra* note 9, at 1243, 1246–47, 1251–52 (remarking that the provision is a compromise between the necessity of refugees to flee into a country and the lack of a right to enter freely into a sovereign state, and yet States continue to impose penalties such as sanctions and legal charges on asylum seekers who enter illegally, to the concern of the UNHCR).

39. Refugee Convention, *supra* note 6, art. 32; see Ulrike Davy, *Article 32*, in COMMENTARY, *supra* note 9, at 1277, 1301 (remarking that Article 32 is applied to all refugees meeting the criteria and not just recognized refugees).

40. Refugee Convention, *supra* note 6, art. 33; see Kälin et al., *supra* note 29, at 1334–35 (describing the "cornerstone" principle of non-refoulement as a *negative duty*, in that it prohibits states from actions, specifically, returning a refugee to the country they had fled, rather than imposing a duty to act); *id.* at 1387–89 (concluding that "life and freedom" should be interpreted broadly to encompass forms of all forms persecution as covered by Article 1(A)(2) so that

refugee protection.”⁴¹ The final relevant obligation in the Convention is fair access to assimilation and naturalization procedures—that is the process of obtaining citizenship—as provided in Article 34.⁴² Parties under the Convention and Protocol are also expected to cooperate with the UNHCR, though the High Commissioner has no power of enforcement.⁴³

There is no official body to interpret the Convention or Protocol, so the task is left to the parties.⁴⁴ Nonetheless, Japan has joined other States in ratifying the Vienna Convention on the Law of Treaties (VCLT), which codifies customary treatment of treaties and conventions, including how to interpret textual language.⁴⁵ Article 31 of the VCLT provides that terms are to be understood “in good faith,” per their “ordinary meaning,” according to context, and in “light of its object and purpose.”⁴⁶ Despite setting treaty interpretation standards, utilization of VCLT principles is often dependent on domestic judiciaries.⁴⁷

Article 33 applies to all refugees).

41. UNHCR, Addendum to the Report of the United Nations High Commissioner for Refugees, para. 21(c), U.N. Doc. A/46/12/Add.1 (1991) [hereinafter UNHCR Report Addendum].

42. Refugee Convention, *supra* note 6, art. 34; Reinhard Marx, *Article 34, in COMMENTARY, supra* note 9, at 1441, 1447–49 (noting that despite some negative connotations of the term “assimilation,” drafters felt it appropriately represented a stage prior to naturalization in the form of integration into the language, culture, and economy of the host society). The language of Article 34 of the Convention does not grant an inherent right to naturalization to refugees, but that naturalization authorities consider refugee applications in good faith. *See id.* at 1451–52 (recognizing that States “cannot be compelled” to grant nationality).

43. Refugee Protocol, *supra* note 6, art. II; *see* Marjoleine Zieck, *Article 35 of the 1951 Convention/Article II of the 1967 Protocol, in COMMENTARY, supra* note 9, at 1459, 1468–69 (noting that Article II of the Protocol nonetheless greatly extends the UNHCR’s supervisory role and obligates States to cooperate with the organization).

44. Jane McAdam, *Interpretation of the 1951 Convention, in COMMENTARY, supra* note 9, at 75, 77–82.

45. Accession by Japan to the Vienna Convention on the Law of Treaties, July 2, 1981, 1237 U.N.T.S. 453.

46. Vienna Convention on the Law of Treaties art. 31, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

47. McAdam, *supra* note 44.

iii. Complementary Protections Outside the Convention and Protocol

While many individuals do not meet one or more of the Convention's elements defining a refugee, they may still seek protection from conflict in their country of origin.⁴⁸ Some States extend protections, known as complementary protections, to these individuals.⁴⁹ However, complementary protections may not confer the full rights of refugee status, particularly integration.⁵⁰ This has led to some concerns that complementary protection systems are used to supplant refugee status with a lesser form of protection that imposes fewer obligations on the State.⁵¹

B. JAPAN'S ACCESSION AND IMPLEMENTATION OF THE 1951 CONVENTION AND 1967 PROTOCOL

As for all parties, implementation of the Convention and Protocol in Japan has relied upon domestic measures.⁵² Subsection 1 explains how the Convention and Protocol are implemented through the Immigration Control and Refugee Recognition Act (ICRRA). Subsection 2 details refugee rights under ICRRA and relevant portions of the Japanese Constitution. Subsection 3 explains

48. See RUMA MANDAL, PROTECTION MECHANISMS OUTSIDE OF THE 1951 CONVENTION ("COMPLEMENTARY PROTECTION") ix (2005) (defining and explaining the basic concept of refugees that fall outside the 1951 Refugee Convention definition).

49. See *id.* at 42–49 (explaining general eligibility requirements for recipients of complementary protection); see also Brian Aycock & Naoko Hashimoto, *Complementary Protection in Japan: To What Extent Does Japan Offer Effective International Protection for Those Who Fall Outside the 1951 Refugee Convention?*, 10 LAWS, March 2021, at 1–2, 6–8, <https://doi.org/10.3390/laws10010016> (explaining Japan's complementary protection system).

50. See MANDAL, *supra* note 48, at 40–41 (remarking that some countries do not extend integration efforts to those under complementary protection, although some countries, including Canada and Australia, do).

51. Rep. of the Fifty-Sixth Session of the Exec. Comm. of the High Comm'r's Programme, para. 21(b), U.N. Doc. A/AC.96/1021 (Oct. 7, 2005) ("[The Executive Committee] [c]alls upon State Parties to interpret the criteria for refugee status in the 1951 Convention and/or its 1967 Protocol in such a manner that all persons who fulfil these criteria are duly recognized and protected under those instruments, rather than being accorded a complementary form of protection . . .").

52. McAdam, *supra* note 44, at 77–81.

administrative and legal interpretations of key Convention terms in Japan.

i. The Immigration Control and Refugee Recognition Act

Japan is a party to both the 1951 Convention and 1967 Protocol.⁵³ Its implementation took form in the Immigration Control and Refugee Recognition Act of 1951 (ICRRA), which establishes the basic procedure of refugee status determination according to the definition provided in the Convention⁵⁴ and also controls Japan's immigration policy as a whole.⁵⁵ ICRRA also provides that the Ministry of Justice may grant complementary protection in the form of "special permission to stay" (SPS) for those determined to not meet the refugee definition.⁵⁶

At the initial application stage, applicants are not permitted legal representation at the hearing and must plead their case on their own.⁵⁷ If denied, the applicant may file for an administrative appeal.⁵⁸

At the appellate stage, the applicant is permitted legal

53. Osamu Arakaki, *Historical Aspects of Japan's Accession to the Refugee Convention and Protocol*, 11 N.Z. ASSOC. OF COMPAR. L.Y.B. 137, 138 nn. 2–3 (2004).

54. [ICRRA] Cabinet Order No. 319 of 1951, art. 2-3-2, as last amended by Amend. of Act No. 63 of 2019.

55. *Id.* art. 1. The conflation of immigration and refugee law has been criticized as associating migration policy concerns with humanitarian principles. *See, e.g.*, Hathaway & Cusick, *supra* note 29, at 531–34 (criticizing decisions of the Supreme Court of the United States in *Immigr. & Naturalization Serv. v. Stevic*, 467 U.S. 407 (1984) and *Immigr. & Naturalization Serv. v. Cardoza-Fonesca*, 480 U.S. 421 (1987) as misinterpreting U.S. obligations to refugees, partly due to considering refugees as a "sub-category of immigrants" while refugees retain a unique right of protection from governments).

56. [ICRRA] art. 61-2-2(2); *see* Aycok & Hashimoto, *supra* note 49, at 8–9 (noting that the vagueness of ICRRA means that, while the Ministry of Justice is required to consider failed refugee applications for the grant of SPS status, the lack of any official guidelines or procedures makes the decision entirely discretionary as there is no means to judge how, or even if, the Ministry made the decision).

57. *See* ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 86 (explaining how there is no statute pertaining to counsel during initial hearings, but in practice counsel is not allowed).

58. *Id.* at 61.

representation.⁵⁹ To introduce independence from the Ministry of Justice, a panel of “Refugee Examination Counselors” (RECs) convenes to hear the applicant’s case.⁶⁰ Counselors are drawn from several occupations per recommendations from the UNHCR and other organizations, with appointments made by the Minister of Justice.⁶¹ The Minister of Justice can use their discretion to accept or refuse the REC’s decision on review.⁶² This is a final administrative decision and those who still seek refugee status after a denial must appeal to the courts.⁶³

ii. Refugee Rights under ICRRRA and the Japanese Constitution

The central protection of refugees, the principle of non-refoulement, is granted to recognized refugees.⁶⁴ The right of freedom of movement is also provided, though under the Constitution of Japan rather than ICRRRA.⁶⁵ Residence status and work visas are not automatically granted, but the process is linked to refugee status determination.⁶⁶ These work visas are complemented

59. *See id.* at 86 (explaining that like the initial hearing, access to counsel is not addressed by statute, but at the appellate stage counsel is permitted by practice).

60. *Id.* at 61–62.

61. *See id.* at 63 (counselors have included “academic scholars of law and international relations, a former judge, former prosecutors, an attorney, former ambassadors, a journalist, a former president of a company and a former insurance company consultant” as of 2008).

62. *Id.* at 64.

63. *Id.* at 65; *see also* Hashimoto, *supra* note 7 (explaining that non-governmental refugee agencies in Japan consider the REC system “defunct,” given the lack of actual independence from the Ministry of Justice, lack of qualified expertise from many of the Counselors, and non-binding nature of the REC decisions, which became increasingly ignored by the Ministry of Justice).

64. [ICRRRA] Cabinet Order No. 319 of 1951, art. 53(3), as last amended by Amend. of Act No. 63 of 2019; Refugee Convention, *supra* note 6, art. 33. *But see infra* Part II(C)(2) (describing issues regarding Japan’s practices of deportation and refoulement, some contrary to the Convention and, seemingly, Japanese law).

65. NIHONKOKU KENPŌ [KENPŌ][CONSTITUTION], art. 22 (Japan) (“Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.”); Refugee Convention, *supra* note 6, art. 26; *see* ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 217–19 (noting that the article 22 of the Constitution of Japan applies to all, including refugees, and that there has been “no breach of article 26 of the Convention . . . identified in practice”).

66. *See* ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at

by a variety of Japanese labor laws that also protect refugee workers' rights per the Japanese Constitution and Article 17 of the Convention.⁶⁷

The Japanese government also funds the public services of the Refugee Assistance Headquarters (RHQ), which provides integration support to recognized refugees and their families.⁶⁸ This includes language, lifestyle, and vocational classes to recognized refugees.⁶⁹

Access to naturalization procedures, the process to obtain Japanese citizenship, is not explicitly addressed in the ICRRA.⁷⁰ However, nothing prohibits refugees from the standard process prescribed in Japan's Naturalization Act.⁷¹

209–11, 227–29 (explaining the residency and work grant while also explaining restrictions such as deny long-term residence status for a refugee who fails to submit an application six months after landing in Japan).

67. Nihonkoku Kenpō [KENPŌ] [CONSTITUTION], art. 27 (“All people shall have the right and the obligation to work. Standards for wages, hours, rest and other working conditions shall be fixed by law. Children shall not be exploited.”); Refugee Convention, *supra* note 6, art. 17; see ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 228 (describing how various laws implement the protections of the Constitution, and subsequently the Convention).

68. ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 229 (explaining how the mandate of the RHQ expanded from focusing solely on Indo-Chinese refugees in 1979, to refugees, generally, servicing more than 10,000 individuals, with funding from the Ministries of Foreign Affairs, Education, and Health, Labour and Welfare).

69. *What We Do*, REFUGEE ASSISTANCE HEADQUARTERS (RHQ), <https://www.rhq.gr.jp/settlement-support-program/> (last visited Oct. 4, 2021).

70. See [ICRRA] Cabinet Order No. 319 of 1951, as last amended by Amend. of Act No. 63 of 2019 (providing no mention of naturalization procedures for refugees).

71. See Kokuseki hō [Nationality Act] Act No. 147 of 1950 arts. 4–5, as last amended by Amend. of Act No. 88 of 2008 (providing discretionary authority to the Minister of Justice to grant citizenship so long as the applicant meets six conditions: (1) they lived in Japan for five years; (2) are twenty years old and are considered capable under their current national law; (3) are of good conduct; (4) are able to make a living individually or through family; (5) do not have a nationality or can relinquish it; (6) and have not conspired or joined with those who have conspired against the Constitution of Japan or its government).

iii. *Administrative and Legal Interpretations of the Convention and Protocol in Japan*

Given the lack of a unified international definition, Japan has developed its own interpretations of the term “persecution.”⁷² However, the judiciary in Japan has refrained from challenging administrative refugee decisions on the merits;⁷³ moreover, judges in Japan are frequently unfamiliar with international human rights law, leading to definitions less in line with international standards.⁷⁴ Generally, these courts have elevated the importance of prosecutions and physical punishment in determining the existence of “persecution.”⁷⁵ The courts frequently do not consider measures as “persecution” if the asylum seeker has not been prosecuted, charged, physically detained, or abused by authorities in their country of origin.⁷⁶ However, at least one Japanese lower court has accepted the refugee “sur place” situation, that a well-founded fear of persecution can arise during the time a refugee is in Japan and, therefore, refugees do not need to hold such fear or suffer persecution before they have entered the country.⁷⁷

72. See ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 165–66 (noting that while definitions of “persecution” have been provided in *other* international agreements, the applicability of these definitions to the Convention is limited because they were not part of the drafting process, and accordingly Japan uses its own definitions for the Convention).

73. ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 188–89.

74. *Id.* at 191–92.

75. See Yukari Ando, *Does the Japanese Approach to the Definition of Persecution Meet International Standards for the Protection of Refugees?*, 30 J. IMMIGR., ASYLUM & NAT’Y L. 31, 43–45 (2016) (citing a common court interpretation as “for ordinary persons, they should not suffer from painful attack or oppression, and violation of life or physical freedom.”).

76. *Id.* at 44–45 (noting that in addition to disregarding non-physical or life related freedoms, some courts in Japan have also differentiated between different recognized refugees based on their supposed persecution, allowing penalization or even deportation if their presence is illegal and they haven’t suffered a direct threat to life or physical freedom).

77. ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 180 (citing Ōsaka Chihō Saibansho [Osaka Dist. Ct.] 1994, 837 Hanrei Taimuzu [Hanta] 242, 244 (Japan)).

C. ICRRA IN PRACTICE: THE SITUATION OF REFUGEES IN JAPAN

Theoretically, ICRRA implements the protections of the Convention and Protocol in Japan.⁷⁸ However, the country has been criticized for its approach to refugee policies. Subsection 1 provides information on Japan's exceedingly low refugee acceptance rates, and Subsection 2 details concerns over Japan's detention and deportation measures taken against asylum seekers.

i. Consistently Low Refugee Acceptance Rates

Japan has been routinely criticized for its actual rate of refugee recognition and treatment of those seeking asylum.⁷⁹ Data collection beginning in 1982 indicates that the rate of refugee application acceptances in Japan is less than 1 percent.⁸⁰ In 2019, 44 of 10,375 refugee applications were accepted, which means only 0.4 percent of applicants were granted refugee status.⁸¹ Furthermore, on appeal, only 1 person out of 8,291 individuals were able to reverse their denial for refugee status.⁸² Additionally, the refugee status determination procedure is slow, averaging over four years and sometimes extending to ten years during which only minimal welfare services are provided.⁸³ This has led to increased homelessness and

78. [ICRRA] Cabinet Order No. 319 of 1951, arts. 1, 2-3-2, as last amended by Amend. of Act No. 63 of 2019.

79. See, e.g., U.S. Dep't of State, Bureau of Democracy, Hum. Rts. & Lab., 2020 Country Reports on Human Rights Practices: Japan, 10–14 (Mar. 30, 2021) (providing a general overview of domestic and international criticisms); Kelley Loper, *The Protection of Asylum Seekers in East Asian State Parties to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, in REGIONAL APPROACHES TO THE PROTECTION OF ASYLUM SEEKERS 347, 351–55 (Ademola Abass & Francesca Ippolito eds., 2014).

80. Aycock & Hashimoto, *supra* note 49, at 7 tbl.1.

81. *Id.*

82. *Id.*

83. See *Refugees in Japan*, JAPAN ASS'N FOR REFUGEES (JAR), <https://www.refugee.or.jp/en/refugee/> (last visited Nov. 25, 2021) (remarking that during the refugee recognition procedure applicants only receive two-thirds the usual welfare support and sometimes after months of administrative delay); see also *Shelter in East Japan Provides Temporary Comfort to Refugee Applicants*, MAINICHI (Jan. 17, 2022), <https://mainichi.jp/english/articles/20220115/p2a/00m/0na/027000c> (reporting the story of a forty-year old who has been in Japan for ten years and is on her third refugee application).

related financial issues for asylum seekers in Japan.⁸⁴

ii. Detention and Deportation

The Japanese government has also been criticized for the detention of asylum seekers pending recognition procedures.⁸⁵ The conditions of detention centers have also been criticized, particularly after a Sri Lankan migrant seeking asylum was denied medical care and died.⁸⁶

In August of 2020, The UN Human Rights Commission evaluated the case of two detainees in particular: asylum seekers who had resided in Japan for thirteen and thirty years.⁸⁷ Both had been repeatedly detained, for a total of at least 4 and a half years each.⁸⁸ The Commission determined that the detentions violated Japan's obligations under international law but did not base its decision on the Convention and Protocol.⁸⁹

Often detentions are made pending deportation,⁹⁰ and the Ministry

84. *Refugees in Japan*, *supra* note 83.

85. U.S. Dep't of State, Bureau of Democracy, Hum. Rts. & Lab., *supra* note 79, at 11. (reporting the various NGOs, civil society groups, legal experts, and the UNHCR critiquing the detention of asylum seekers and refugees, associating the detentions with hunger strikes and other protests); see U.N. High Comm'r for Refugees, Submission on Japan: Universal Periodic Review 28th Session, 2–3 (Mar. 2017) [hereinafter Periodic Review: Japan](raising concerns over the Ministry of Justice's practice of withdrawing residence permits of asylum seekers on their third application, providing grounds for detention with no maximum period provided in ICRRA).

86. Ben Dooley & Hisako Ueno, *Japan Is Shaken After a Detainee, Wasting Away, Dies Alone in Her Cell*, N.Y. TIMES, <https://www.nytimes.com/2021/05/18/world/asia/japan-refugee-wishmarathnayake.html> (last updated Aug. 10, 2021) (reporting that the death and subsequent backlash also resulted in the governing majority party withdrawing a bill that would have permitted the Ministry of Justice to more easily deport and even refool asylum seekers).

87. Hum. Rts. Council Working Grp. on Arbitrary Det., Opinion No. 58/2020 Concerning Deniz Yengin and Heydar Safari, para. 77, U.N. Doc. A/HRC/WGAD/2020/58 (Sept. 25, 2020).

88. *Id.* para. 89 (specifying that one had been detained for a total of almost a year, and the other for a total of almost four and a half years, with no opportunity to contest the legality of their detentions).

89. *Id.* para. 100 (determining that Japan had violated provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights).

90. U.S. Dep't of State, Bureau of Democracy, Hum. Rts. and Lab., *supra* note

of Justice has occasionally used its power to detain and deport asylum seekers.⁹¹ However, in September 2021, the Tokyo High Court ruled that such deportations conducted while individuals are appealing their refugee applications violate the Constitution of Japan.⁹²

D. THE 2021 MYANMAR COUP D'ÉTAT AND RESULTING REFUGEES.

The 2021 Myanmar coup d'état was a relatively quick incident that has nonetheless created an enduring crisis, both in Myanmar itself and for its nationals abroad in Japan.⁹³ Subsection 1 details the origins of the coup and subsequent patterns of oppression and persecution by the Myanmar military against the civilian populace. Subsection 2 explains Japan's reaction through the implementation of the Emergency Refugee Measure and its effect on Myanmar residents and asylum seekers.

i. Origins and Aftermath of the Coup d'État

Myanmar's parliamentary election of 2020 was viewed as a barometer of the public's support for the country's increasing democratization under the popular National League for Democracy (NLD).⁹⁴ The other major party in the elections was backed by Myanmar's military, the Tatmadaw.⁹⁵

After losing the elections, in February 2021, the Tatmadaw launched a military operation, quickly taking control of parliament,

79, at 11 (noting that individuals under deportation order have the right to refuse, that most did, and that sixty percent of those who refused were applying for refugee status).

91. See Yuri Murakami et al., *High Court Rules Deportation of Sri Lankan Men Unconstitutional*, ASAHI SHIMBUN (Sept. 23, 2021), <https://www.asahi.com/ajw/articles/14446283> (highlighting the arrests and deportation of two Sri Lankan men).

92. See *id.* (reporting a case in which two Sri Lankan asylum seekers were deported before they could appeal their denied refugee application at the appellate level, with the Court questioning the government's forty-day delay in notifying the individuals of their denied applications).

93. Goldman, *supra* note 2.

94. *Id.*

95. *Id.*

arresting many NLD leaders, and establishing a military administration.⁹⁶ The Tatmadaw soon began to rely on authoritarian methods of control to counterprotests.⁹⁷

These counter-protest methods have included censorship and lethal weapons.⁹⁸ Medical providers have also been targeted for treating protestors.⁹⁹ Approximately 1,000 Myanmar dissidents were killed between February 2021 and August 2021.¹⁰⁰ An additional estimated 5,000 or more have been imprisoned.¹⁰¹ Protests and clashes have been recorded and shared online, by both those in solidarity with protestors and by the Tatmadaw or Tatmadaw-aligned sympathizers.¹⁰²

Moreover, the military has restricted access to the internet via censorship and blanket internet cuts.¹⁰³ Military and police have stopped individuals on the streets to check for the presence of censorship-evading VPNs and other applications on phones, making arrests if they are found.¹⁰⁴ These blackouts and media control have

96. *Id.*

97. See Hannah Beech, *Three Months after Coup, Myanmar Returns to the 'Bad Old Days'*, N.Y. TIMES, <https://www.nytimes.com/2021/05/06/world/asia/myanmar-terror-military-coup.html> (Dec. 24, 2021) (describing the Tatmadaw's tools of neighbor-informants, imprisonment for pro-democracy displays, and interrogations, despite changed values in the public and how that may complicate their effectiveness).

98. Joyce Sohyun Lee et al., *Anatomy of a Crackdown: How Myanmar's Military Terrorized Its People with Weapons of War*, WASH. POST (Aug. 25, 2021), <https://www.washingtonpost.com/world/interactive/2021/myanmar-crackdown-military-coup/>.

99. Ratcliffe, *supra* note 2.

100. *Death Toll since Myanmar Coup Tops 1,000, Says Activist Group*, REUTERS (Aug. 18, 2021), <https://www.reuters.com/world/asia-pacific/death-toll-since-myanmar-coup-tops-1000-says-activist-group-2021-08-18>.

101. *Aung San Suu Kyi: Trial of Ousted Myanmar Leader Begins*, BBC (June 14, 2021), <https://www.bbc.com/news/world-asia-57449884>.

102. See Lee et al., *supra* note 98 (summarizing an analysis of 15,000 videos and images made by civilians and 20,000 'TikTok' short-form videos created by Myanmar Security forces, demonstrating callousness and even celebrating deaths of protestors).

103. Peter Guest, *"They Want Us to Disappear"*, REST OF WORLD (May 11, 2021), <https://restofworld.org/2021/they-want-us-to-disappear/>.

104. Ole Tangen Jr., *The Battle for Myanmar Plays Out on Twitter, Tiktok and Telegram*, DEUTSCHE WELLE (Apr. 20, 2021), <https://www.dw.com/en/the-battle-for-myanmar-plays-out-on-twitter-tiktok-and-telegram/a-57267075>.

complicated humanitarian responses and are attributed to the restriction on freedoms of expression in Myanmar.¹⁰⁵

The coup has already led to massive displacement within Myanmar and to external displacement as people have fled to neighboring countries.¹⁰⁶ In Japan, Myanmar residents protested the coup and the subsequent oppression by the Tatmadaw.¹⁰⁷

ii. Japan's Emergency Refuge Measure for Myanmar Residents and Asylum Claims after the 2021 Coup

In response to the coup, the Minister of Justice announced an Emergency Refuge Measure on May 28, 2021 that permitted Myanmar residents to change their visas to extend their stay for six months, or for twelve months if the individual sought work in specific blue-collar industries.¹⁰⁸

To be eligible for the extension, the individual needs to be a Myanmar national or a habitual resident of Myanmar.¹⁰⁹ This extension applied to approximately 35,000 Myanmar residents with standard residency visas and 2,900 individuals who were seeking

105. See generally U.N. Human Rights Council (UNHRC), Report of the United Nations High Commissioner for Human Rights: Situation of Human Rights in Myanmar, paras. 13–18, U.N. Doc. A/HRC/48/67 (Oct. 19, 2021).

106. Jun Kobayashi et al., *COVID-19 Control during a Humanitarian Crisis: The Need for Emergency Response at the Thai-Myanmar Border as an Alternative Channel*, TROPICAL MED. & HEALTH (May 7, 2021), <https://doi.org/10.1186/s41182-021-00323-1>; Sui-Lee Wee, *Stay or Go? For Myanmar's Latest Wave of Refugees, There's No Good Choice*, N.Y. TIMES (Jan. 5, 2022), <https://www.nytimes.com/2021/12/29/world/asia/myanmar-coup-refugees.html>.

107. *Thousands March in Tokyo to Protest Myanmar Coup, Biggest Japan Demonstration so far*, REUTERS (Feb. 13, 2021), <https://www.reuters.com/article/us-myanmar-politics-japan-protests/thousands-march-in-tokyo-to-protest-myanmar-coup-biggest-japan-demonstration-so-far-idUSKBN2AE087>.

108. Emergency Refuge Measure, *supra* note 4 (providing statistical data from March 2021 and the end of 2020); *Japan Permits Continued Stay of Myanmar Residents Due to Coup*, *supra* note 3.

109. The "habitual resident" qualification extends eligibility to those considered "stateless," significant for the Rohingya people who are not granted Myanmar nationality and compose a significant portion of previous refugees from Myanmar. See Emergency Refuge Measure, *supra* note 4; see also Ando, *supra* note 75, at 42–43.

refugee recognition.¹¹⁰

Further extensions were conditioned on the lack of improvement on the crisis in Myanmar.¹¹¹ The Emergency Measure also promised prompt review of refugee applications.¹¹² The measure has been welcomed by civilians seeking asylum out of fear of danger in returning.¹¹³

One heavily publicized asylum seeker and eventual recognized refugee was Ko Pyae Lyan Aung, who arrived in Japan as a part of Myanmar's FIFA World Cup team in May 2021.¹¹⁴ Before a match, Pyae Lyan Aung signaled solidarity with protestors in Myanmar with the three-fingered salute, which garnered media attention and publicity.¹¹⁵ He sought asylum before his flight back to Myanmar, citing fear for his life, and was granted stay under the Emergency Refuge Measure pending his refugee application.¹¹⁶ His application, which he submitted at the end of June 2021, was approved in August 2021, taking only three months to process.¹¹⁷

III. ANALYSIS

The abrupt 2021 Myanmar coup d'état quickly deteriorated into political persecution against civilians and led to a wave of individuals seeking refuge from the Tatmadaw.¹¹⁸ Japan, recognizing

110. Emergency Refuge Measure, *supra* note 4 (providing statistical data from March 2021 and the end of 2020).

111. *Id.*

112. *Id.*

113. See *Japan Permits Continued Stay of Myanmar Residents Due to Coup*, *supra* note 3 (reporting a statement by one asylum seeker: "It is good news. We can't go back now because it is dangerous . . . I hope the government will give me refugee status instead of a permit with time restrictions.").

114. Hisako Ueno & Ben Dooley, *In Rare Move, Japan Grants Asylum to Soccer Player from Myanmar*, N.Y. TIMES (Aug. 23, 2021), <https://www.nytimes.com/2021/08/20/world/asia/japan-soccer-player-myanmar-asylum.html>.

115. *Id.*

116. *Myanmar Soccer Goalie Receives Official Refugee Status in Japan*, KYODO NEWS (Aug. 20, 2021), <https://english.kyodonews.net/tokyo/news/2021/08/56060ca783e6-myanmar-soccer-goalie-receives-official-refugee-status-in-japan.html>.

117. *Id.*

118. Wee, *supra* note 106.

the seriousness of the situation, offered visa extensions to Myanmar residents in the form of the Emergency Refuge Measure.¹¹⁹ However, the Measure does not extend protections or guarantees of refugee status to recipients.¹²⁰

Section A explains how the circumstances of the coup qualify most Myanmar asylum seekers for refugee status in Japan. Section B analyzes how these Myanmar and other asylum seekers are improperly disadvantaged in Japan's refugee recognition system, leading to wrongful denial of refugee status and Japan's exceedingly low refugee recognition rate. Section C then demonstrates how the Emergency Refuge Measure does not extend sufficient protections or rights to asylum seekers and unrecognized but proper refugees under the Convention and Japanese Law.

A. ASYLUM SEEKERS FLEEING THE 2021 MYANMAR COUP
D'ÉTAT ARE REFUGEES UNDER ARTICLE 1(A)(2) OF THE 1951
CONVENTION

Under the definition provided by Article 1(A)(2) of the Convention applied in Japanese Law through ICRRRA, the thousands of Myanmar asylum seekers in Japan should generally qualify for refugee status.¹²¹ The asylum seekers still need to demonstrate how the definition applies to their circumstances and that they don't fall under any exclusionary criteria, but the Tatmadaw have created a system of oppression and persecution that asylum seekers can objectively rely upon as a basis and evidence for a refugee claim per the Convention definition.¹²² In reviewing applications, the authorities also need to consider that the suddenness of the coup will have led to refugee "sur place" claims, that is, the "well-founded fear of persecution" behind the claim arose after the applicant had arrived

119. Emergency Refuge Measure, *supra* note 4.

120. *Id.*

121. Refugee Convention, *supra* note 6, art. 1(A)(2); Refugee Protocol, *supra* note 6, art. I(2); ICRRRA Cabinet Order No. 319 of 1951, arts. 1, 2-3-2, as last amended by Amend. of Act No. 63 of 2019.

122. See HANDBOOK, *supra* note 13, paras. 37–50 (explaining "well-founded fear" and how to analyze the subjective component); see generally Goldman, *supra* note 2 (providing an overview of the origins of the coup and the actions of the Tatmadaw towards political leaders, protestors, and dissidents)

left Myanmar.¹²³

This Section discusses the applicable circumstances to the first three elements of refugee status: (1) that Myanmar asylum seekers' fear of persecution is based on reasons of political opinion, (2) that this fear is "well-founded," and (3) that the Myanmar asylum seekers in Japan are outside the country of their nationality.¹²⁴ Finally, subsection (4) explains how these elements are illustrated not only by theoretical applications but in the real case of soccer player Ko Pyae Lyan Aung, who was granted refugee status.¹²⁵

i. Myanmar asylum seekers fear persecution for reasons of political opinion

Myanmar asylum seekers are targeted "for reasons of . . . political opinion." The 2021 coup, an overthrow of the democratically elected government of Myanmar, is inherently a conflict on political grounds.¹²⁶ The most obvious political opponent, the NLD leadership, has been systematically targeted from the first days of the coup, but supporters and protesters in solidarity with the NLD quickly became victims as well.¹²⁷ Those not arrested are either under watch or sought out, with the risk of detention or death.¹²⁸ While political differences alone are not enough for refugee status, it is enough when an individual or group is targeted for expressing such views, like what the Tatmadaw has done to protestors and pro-democracy supporters.¹²⁹

123. See HANDBOOK, *supra* note 13, paras. 94–96.

124. For clarity, this Section begins the analysis with the second element defining a refugee identifying the reasons for a fear of persecution, then analyzes the first element of whether fears on these reasons are well-founded.

125. See *supra* Part II(D)(2) (providing information on the case of Ko Pyae Lyan Aung's asylum application and subsequent refugee recognition in Japan).

126. Goldman, *supra* note 2 (discussing the roots of the conflict as Tatmadaw retaliation for being practically shut-out by the popular NLD success in the 2020 parliamentary elections which subsequently became a crackdown on pro-democracy leadership, supporters, and reporters).

127. See *id.* (discussing the events of the coup which involved the arrest of NLD leadership, including the party head Aung San Suu Kyi).

128. *Id.*; see Beech, *supra* note 97 (describing extensive use of local informants and imprisonment as a means for the Tatmadaw to assert control).

129. See HANDBOOK, *supra* note 13, paras. 80–86 (noting that just holding a political opinion is not enough, and that an individual or group must fear

ii. *Myanmar asylum seekers' fears of persecution by the Tatmadaw are well-founded*

Myanmar asylum seekers can demonstrate a "well-founded fear of being persecuted"¹³⁰ due to the Tatmadaw's threats of retributive harassment, detention, and lethal attacks.¹³¹ The threats are genuine, as thousands have died, more have been detained, and many have had opportunities and rights stripped away.¹³² The Tatmadaw's continuous use of tactics and tools from its pre-2011 handover of power, including those that it utilized during the period of democracy, indicates that these repressive activities are not temporary measures but the standard modus operandi of the organization.¹³³ Given that any protective government institutions, from rights organizations to the police, have been coopted or targeted themselves, individuals seeking refuge have little choice but to flee, leading to the massive displacement both internally and externally.¹³⁴

Moreover, far from the days of the signing of the Convention, individuals now have access to video and imagery documenting the Tatmadaw's oppression¹³⁵ Much of this is not only provided by protestors, but by the members of the Tatmadaw itself as it seeks to intimidate and ensure compliance with its policies through fear tactics.¹³⁶ The use of modern media and media controls has led to

persecution for these opinions).

130. Refugee Convention, *supra* note 6, art. 1(A)(2).

131. Lee et al., *supra* note 98 (analyzing pictures and video of both protestors and Tatmadaw members on the events of protests and crackdowns); See Beech, *supra* note 97 (describing the Tatmadaw's tools of neighbor-informants, imprisonment for pro-democracy displays, and interrogations).

132. Lee et al., *supra* note 98; Beech, *supra* note 97; *Death Toll since Myanmar Coup Tops 1,000, Says Activist Group*, *supra* note 100.

133. Beech, *supra* note 97 (describing the legacy of these methods, but that their effectiveness in suppressing discontent with the current Myanmar populace may be limited).

134. Kobayashi et al., *supra* note 106 (remarking that most of those who fled to Thailand are activists, NGO leaders, and dissidents).

135. Lee et al., *supra* note 98 (analyzing 15,000 videos and images made by civilians, recording the events of protests, arrests, and crackdowns by the Tatmadaw).

136. *Id.* (analyzing 20,000 short form "Tik-Tok" videos made by members or supporters of the Tatmadaw, many advocating for government suppression of protestors, attacks, and more).

unprecedented recording of the violence and to a subsequent battle between sharing and limiting public access to these materials.¹³⁷ Individuals have shared the real persecution they have experienced to counter obfuscated and falsified narratives presented by the Tatmadaw.¹³⁸ These stories and the threats of the Tatmadaw disseminated in the same manner, reaching both local audiences and individuals abroad.¹³⁹ Conversely, the activities and protests of individuals abroad can also reach the eyes and ears of the Tatmadaw, which has been using media and the internet as a new tool of oppression.¹⁴⁰ As the acts of the Tatmadaw and associated supporters are broadcasted, a well-founded fear can develop in Myanmar individuals abroad that their former or new demonstration of support for the democratic government will result in prosecution should they return.

iii. Myanmar asylum seekers in Japan are “outside the country of [their] nationality” and may be refugees “sur place”

Myanmar asylum seekers in Japan are “outside the country of [their] nationality . . . or . . . former habitual residence” per the Article 1(A)(2) definition of a refugee.¹⁴¹

While some asylum seekers in Japan may have arrived after the 2021 coup,¹⁴² it should be recognized that many covered by the Emergency Refuge Measure would likely seek refugee status as refugees “sur place” because their “well-founded fear of being persecution” arose after they were already residing in Japan.¹⁴³ Under this category of refugee claim, the UNHCR recommends careful consideration of the particular facts and circumstances of the asylum

137. *See id.* (reporting the contesting narratives and support of civilians and military or military aligned groups on online media); *see* Tangen, *supra* note 104 (reporting on Tatmadaw shutdown of internet access, as well as searching for users of censor avoiding VPN applications, who may then be arrested themselves).

138. Lee et al., *supra* note 98; Tangen, *supra* note 104.

139. Lee et al., *supra* note 98.

140. *See infra* Part III(A)(4) (discussing the case of Ko Pyae Lyan Aung, a Myanmar soccer goalkeeper whose display of solidarity was grounds for a “well-founded fear” that he had drawn the Tatmadaw’s attention).

141. Refugee Convention, *supra* note 6, art. 1(A)(2).

142. Wee, *supra* note 106.

143. *See* HANDBOOK, *supra* note 13, paras. 94–96.

seeker.¹⁴⁴ This includes individuals who may not have left illegally or under fear of persecution that experienced some change in circumstances leading to the refugee claim, such as a change in events occurring in the home country that would draw the persecuting authorities attention to these individuals should they return.¹⁴⁵

While the Ministry of Justice generally argues that legal entry permitted by the government is evidence against persecution, the text and drafting history of the Convention suggest support for refugees “sur place.”¹⁴⁶ Additionally, in Japan, there exists legal precedent for accepting refugee “sur place” claims.¹⁴⁷

The problem with “sur place” asylum seekers is that many may not have initially arrived in Japan because of fear of persecution and instead are seeking refugee status after the Myanmar coup and subsequent violence.¹⁴⁸ The Handbook notes that refugees “sur place” may arise out of their own actions or by a change of circumstance back in their home country.¹⁴⁹ Here, both situations have occurred.¹⁵⁰ The coup and subsequent crackdown illustrated that

144. *See id.*

145. *See id.*

146. *See id.*

147. *See* ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 180 (citing Ōsaka Chihō Saibansho [Osaka Dist. Ct.] 1994, 837 Hanrei Taimuzu [Hanta] 242, 244 (Japan) for a judicial adoption of the “sur place” refugee concept in Japan); *see also infra* Part III(A)(4) (discussing the case of Myanmar soccer player Ko Pyae Lang Aung who likely meets the definition of a refugee “sur place”).

148. Generally, Myanmar individuals have made up a large number of the asylum seekers in Japan over the years, so many sought refugee recognition before the coup. ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 30; *see Japan Permits Continued Stay of Myanmar Residents due to Coup*, *supra* note 3 (reporting on the Japanese Government’s Emergency Refuge Measure permitting the extended stay of Myanmar residents, in recognition of the circumstances in Myanmar).

149. HANDBOOK, *supra* note 13, paras. 95–96.

150. *See Japan Permits Continued Stay of Myanmar Residents due to Coup*, *supra* note 3 (reporting the new concerns and fears of Myanmar residents of Japan due to the coup); *Thousands March in Tokyo to Protest Myanmar Coup, Biggest Japan Demonstration so far*, *supra* note 107 (reporting on protests by Myanmar residents of Japan, where similar protest in Myanmar have brought the ire and attention of the Tatmadaw).

formerly popular political opinions or associations are no longer tolerated in Myanmar.¹⁵¹ This change in circumstances, which includes a coup against democratic elections and arbitrary arrests and executions of former government members, are potential grounds for a well-founded fear of future persecution.¹⁵² Many Myanmar individuals residing in Japan expressed their opposition to the military and support for the pro-democracy groups and protestors, demonstrating their political convictions.¹⁵³ Participation in presenting these views are also a change in circumstances that can be grounds for a well-founded fear of persecution.¹⁵⁴

The UNHCR Handbook remarks that, regarding refugees “sur place,” consideration should be given to the level of attention an individual may receive from the government and the likely judgment or action by the government towards that individual.¹⁵⁵ While situations involving diplomats and athletes may present a more clear-cut case, the Myanmar military junta has demonstrated through violence against the general populace that its attention is not only given to high-profile individuals but also to protestors, individuals on the street, medical workers, and others that draw the attention of the Tatmadaw.¹⁵⁶

Accordingly, to properly recognize Myanmar refugees, the authorities need to consider that many are refugees “sur place.”¹⁵⁷ Relevant factors for this consideration include that the current Myanmar refugees may have originally entered the country without fear of persecution, that the abrupt circumstances of the coup or the

151. See Goldman, *supra* note 2 (reporting on the government crackdown on pro-democracy supporters who had, only a few months prior, elected a democratic government by a wide margin of victory).

152. See HANDBOOK, *supra* note 13, paras. 80–86.

153. See *Thousands March in Tokyo to Protest Myanmar Coup, Biggest Japan Demonstration so far*, *supra* note 107 (reporting on mass protests by Myanmar residents and supporters in Japan against the coup and the Tatmadaw).

154. See HANDBOOK, *supra* note 13, paras. 94–96.

155. *Id.* para. 96.

156. See Goldman, *supra* note 2 (describing the Tatmadaw’s attacks on protestors); Ratcliffe, *supra* note 2 (reporting that medics, along with reporters, activists, and elected politicians have all been targeted); Guest, *supra* note 103 (reporting how individuals with applications bypassing censors are also being arrested).

157. See HANDBOOK, *supra* note 13, paras. 94–96.

refugees' reaction to the coup provided grounds for a well-founded fear, and that the authorities are willing to target individuals regardless of prestige which would include many of the refugees.¹⁵⁸

Ultimately, most Myanmar asylum seekers in Japan fleeing the Myanmar coup should qualify as refugees under the Convention and Japanese Law. The Convention-defined reason of political persecution exists as the Tatmadaw has carried out a sustained campaign of repression, arrests, and fatal crackdowns against supporters of the democratic government.¹⁵⁹ Given the readily available information and graphics of the situation, Myanmar asylum seekers have strong support for a "well-founded fear of being persecution" for reasons of political opinion necessary for refugee recognition.¹⁶⁰ Though many of these asylum seekers may not have entered into Japan with a "well-founded fear," the change of circumstances qualifies the asylum seekers for the third element of being outside Myanmar as refugees "sur place."¹⁶¹ Finally, the fourth and fifth elements are met since the persecutors, the Tatmadaw, are currently in control of the government, and Myanmar nationals or stateless individuals of former Myanmar residences are either unable to or unwilling to receive protection from the Tatmadaw or are unable or unwilling to return.¹⁶² Therefore, the background of the coup and severity of the Tatmadaw oppression have created an objective basis for refugee claims from Myanmar and Japan's refugee recognition system should be accepting these applicants that meet the refugee definition of the Convention.

158. *See id.*

159. *See supra* Part III(A)(1) (analyzing that a valid rationale for a well-founded fear arises from the Tatmadaw's aggressive and political-based attacks).

160. *See HANDBOOK, supra* note 13, paras. 80–86.

161. *Id.* paras. 94–96.

162. *See Japan Permits Continued Stay of Myanmar Residents due to Coup, supra* note 3 (reporting a statement by one asylum seeker: "It is good news. We can't go back now because it is dangerous . . . I hope the government will give me refugee status instead of a permit with time restrictions.").

iv. *The case of Ko Pyae Lyan Aung demonstrates that the coup d'état is grounds for refugee status*

At least in one case, the Ministry of Justice has agreed that these factors are sufficient for refugee status.¹⁶³ The grant of refugee status to Myanmar soccer player Ko Pyae Lyan Aung is indicative of how the elements of a Convention refugee can be applied to Myanmar refugees, generally.¹⁶⁴

Ko Pyae Lyan Aung arrived in Japan on non-refugee grounds, in his case, to play soccer for the Myanmar team.¹⁶⁵ Because he was traveling under the auspices of the Myanmar government, in normal circumstances Japanese officials would have reasoned that such travel indicates Myanmar acceptance and not persecution, which would generally provide a barrier for an asylum application in Japan.¹⁶⁶ His situation changed, however, once he flashed the three-fingered protest symbol while on the soccer field, and garnered the attention of international news.¹⁶⁷

As individual refugee status determination proceedings are not public, it is difficult to establish the exact rationale for the grant of refugee status. However, a few relevant observations can be made. Ko Pyae Lyan Aung traveled to Japan in May after the coup, indicating that his travel, as a representative of the Myanmar soccer team, was permitted or at least insignificant to the Tatmadaw.¹⁶⁸ His signal of solidarity with the protestors either was a basis on its own or illustrated views that provided a “well-founded fear” that he would be persecuted if he returned to Myanmar.¹⁶⁹ In his case, there

163. See *supra* Part II(D)(2) (discussing in part the case of recognized refugee Ko Pyae Lyan Aung).

164. See generally Ueno & Dooley, *supra* note 114 (reporting Ko Pyae Lyan Aung's actions, refugee application, and subsequent recognition by the Japanese government).

165. *Id.*

166. See ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 197.

167. Ueno & Dooley, *In Rare Move, Japan Grants Asylum to Soccer Player from Myanmar*, *supra* note 114.

168. See *id.*

169. See *id.*; HANDBOOK, *supra* note 13, para. 96 (providing that an individual may become a refugee “sur place” by their own actions if attention of such action may be brought to the attention of the authorities).

was no indication of any concerns over ethnicity or religion, meaning his political expression was likely the grounds for his grant of status.¹⁷⁰ Therefore, Japanese authorities likely concluded that expressing support for Myanmar protestors provided a reason for a well-founded fear of persecution.

A key difference between Ko Pyae Lyan Aung and the other thousands seeking refugee status in Japan is the relatively high-profile reporting on his case.¹⁷¹ Certainly, that a name can be put to the face of a protestor—let alone that of a national athlete—increases the chance or even assures that he would gather the attention of the junta.¹⁷² Nevertheless, the Tatmadaw has demonstrated that it will not only target well-known dissidents but dissidents generally.¹⁷³ This presents two necessary considerations that prove less prominent asylum seekers meet the Convention definition of a refugee. First, since many individuals have participated in broadcasted protests or demonstrated support for the democratic government online, these individuals have been exposed to or made discoverable by the junta.¹⁷⁴ The Tatmadaw has demonstrated its willingness to act against individuals in media or who are active online, not just those marching on the streets in Myanmar.¹⁷⁵ Second, if there were some requirement that the individual had to garner the attention of the military—as Japanese authorities have decided is necessary in similar past cases—this would place harsh conditions on the refugee seekers.¹⁷⁶ If they were not already a target, they would either need to expose their political leanings to earn refugee status or run the risk that their previous activities or opinions could be revealed if they returned to Myanmar.¹⁷⁷

170. See Ueno & Dooley, *In Rare Move, Japan Grants Asylum to Soccer Player from Myanmar*, *supra* note 114.

171. See *id.*

172. See *id.*

173. Goldman, *supra* note 2; *Death Toll since Myanmar Coup Tops 1,000, Says Activist Group*, *supra* note 100.

174. Takahashi, *supra* note 3.

175. Goldman, *supra* note 2; Lee et al., *supra* note 98.

176. See ARAKAKI, *REFUGEE LAW AND PRACTICE IN JAPAN*, *supra* note 9, 177–78.

177. See Tangen, *supra* note 104 (reporting that the Tatmadaw has monitored and targeted social media ‘influencers,’ demonstrating the Tatmadaw’s attention to

At the very least, in recognizing Ko Pyae Lyan Aung's refugee status, Japanese authorities have accepted the argument that demonstrations based on political opinion can be sufficient grounds for a "well-founded fear of being persecuted" by the Tatmadaw.¹⁷⁸ Furthermore, the fact that the application was processed in three months also shows that the refugee recognition procedure can operate relatively rapidly.¹⁷⁹

B. JAPAN'S REFUGEE STATUS DETERMINATION PROCEDURE FAILS TO RECOGNIZE REFUGEES UNDER THE ARTICLE 1(A)(2) DEFINITION OF THE 1951 CONVENTION

Despite amending the Immigration Control and Refugee Recognition Act to include appellate review by RECs and extend complimentary protection through SPS, Japan continues to have extremely low refugee acceptance rates.¹⁸⁰ As refugee status is declaratory, with a limited level of State discretion in validating such status,¹⁸¹ the fact that only less than one percent of applicants are recognized suggests that either Japan is a hotspot for false refugee claims, or, more likely, that the recognition process in Japan is filtering out or ignoring valid refugee claims in violation of the Convention and Protocol.¹⁸²

There are three primary factors that lead Japan's Ministry of Justice to deny otherwise proper recognition to refugees. These factors are: (1) the utilized interpretations of "persecution" of Article 1(A)(2) of the Convention are overly narrow; (2) the administration of the recognition process places an undue burden on the asylum seeker; and (3) the administration's discretionary use of power in the recognition process and treatment of refugees violates rights due to putative refugees and asylum seekers.

dissidents online).

178. See Ueno & Dooley, *supra* note 114.

179. *Myanmar Soccer Goalie Receives Official Refugee Status in Japan*, *supra* note 116.

180. Hashimoto, *supra* note 7.

181. See Hathaway & Cusick, *supra* note 29, at 488–91.

182. See Hashimoto, *supra* note 5 (explaining government and refugee group explanations for low refugee rates in Japan).

i. Japan's definitions of persecution are overly restrictive and contrary to the objectives of the Convention

Japan has yet to establish a definition of "persecution" that adheres to the 1951 Convention.¹⁸³ Neither Japan's legislature nor the judiciary, through statutes or rulings implementing the Convention under the Japanese Constitution, have developed a binding, consistent definition of "persecution."¹⁸⁴ In practice, this has led to ad hoc and incongruous definition developments per case, which tend to defer to administrative or political policy rather than the legal requirements of the Convention and Constitution.¹⁸⁵

While specific interpretations of the Conventions are necessarily left to the domestic legislatures or judiciary, the standard of such interpretations should be conducted following the VCLT.¹⁸⁶ The Japanese courts have, conversely, ignored the context and good faith understanding of the Convention, instead choosing to adhere to a strict and limited concept of persecution that necessitates physical or actual limitations on freedoms, rather than a broader loss of rights or potential limitation.¹⁸⁷ Consequently, Japan's courts and the Ministry of Justice have utilized overly narrow interpretations of "persecutions" and "for reasons of" contrary to the plain meaning

183. See ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 166–73; see also Ando, *supra* note 75, at 43–44 (remarking that the courts do generally interpret persecution along strict lines, and provides a commonly defined usage, but that judicial and legislative interpretations are underdeveloped when compared to international standards).

184. See ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 173–80 (citing various district court cases illustrating minimal precedential or persuasive value in deciding valid reasons for refugee status).

185. See *id.*, at 188–92 (describing the judicial conservatism and restraint as leading to deference to the administrative control over the refugee system, despite the judiciary being the last body ensuring protection for human rights).

186. See McAdam, *supra* note 44, at 77–82 (while using the methods of the VCLT are not mandatory, the duty to give effect to the intention of a treaty is expected).

187. Compare Ando, *supra* note 75, at 43–45 (noting the cases where asylum seekers who did not suffer physical punishment or persecution were denied status by courts in Japan, and even cases where the punishment was not considered severe enough, including incidents of forced labor), with VCLT, *supra* note 46, art. 31, paras. 1–2 (emphasizing context and good faith as tools of treaty interpretation).

and context of the Convention.¹⁸⁸

ii. The Ministry of Justice's use of discretionary power over refugee recognition and treatment of asylum seekers violates the Convention

The Ministry of Justice's discretionary power as the administrator of ICRRRA permits abuse of Convention obligations and Japanese law in two ways. First, the system permits unexplained denial of refugee status to individuals otherwise recommended by the initial and appellate administrative systems which allows the rejection of refugees otherwise qualified under Article 1(A)(2) of the Convention.¹⁸⁹ Second, the system enables the Ministry to deny rights and obligations owed to prospective refugees through the limitation on access to courts, free movement, and the right to non-deportation and non-refoulement.¹⁹⁰

I. The Ministry of Justice can overturn proper determinations of refugee status under the Convention

The addition of RECs to the refugee status determination procedure was justified as a means to introduce an independent appellate review to decisions made by Ministry of Justice officials.¹⁹¹ However, due to disadvantages to the asylum seeker in the process,¹⁹² appellate review very rarely results in refugee recognition.¹⁹³ Moreover, the Ministry of Justice maintains the ability to deny refugee status, even after the RECs, without justification.¹⁹⁴

Essentially, this negates whatever benefit the RECs provide as an independent body and maintains the denial of recognition to valid refugees by the Ministry of Justice as per the pre-amendment

188. See Refugee Convention, *supra* note 6, art. 1(A)(2).

189. *Id.*

190. Refugee Convention, *supra* note 6, arts. 26, 31–33.

191. Hashimoto, *supra* note 7.

192. See *infra* Part III(B)(2)(ii)

193. Hashimoto, *supra* note 7.

194. [ICRRRA] Cabinet Order No. 319 of 1951, art. 61-2, as last amended by Amend. of Act No. 63 of 2019 (“If a foreign national in Japan files an application in accordance with the procedures provided by Ministry of Justice Order, the Minister of Justice *may* recognize that person as a refugee . . . based on the materials submitted”) (emphasis added).

system.¹⁹⁵ The UNHCR has already expressed concern over incidents of denial of recognition by the Ministry of Justice, and arbitrary denial of refugee status to those already vetted by the system denies these refugees access to the rights and obligations from the state.¹⁹⁶ Domestic critics have also seen the mere advisory role of the RECs as a critical weakness in the refugee system.¹⁹⁷

2. *The Ministry of Justice's treatment of asylum seekers violates obligations under the Convention and Japanese Law*

Japan's treatment of asylum seekers continues to breach the Convention and illustrates the arbitrary application of its obligations. The Ministry of Justice's deportation practices, particularly detaining and removing applicants before they have a chance to understand the system or appeal with representation,¹⁹⁸ is one of the clearest violations of Articles 26, 31, 32, and 33 of the Convention¹⁹⁹ and Article 22 of the Japanese Constitution.²⁰⁰

Article 26 of the Convention obligates States to extend freedom of movement to refugees and asylum seekers,²⁰¹ and Article 22 of the

195. See Hashimoto, *supra* note 7 (referring to criticism by lawyers and refugee advocacy groups that despite initial hopes for the REC review, lack of actual independence and respect of the REC decisions render the system defunct).

196. Periodic Review: Japan, *supra* note 85, at 4 n.13 (noting that the Ministry of Justice's practice of overturning positive recommendations by the RECs has also been criticized by other U.N. human rights organizations, including the Human Rights Committee, the Committee against Torture, and the Human Rights Council).

197. Hashimoto, *supra* note 7.

198. See Murakami et al., *supra* note 91 (reporting the Tokyo High Court's finding that the deportation action on two Sri Lankan men before they could appeal was unconstitutional).

199. Article 26 relates to freedom of movement; Article 31 to non-penalization for illegal entry or presence when seeking asylum; Article 32 to non-expulsion; and Article 33 to non-refoulement. Refugee Convention, *supra* note 6, arts. 26, 31–33; see also *supra* Part II(A)(2) (discussing refugee rights and state obligations).

200. NIHONKOKU KENPŌ [Kenpō] [Constitution], art. 22 (Japan) (codifying the right to freedom of movement); see also ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 217–19 (noting that while no issue has been identified with Article 26 of the Convention and Article 22 of the Constitution of Japan in practice as applied to recognized refugees, issues arise when access to the right is judged by non-recognized asylum seekers).

201. Refugee Convention, *supra* note 6, art. 26; see Marx, *supra* note 37, at

Constitution of Japan guarantees freedom of movement to every person, regardless of alien or national status.²⁰² Detention of asylum seekers pending deportation orders is justified by the Ministry of Justice claiming that the applicants, many of whom overstay their original visas while seeking asylum, are lawbreakers or in the country illegally.²⁰³ This contravenes Article 31 of the Convention, which prohibits discrimination based on the legality of refugees' means of entry into or presence in the country.²⁰⁴ While the Article provides that the refugee should present themselves without delay and show good cause, doing so has not prevented the Ministry of Justice from detaining them, as the UNHCR recognized in their report on two asylum seekers repeatedly detained over several years.²⁰⁵

The High Court of Tokyo has already held that the Ministry of Justice's deportation of asylum seekers pending appeal violated the Japanese Constitution.²⁰⁶ This likewise violates the non-expulsion principle of Article 32 of the Convention due to the necessity of considering these asylum seekers as presumptive refugees per the language of the Article.²⁰⁷ That deportation can lead, and has led, to the refoulement of asylum seekers in Japan, which brings further issues with the practice in that it violates the central principle of non-refoulement under Article 33.²⁰⁸ Therefore, the Ministry of Justice's

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202. NIHONKOKU KENPŌ [Kenpō] [Constitution], art. 22; *see* ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 217–19.

203. *See, e.g.*, Dooley & Ueno, *supra* note 86 (reporting that Wishma Rathnayake, a migrant from Sri Lanka was detained in Japan for overstaying her visa, eventually dying in custody).

204. Refugee Convention, *supra* note 6, art. 31.

205. Human Rights Council Working Group on Arbitrary Detention, Opinion No. 58/2020 Concerning Deniz Yengin and Heydar Safari, *supra* note 87, paras. 6, 77 (noting that one asylum seeker was married to a Japanese national, which is normally a grounds for residency, and that both had resided in Japan for years after applying for refugee status soon after their legal residency expired).

206. *See* Murakami et al., *supra* note 91 (reporting that this was the second decision finding such measures to be illegal, but the Tokyo High Court was the first to find it unconstitutional according to the Constitution of Japan).

207. *See* Davy, *supra* note 39, at 1301 (remarking that Article 32 is applied to refugees, generally, and therefore to all individuals meeting the criteria and not just recognized refugees).

208. *See* Refugee Convention, *supra* note 6, art. 33 (prohibiting the expulsion or

use of discretionary procedures in administrating ICRRA to deny asylum seekers their rights under ICRRA violates the Convention and Japanese law.

iii. Japan's administration of its refugee status determination procedure places barriers obstructing proper refugee claims

The refugee status determination procedure continues to severely disadvantage applicants, many of whom should be properly considered refugees.²⁰⁹ The system itself is designed, instead of some administrative means of discovery and verification, as an adversarial system where asylum seekers must contend with the Ministry of Justice.²¹⁰ While, internationally, the refugee may be expected to bear the burden of proof in pleading their claim, Japan's refugee status determination procedure expects the seeker to supply evidence and verification that they may not be able to access.²¹¹ The refugees are also expected to plead their case without representation in their initial proceedings; a hard task because of language barriers and the general obscurity in terms of definitions.²¹² Given most evidence and claims must be introduced at the initial hearing, difficulties may continue into the appellate process when the applicant is permitted representation.²¹³

Additionally, while Article 61-2(2) of ICRRA requires that the Ministry of Justice provide a reason for the declination of refugee status, frequently the provided reason is nominal and insufficient to

return of refugees); *see also* Kälin et al., *supra* note 29, at 1334–35 (describing the principle of non-refoulement as a “cornerstone” of the Convention and a negative duty prohibiting states from acting against refugees).

209. *See, generally*, ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 78–95 (discussion procedural fairness in asylum application claims in Japan).

210. *See id.* at 86–88 (discussing issues regarding the right to confront adverse evidence, where asylum seekers may not know of adverse evidence collected by the Ministry of Justice or have an opportunity to challenge this evidence during the administrative processes).

211. *See id.* at 121–22 (noting the difficulties of gathering evidence, particularly corroborative evidence, for refugees).

212. *See id.* at 118–22 (explaining that the non-adversarial style of the procedure for refugee status determinations presents many risks to asylum seekers).

213. *See id.*

utilize in appeals.²¹⁴

Due to these shortcomings, Japan's refugee status determination procedure denies refugees from acquiring refugee status through unjust barriers. Ultimately, through narrow interpretation, a discretionary approach to implementing the Convention, and administrative barriers, Japan has achieved a low refugee recognition rate at the expense of asylum seekers and legitimate refugees.²¹⁵ Because legitimate refugees may be turned away, or even deported, Japan violates its obligations under the Convention and Protocol.²¹⁶

C. THE EMERGENCY REFUGE MEASURE AS APPLIED TO ASYLUM SEEKERS VIOLATES JAPAN'S OBLIGATIONS UNDER THE CONVENTION

This Section analyzes the Emergency Refuge Measure and argues that, while the measure temporarily protects against refoulement, it is insufficient to grant the obligatory rights to refugees fleeing the Myanmar coup d'état under the Convention and Protocol.²¹⁷ Per concerns of the UN, the Emergency Measure is merely a temporary measure that may supplant refugee recognition and be used as an excuse to not provide full recognition to proper refugees.²¹⁸

The Emergency Refuge Measure is insufficient on two grounds: (1) the temporary and discretionary nature of the Emergency Measure violates guarantees of non-expulsion and non-refoulement as mandated by Articles 32 and 33 under the Convention; and (2) the measure does not provide legitimate refugees access to integration rights and services as expected under Article 34 of the Convention or

214. *See id.* at 89–90 (providing that often, the supplied “reasons” for denial given to the applicant are mere recitations of failure to meet the definition and lack of sufficient evidence).

215. *See supra* Part II(C)(1) (providing background information regarding Japan's consistently low refugee acceptance rate).

216. *See* Hathaway & Cusick, *supra* note 29, at 488–98 (arguing the non-derogability of refugee obligations).

217. *See* Emergency Refuge Measure, *supra* note 4 (delineating rules and qualifications for refugees from Myanmar who wish to stay in Japan).

218. *See* Rep. of the Fifty-Sixth Session of the Exec. Comm. of the High Comm'r's Programme, *supra* note 51, para. 21(b) (calling upon States to recognize qualifying refugees as such and not to shirk duties and obligations through the extension of a lesser protective status).

services otherwise granted to a refugee by the Government.

i. The Discretionary and Temporary Nature of the Emergency Measure is an Insufficient Guarantee Against Non-Refoulement

The premise of non-refoulement is one of the central tenets of the Convention.²¹⁹ Refugees seeking asylum from the Myanmar Junta are not merely escaping economic turmoil and political conflict, but fear a direct deprivation of their personal or physical liberties.²²⁰ Recognizing the general risk and turmoil in Myanmar, the Japanese Ministry of Justice provided the Emergency Measure allowing for a visa change or extension for a duration between six to twelve months, on a conditional extension based on the status of the Myanmar political situation once the respective period ends.²²¹ As is, the Emergency Measure honors the non-refoulement principle of the Convention.²²² However, the Measure, unlike a grant of refugee status, is both temporal and discretionary. When the Measure expires and the Government does not recognize an ongoing crisis for renewal, Myanmar refugees are again at risk of deportation and refoulement.²²³ As a result, non-refoulement is at the discretion of the

219. UNHCR Report Addendum, *supra* note 31, para. 21(c) (referring to non-refoulement and the right to asylum as the “cardinal principles” of the Convention and Protocol).

220. *See, e.g., Japan Permits Continued Stay of Myanmar Residents due to Coup*, *supra* note 3 (reporting on an asylum seeker’s fear of return); *Myanmar Soccer Goalie Receives Official Refugee Status in Japan*, *supra* note 116 (reporting on recognized refugee Ko Pyae Lyan Aung’s application for asylum after fearing for his life from the Myanmar military).

221. Emergency Refuge Measure, *supra* note 4; *see generally, Japan Permits Continued Stay of Myanmar Residents due to Coup*, *supra* note 3 (reporting the announcement, provisions, and responses to the Emergency Measure).

222. *See Japan Permits Continued Stay of Myanmar Residents due to Coup*, *supra* note 3 (allowing asylum seekers who have overstayed their permits to temporarily remain in Japan even if their application for residential status was turned down); Refugee Convention, *supra* note 6, art. 33; *see also* Kälin et al., *supra* note 29, at 1334–35 (describing the principle of article 33 as a “cornerstone” that prohibits states from refoulement, and due to the nature of the risk that the principle is applicable to both recognized refugees and asylum seekers alike).

223. *See* Emergency Refuge Measure, *supra* note 4 (providing the condition for reapplication after an initial extension, which presumptively is decided by the government’s discretion as was their initial decision in providing the emergency measure).

Ministry of Justice, and there is little legal protection available to refugees without the involvement of the courts.²²⁴ Given the current flaws in the refugee status determination procedure, the government risks wrongly turning away otherwise applicable refugees, who then face deportation or refoulement.

ii. The Emergency Measure Does Not Provide Proper Integration Assistance to Prospective Refugees

Even if the Emergency Measure is maintained, asylum seekers would be denied another right of refugee status: the opportunity to integrate into the host society as provided by Article 34.²²⁵ The Convention does not account for determining whether a conflict or threat of persecution is long term or short term.²²⁶ The general expectation is that the refugee cannot or is unwilling to return to their home country.²²⁷ While integration is not mandated, fair access for refugees to do so according to the nation's laws should be made available.²²⁸ Myanmar refugees may very well determine that the threat may end and expect that they will return someday, deciding not to seek integration into Japanese society.

However, the possibility that the Tatmadaw remains in power for the long term also exists. Absent significant changes, the Japanese status determination procedure remains strict and slow, and it could

224. See *High Court Rules Deportation of Sri Lankan Men Unconstitutional*, *supra* note 76 (reporting a lawyer's concern of the frequency of deportations before appeal).

225. Refugee Convention, *supra* note 6, art. 34; see Marx, *Article 34*, *supra* note 42, at 1451–52 (recognizing that access to naturalization or assimilation is not mandated, but that any access be provided and facilitated on terms equal to non-refugee aliens)

226. See Refugee Convention, *supra* note 6, art. 34 (providing nothing regarding the length of persecution or refugee-creating incidents on defining a refugee or the provision of rights).

227. See *id.* at art. 1(A)(2)(defining a refugee as being unable to or unwilling to return based on lack of protection or incapability to return).

228. See *id.* art. 34 (providing that States facilitate fair access to assimilation as well as naturalization); Marx, *Article 34*, *supra* note 42, at 1447–49 (noting that drafters of the convention felt the term “assimilation” appropriately represented a stage prior to naturalization in the form of an integration into the language, culture, and economy of the host society).

take years for some Myanmar refugees to receive their status.²²⁹ During this period as putative refugees, they would be denied the rights and opportunities that they are entitled to under the Convention.²³⁰

Unlike recognized refugees, asylum seekers are unable to receive assistance from the RHQ or similar assistance programs.²³¹ While many previous asylum seekers have spent long periods in Japan, often making language and culture classes redundant, those caught off guard by the coup may not have benefited from or planned for a long stay and would be more in need of such assistance.²³²

Finally, while the Emergency Measure does not forbid naturalization, Article 34 expects the facilitation of assimilation as a goal to promote fair access to naturalization procedures for refugees, which the Emergency Measure fails to do by only providing standard work and residency rights attached to visas and not any additional refugee support.²³³ Ultimately, while as an initial procedure the Emergency Refuge Measure provides temporary protection to Myanmar asylum seekers, it does not provide the full obligations owed to Myanmar refugees as a limited, temporary, and administrative measure.²³⁴ If the Emergency Measure is not expanded upon and is used in place of a proper grant of refugee status, Japan will be in violation of the Convention and Protocol.

229. The Emergency Refuge Measure promises prompt processing of refugee applications from Myanmar residents, but the process is often slowed through administrative appeals and resubmissions after a declined application. *See* Emergency Refuge Measure, *supra* note 4 (promising that Myanmar resident refugee applications will be promptly reviewed and refugee status promptly granted if accepted, but does not mention appeals or process upon denial); *see Refugees in Japan*, *supra* note 83 (providing that the average refugee status determination period is over four years, and occasionally ten years).

230. *See supra* Part II(A)(2), (B)(2) (discussing the various rights of refugees under the Convention, the Constitution of Japan, and ICRRA).

231. *See* ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 229 (explaining how RHQ assistance is provided only to recognized refugees and their families).

232. *See id.* (“[M]any refugees already have command of the language as they have already spent long periods in Japan.”).

233. *See* Emergency Refuge Measure, *supra* note 4 (remaining silent on naturalization rights and procedures).

234. *See id.* (providing refugees with limited protections subject to renewal).

IV. RECOMMENDATIONS

The Myanmar coup d'état has led to ongoing and oppressive political persecution, providing grounds for many Myanmar residents in Japan to seek refugee status.²³⁵ However, Japan's overly strict and obscure Refugee Status Determination procedures hamper many proper claims,²³⁶ and the Emergency Refuge Measure does not provide sufficient protection for prospective refugees.²³⁷

This Part recommends three potentially significant actions Japan can take to properly extend protections and establish a more effective refugee system. Section A recommends that Japan should provide complementary protections, such as the SPS or alternatives, to Myanmar asylum seekers pending refugee applications. Section B recommends that the Japanese legislature establish an official interpretation of "persecution" in line with accepted international definitions. Lastly, Section C recommends that Japan reconfigures its refugee status determination procedure to lower barriers to asylum seekers and reduce the potential for arbitrary decisions.

A. JAPAN SHOULD PROVIDE COMPLEMENTARY PROTECTION FOR MYANMAR REFUGEES WHILE PROCESSING CLAIMS

Complementary Protection measures, SPS or others, should not replace obligations under the Convention and Protocol.²³⁸ However, complementary protection can serve an immediate role for an administration to respond to crises such as the 2021 Myanmar Coup.²³⁹ For those not claiming refugee status, the temporary

235. See *supra* Part III(A) (examining the status of Myanmar asylum seekers as refugees).

236. See *supra* Part III(B) (discussing Japan's failure to recognize refugees under Article 1(A)(2)).

237. See *supra* Part III(C) (analyzing Japan's obligation to asylum seekers).

238. See Rep. of the Fifty-Sixth Session of the Exec. Comm. of the High Comm'r's Programme, *supra* note 51, para. 21(b) (calling upon state parties to recognize people as refugees according to the 1951 Convention and/or its 1967 protocol, rather than a complementary form of protection).

239. See *supra* Part III(C) (concluding that Japan's Emergency Refuge Measure violates its obligations under the Convention and Protocol); *Japan Permits Continued Stay of Myanmar Residents due to Coup*, *supra* note 3 (reporting that the United States and Australia provided Myanmar nationals with complementary protections); Aycock & Hashimoto, *supra* note 49, at 8 tbl.1 (explaining how a

protection of the Emergency Measure may be enough, but for those claiming the status, the lack of full refugee rights can unjustly diminish access to integration resources and other rights.²⁴⁰ Therefore, a solution would be to provide these rights on the presumption that these asylum seekers are refugees.

Though the government may be wary of extending refugee protections simply for claiming the status, the Ministry has already acknowledged the special circumstances and dangers present in Myanmar by the declaration of the Emergency Measure.²⁴¹ Moreover, not all Myanmar individuals in Japan have pursued refugee recognition.²⁴² The combination of these two considerations, whether an individual is under the Emergency Measure and is pursuing refugee recognition, would perhaps present a more palatable ground for the Japanese government rather than the automatic extension of rights to all applicants.

While the Emergency Refuge Measure may be a short-term action taken to prevent the deportation and possible refoulement of refugees, complementary protection as with an expanded SPS status grant could provide and grant provisional rights to asylum seekers pending refugee recognition applications, ensuring that delays and proceedings do not deny proper refugees rights Japan owes under the Convention and Protocol.

B. JAPAN SHOULD ESTABLISH A UNIFORM LEGISLATION DEFINITION OF PERSECUTION THAT ADHERES TO THE INTENT OF THE CONVENTION

Japan's shortcomings in implementing the Convention domestically are the root of many of the issues facing the Myanmar

surge of SPS status grants was the result of a surge of refugee applications from a previous Myanmar crisis).

240. See *supra* Part III(C)(2) (discussing how refugee applicants under the Emergency Measure are not granted access to full refugee integration assistance).

241. See Emergency Refuge Measure, *supra* note 4 (recognizing that people are unable to return to Myanmar because of the "unstable situation there").

242. See *Japan Permits Continued Stay of Myanmar Residents due to Coup*, *supra* note 3 (providing that since the coup, of the tens of thousands of Myanmar residents in Japan, only a few thousand are seeking refugee status).

asylum seekers today.²⁴³ To meet its obligations under the Convention, Japan should add to ICRRA a definition of “well-founded fear of persecution” that accords with the UNHCR Handbook understanding.²⁴⁴

Without final, proper definitions, Japanese administrators and judiciary must use their discretion to choose an interpretation.²⁴⁵ Providing an official legislative definition would not only establish a standard for administrators and judiciary to use but applicants as well, potentially increasing the number of proper applicants while decreasing the number of improper applicants who would realize that their situation does not apply.

Currently, a common definition of persecution among lower courts in Japan is “for ordinary persons, they should not suffer from painful attack or oppression, and violation of life or physical freedom.”²⁴⁶ While the UNHCR Handbook notes there is no universal definition, it provides that serious violations of human rights, threats to freedom on account of race, religion, nationality, political opinion, or membership of a particular social group, can be considered persecution.²⁴⁷ The “common” Japanese definition of persecution could be extended and altered to something along the lines of “physical attack or threat thereof, violation of life or physical freedom, or the denial of basic human rights through physical force or that of law or the deprivation thereof.”

Whether this interpretation or a domestic interpretation is developed and utilized, Japan should create a clear, Convention-compliant understanding of the definition of a refugee. In doing so,

243. See *supra* Part III(B)-(C) (explaining how Japan’s refugee status determination procedure violates the Convention, and how the Emergency Refuge Measure does not make-up for these shortfalls).

244. See HANDBOOK, *supra* note 13, paras. 37–86 (providing the UNHCR’s interpretation of the terms and criteria and how to apply them in determining refugee status).

245. ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 165–66 (explaining that the terms, “persecution” and “being persecuted,” are not clearly defined in international instruments).

246. Ando, *supra* note 75, at 43–44 (stating that a fear of persecution must be subjectively and objectively well-founded).

247. See HANDBOOK, *supra* note 13, para. 51 (providing an interpretation of the term, “persecution”).

Japan would not only signal its intent to comply with the Convention but also provide greater guidance and consistency to administrative and judicial bodies in enacting its obligations.

C. JAPAN SHOULD RECONFIGURE ITS REFUGEE RECOGNITION
PROCEDURE TO PERMIT ASYLUM SEEKERS TO FAIRLY PLEAD
THEIR CASES

Another barrier for Myanmar refugees, and refugees in Japan generally, is the systematic disadvantages to asylum seekers in the refugee status determination procedure despite a series of amendments.²⁴⁸ By revising standards and practices within this system to lessen the practical and legal burdens on the applicant, Japan could develop a more effective system that quickly affirms proper refugee status and prevents applicants from remaining in limbo.²⁴⁹

Allowing legal counsel at the first administrative proceedings would assure more proper refugee applicants are admitted early, decrease the need for appeals, and generally clean up the process overall.

Additionally, a more efficient and consistent system would also develop if the Ministry of Justice provided transparent insight into its standards and procedures in refugee application considerations. Before the appellate stage, applicants should be provided a proper and full reason for the refusal of their application. This transparency would have the dual effects of protecting against arbitrary decisions and allowing applicants to effectively contest and prepare their appeal.

For Myanmar asylum applicants, many of whom were in Japan before the coup, these changes would allow them to plead their case and circumstances more adequately, particularly as many are

248. See [ICRRA] Cabinet Order No. 319 of 1951, art. 61–62, as last amended by Amend. of Act No. 63 of 2019 (prescribing that when a foreign national files an application in accordance with proper procedure, the Minister of Justice has discretion to recognize that foreign national as a refugee); see also *supra* Part III(B)(3) (analyzing Japan's administration of the refugee status determination procedure and refugee disadvantages within the system).

249. See *Refugees in Japan*, *supra* note 83 (providing that the average refugee status determination period is over four years, and occasionally ten years).

refugees “sur place” and need to demonstrate unique criteria demonstrating a change in circumstances.²⁵⁰

Additionally, Japan should acknowledge a *prima facie* case for the Myanmar refugees.²⁵¹ Given the level of discretion ICRRA affords the Ministry of Justice, the Ministry should inclusively exercise its discretion to recognize the unique circumstances of the Myanmar refugees “sur place” and consider evidence and context accordingly.²⁵²

A more transparent and equitable system of refugee recognition would undoubtedly produce greater recognition of proper refugees, allowing Japan to extend the non-derogable rights obligated under the Convention and Protocol.

V. CONCLUSION

When the Tatmadaw overthrew the Myanmar government in February of 2021, the Myanmar people simultaneously lost their democratic rights and were oppressed for expressing their dissent.²⁵³ Thousands of Myanmar residents in Japan rightfully fear returning to Myanmar and losing their political and individual freedoms, which provides validity for claims of refugee status.²⁵⁴ The Japanese government made an initial step in providing these individuals with temporary protection from deportation.²⁵⁵ However, Japan is obligated under the 1951 Convention and 1967 Protocol to provide those claiming refugee status with more than the Emergency

250. See *Japan Permits Continued Stay of Myanmar Residents due to Coup*, *supra* note 3 (reporting on the situation of thousands of Myanmar residents of Japan in the aftermath of the coup).

251. See HANDBOOK, *supra* note 13, at 204 paras. 1–3, n.3 (discussing the use of *prima facie* refugee cases).

252. See *supra* Part III(A)(3) (analyzing how fears of persecution arose for many while in Japan and that the actions of the Tatmadaw demonstrate attention and retribution is enacted against lesser-known dissidents as well as famous ones).

253. See Goldman, *supra* note 2 (reporting that after the coup, military leaders conducted brutal operations to stop pro-democracy demonstrations).

254. See, e.g., *Japan Permits Continued Stay of Myanmar Residents due to Coup*, *supra* note 3 (stating that Myanmar asylum seekers want to get refugee status and remain in Japan because Myanmar is dangerous).

255. See Emergency Refugee Measure, *supra* note 4 (providing Myanmar asylum seekers in Japan with limited protections).

Measure provides,²⁵⁶ and the slow, restrictive refugee status determination has historically disadvantaged those seeking its protection.²⁵⁷ Japan has multiple options to bring its administrative and legal structures in compliance with its international agreements, and if it does, it can demonstrate that it upholds the dignity of those fleeing persecution and that it respects the country's role internationally in regard to the Convention and Protocol.

256. *See supra* Part III (C) (analyzing how Japan's Emergency Refuge Measure as applied to asylum seekers violates Japan's obligations under the Convention).

257. *See generally* ARAKAKI, REFUGEE LAW AND PRACTICE IN JAPAN, *supra* note 9, at 78–95 (discussing the difficult process asylum seekers go through to apply for refugee status in Japan).