## WAS MALAYSIA RIGHT TO DEPORT ASYLUM-SEEKERS TO MYANMAR?

MALAYSIA repatriated 1,086 Myanmar nationals on three navy ships sent by Myanmar. The deportation took place as the Covid-19 pandemic severely hurt the job prospects of migrants in Malaysia, effectively turning many [documented workers into undocumented](https://www.globaldetentionproject.org/countries/asia-pacific/malaysia) and potentially subject to immigration enforcement measures.

**Why did Malaysia deported the asylum-seekers?**

The deportation comes as [more than 130 civil society groups](https://www.bbc.com/news/world-asia-56178270#:~) had called for an immediate ban on sales of all equipment that could be used for military purposes to Myanmar, also known as Burma, while it still remains under military rule.

Malaysia is home to one of the largest refugee populations in East Asia. According to the United Nations Refugee Agency, there are nearly 180,000 refugees and asylum seekers. The vast majority belong to Myanmar, including [102,250 Rohingya](https://www.aljazeera.com/news/2021/2/24/malaysia-court-stops-deportation-of-remaining-114-myanmar-nationa).

**What was the court order?**

The Kuala Lumpur High Court’s order came after the migrants were transported to the naval base, where three Myanmar military ships were waiting to take them home. In February 2021, a Malaysian court ordered the suspension of the planned deportation of [1,200 Myanmar immigrants](https://indianexpress.com/article/world/malaysia-court-allows-rights-groups-to-challenge-myanmar-deportations/) in order to hear calls from human rights bodies that said immigrants include refugees, asylum-seekers and minors. As a result, the court’s ruling paved the way for a full hearing on deportation and extended the ban on the repatriation of 114 Myanmar nationals until the end of the judicial review. This is an important step in a country where the country’s law prohibits immigration decisions from being challenged in court.

The director of Amnesty International said that according to the court’s ruling, the Malaysian government must respect the court’s order and ensure that not one of the 1,200 is deported.

Despite the court ruling, it may be emphasised that the 1200 refugees were deported to Myanmar from Malaysia during the pandemic, which stands in contravention to the rights provided by the laws enacted in Malaysia.

The Malaysian immigration authorities put forth their claims as that their repatriation programme does not involve refugees or asylum-seekers, but the issue that may arise is how have they determined this if the United Nations has been prevented from accessing people in immigration detention for one-and-a-half years?

**Is this act of Malaysia against international law?**

The lack of transparency in mass deportation activities violates Malaysia’s obligation to respect and protect the rights of immigrants and refugees and risk their lives. After the military coup in Myanmar on February 1, widespread suppression of dissidents put those who should be deported face the risk of further human rights violations.

Regardless of their immigration status, all people in Malaysia enjoy certain basic [human rights under international law](https://www.hrw.org/reports/2000/malaysia/maybr008-02.htm). In addition, refugees also enjoy rights based on international refugee law, including basic protection against non-refoulement. This means that due to race, religion, nationality, membership in a particular social group, or political opinions or any other ground for which they can be persecuted, they have a right not to be deported to whom they fear.

International human rights law usually stipulates that states have obligations to all people, not just citizens. Although international human rights law recognises that a country has the right to control its borders and restrict its entry into its territory, the fact that a person enters a country illegally does not affect his basic right to life, personal safety, equality before the law, or other basic civil rights and political rights.

Malaysia is a signatory of the United Nations Charter and is bound by the Universal Declaration of Human Rights, which explicitly prohibits discrimination based on nationality. It is also a party to the Convention on the Elimination of All Forms of Discrimination against Women (Cedaw) and the [Convention on the Rights of the Child](https://cypcs.org.uk/rights/uncrc/articles/article-9/), and they do not distinguish between citizens and non-citizens in the rights they establish. [Cedaw](https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx) clearly stipulates that men and women should “have equal rights to acquire, change or retain their nationality.”

**Issues that need to be considered to understand whether Malaysia has violated international human rights law**

1. Articles 1, 2 and 12 – Detention and Non Refoulement

Contrary to international law, the Malaysian government continues to detain refugee and asylum-seeking women and children, including pregnant women and lactating women, in inadequate conditions, which eventually exposes them to the risk of harm. This essentially is against the principle of non-refoulement.

The government’s response with respect to this does not correspond with the situation and circumstances on the ground. Their commitments to Cedaw to abide by the principle of non-refoulement have not been upheld, considering they had deported 1,086 individuals to Myanmar in the pandemic times.

2. Violation of Convention on the Rights of the Child

The issue that was also filed in the court was that the deportation included 17 minors who have at least one of the parents still in Malaysia, and therefore, it may be stated that separating them from their parents is violative and also infringes the country’s Child Act of 2001. It also violated the international commitments under Article 9 of the Convention on the Rights of the Child. Having said this, it must be emphasised that Malaysia has ratified the said Convention and thereby is obligated to follow the same.

3. Right to life and extension of protection

It should be emphasised that since Myanmar has recently witnessed a military coup d’état. Malaysia should not accept the deportation of asylum-seekers to a dangerous road in Myanmar. [Human Rights Watch](https://www.hrw.org/news/2021/02/19/malaysia-planned-forced-return-1200-myanmar) said the scope of protection is now basically extended to the escapees, thereby protecting their lives, rather than letting them keep track of serious human rights violations.

4. The Malaysian government should provide the United Nations Organisation to visit and assess the asylum centre

It is considered to be obligatory on the part of the state, where the extent of refugees is beyond limits, to enable the [United Nations Refugees Agency](https://www.reuters.com/article/malaysia-migrants-idUSKBN27R13P) to do its job by assessing asylum claims at immigration centres, so that the international community at large can be assured that Malaysia is not violating any of the rights and is not deporting people into harm’s way. It is the mandate of the UNHCR to access immigration detention facilities to exercise its mandate to determine the refugee status of the detainees and facilitate durable solutions, including integration in Malaysia.

The international community and local groups have put pressure on Malaysia to stop the impending deportation. The European Union, the United States, the United Nations and various other organisations have condemned the deportation from Myanmar.

**Conclusion**

It is accentuated by the author that considering the abuses that prevail in Malaysia with respect to the detainees, it was right on their part to deport; however, not in the circumstances that the government chose to deport them. The government deported the asylum-seekers at a time when a military coup d’état was established in Myanmar. Myanmar is going through a phase wherein the human rights of the individuals are abused almost every moment. At a time when such circumstances exist in Myanmar, it is absolutely disgraceful for Malaysia to deport the asylum seekers to Myanmar.

Malaysia is not a party to the United Nations Refugee Convention 1951 or 1967 Protocol, but it must be emphasised that the principle of non-refoulement is regarded as part of customary international law and is regarded as binding on all countries. The Malaysian government did not abide by these principles and therefore violated customary international law that is clearly binding on all countries.

Furthermore, with the rights of the individuals kept in the hands of harm’s way, it is accentuated that such rights are the basic human rights of the detainees and are not ought to be infringed upon. Therefore, the right to life and an extension of the same in other’s territory also shall be respected rather than taking an action of deporting them considering the crisis that prevails in Malaysia. – May 7, 2021.

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