

**Mandate of the Special Rapporteur on the situation of human rights in Myanmar**

Ref.: UA MYS 3/2022  
(Please use this reference in your reply)

21 October 2022

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights in Myanmar, pursuant to Human Rights Council resolution 49/23.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **recent refoulement of persons to Myanmar, as well as a recent mass deportation of persons to Myanmar, despite clear information about the risks of torture, ill treatment and even execution of persons refouled to Myanmar in particular since the coup of February 2021.**

According to the information received

On 20 September 2022, immigration authorities carried out a migration raid at a private residence in Taman Kajang, Kuala Lumpur. At least 30 uniformed and plain clothed officers arrived in three trucks. The officials entered the premises and asked a group of Myanmar nationals who were there to produce their community cards and their Online UNHCR New Registration Request Forms. It is alleged that four individuals were unable to produce the documentation. It is reported that they did in fact possess the requested documents, they just did not have them on their persons on that day. The four individuals, who are ethnic Rakhine, [REDACTED], his wife [REDACTED], [REDACTED] and [REDACTED], were taken directly to the Putrajaya immigration detention centre.

[REDACTED] had defected from the Myanmar Navy in 2019, and had sought refuge in Malaysia with his wife, [REDACTED]. [REDACTED] was a construction worker. [REDACTED] fled Myanmar to Malaysia in 2018 as he was targeted in his village by the Myanmar Military for suspected connection to the Arakan Army.

On the same day, 20 September 2022, another Myanmar citizen, [REDACTED] was also detained by the Malaysian authorities and sent to Putrajaya immigration detention centre. [REDACTED] was also a defector from the Myanmar Navy who had fled to Malaysia in 2019.

On 21 September 2022, another Myanmar citizen, [REDACTED] was detained in Johor State. [REDACTED] was also a defector from the Myanmar Navy who fled to Malaysia in 2020. On 14 July 2020, the Myanmar Navy announced that he was defector and fugitive from the Naval Communications and Electronics Training Investigation Team.

As early as 26 September 2022, the government of Malaysia was made aware of the situation of the four detainees, [REDACTED], his wife [REDACTED], [REDACTED] and [REDACTED], including through direct intervention by the Special Rapporteur on Myanmar, among others. It was clearly communicated that due to their profiles they could be at grave risk of persecution, torture or even death if refouled to Myanmar. The cases of the other two defectors [REDACTED] and [REDACTED] were not included in the initial intervention to the Malaysian government on 26 September because at that stage there was no information that they had been detained or were slated for deportation.

Despite the information provided to the Malaysian government, on 6 October 2022, the Immigration Department of Malaysia deported two of the four individuals, [REDACTED] and [REDACTED], directly from the immigration detention centre to Yangon. Prior to their deportation, the couple were not charged with any migration offences. The couple had no opportunity to challenge their deportation in a court of law.

UNHCR and the community-based organisation supporting the detainees came to know of the deportation on 7 October 2022, one day after it had already been executed. It is reported that on that day Immigration officers further advised that the remaining two individuals who were detained as part of the original raid, [REDACTED] and [REDACTED] would be deported to Myanmar soon.

Moreover, it appears that the deportation of [REDACTED] and [REDACTED] on 6 October took place as part of a mass deportation of over 100 persons back to Myanmar on that day. It remains unclear under what procedure the 100 persons were deported. UNHCR did not have access to this group of 100 individuals, as they do not have access to any detention sites, and were thus unable to carry out any screening in line with international standards to ensure that none of the group had valid refugee claims or would have faced protection concerns upon deportation back to Myanmar, which may be heightened as a result of the 2021 coup. As a result of this lack of screening, it appears that at least two other defectors [REDACTED] and [REDACTED], who had been arrested in September 2022, were sent back to Myanmar as part of this mass deportation.

It is alleged that the group of approximately 100 Myanmar nationals deported on 6 October 2020 were transferred upon arrival in Yangon to Dagon University to carry out an obligatory 14-day Covid quarantine. However, it is alleged that [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were removed from the larger group and arrested. Their fate remains unknown.

It has been reported a flight ticket was purchased by the Myanmar embassy for [REDACTED] to return to Myanmar on 20 October without his knowledge. An application on behalf of [REDACTED] was filed in court, and on 17 October, an ad interim stay order was placed on the deportation of [REDACTED]. This order was in place until the interim stay application hearing on 20 October. At that hearing the judge rejected the application, and although the lawyer intends to

appeal the decision, he remains at high risk of deportation. As for [REDACTED] [REDACTED] reportedly no tickets have been purchased to date for his deportation.

Furthermore, and regrettably, the Special Rapporteur notes that the recent deportations of persons to Myanmar on 6 October 2022 are not the only ones that have been carried out since the coup of Feb 2021. According to the information received:

On 24 February 2021, Malaysia returned 1,086 migrants, including unaccompanied minors and toddlers as young as three-years-old to Myanmar, on three Navy vessels provided by the Myanmar military. These deportations took place without any individual screening of the deportees in line with international standards and despite the fact that the Kuala Lumpur High Court had issued an order to suspend their deportation pending judicial review.

It is further alleged that of the 1,200 persons that were listed for deportation on February 2021, 114 individuals were removed and placed back in detention. It is feared that there is a high risk that the remaining 114 may now be at risk of deportation as Immigration has reportedly requested a lift on the stay of deportation for that group.

Furthermore, according to the information shared by the Ministry of Home Affairs in August 2022, it appears that there are at least 1,390 people from Myanmar in indefinite detention, all of whom remain at risk of deportation, some of whom may be children.

Given the lack of information regarding deportation procedures, it is also possible that other deportations to Myanmar have been taking place since the coup.

Without prejudging the accuracy of the above allegations, the principle of non-refoulement forms an essential protection under customary international law and is binding on the Government of Malaysia. Non-refoulement prohibits all forms of removal and transfer of any individual, regardless of their status, when there are substantial grounds for believing that the individual would be at risk of irreparable harm, such as death, torture or cruel, inhuman or degrading treatment or punishment, persecution, enforced disappearance or other serious human rights violations, in the place to which they are to be transferred or removed. The principle of non-refoulement under international human rights law is characterized by its absolute nature without any exception, applying to all persons, including all migrants, at all times, irrespective of their citizenship, nationality, statelessness or migration status. Furthermore, mass deportations are, in the absence of individual screening in line with international standards, in breach of the principle of non-refoulement, a rule of jus cogens, which absolutely prohibits the collective deportation of migrants without an objective risk assessment being conducted in each individual case.

I am in firm agreement with the public statements issued by the government of Malaysia, regarding the illegality of the February 2021 coup inside Myanmar, and the grave violations of international humanitarian law and international human rights law

ongoing in the country being carried out by the Myanmar Military. Accordingly, I respectfully call again on the Government of Malaysia to act in line with its own foreign policy on Myanmar, as well as with its international legal obligations, and as a first step and without delay, halt all deportations to Myanmar.

I am also concerned by what appears to be a deliberate refusal by the Malaysian government to allow access to persons that are due to be deported, and the denial of due process guarantees and judicial safeguards regarding the deportations, as well as lack of access of all Myanmar persons in detention access to adequate screening procedures in line with international standards. During my visit to Malaysia, I was denied my request to meet with Home Ministry officials as well as to visit detention facilities.

Finally, and very concerningly, I take note of the fact that the recent deportations, including the mass deportation without adequate mechanisms to screen for international protection needs, have resulted in the deportation of military defectors from Malaysia back to Myanmar. In this regard, I take note that under Myanmar law (Defence Services Act, 1959), an individual convicted of defection can be sentenced to death. I also take note that in July 2022 the junta executed four political prisoners in flagrant breach of international law, breaking its de facto moratorium on the death penalty. There are reportedly a total of 126 persons who have been sentenced to death since the coup.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any information and comment you may have on the above-mentioned allegations.
2. Please explain what procedures were followed to ensure that the deportations carried out to date did not breach the non-derogable right of non-refoulement.
3. Please explain what mechanism have been put in place, in line with international standards, to ensure that persons deported to Myanmar do not have international protection needs and grounds for asylum.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Thomas Andrews  
Special Rapporteur on the situation of human rights in Myanmar