



**Resolution Adopted at the 75th Annual General Meeting of the Malaysian Bar
Held on 13 March 2021**

**Resolution Condemning Repatriation in Violation of Court Order, and Enactment of
Refugee / Asylum Seeker Law**

WHEREAS:

- (1) When Malaysia on 23 Feb 2021 reportedly repatriated 1,086 Myanmar citizens whom it described as “illegal immigrants” to Myanmar despite an existing court order preventing the sending back of 1,200 persons, it raised several issues, including the obligation of state and government departments to respect and obey court orders. The order was issued in a case that was filed, amongst others, to ensure that all the said 1,200 persons were duly vetted and determined to be not refugees and/or asylum seekers, whereby a repatriation of any such persons would be a violation of the universally recognised principle of non-refoulement that guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.
- (2) Refugees are people who have fled war, violence, conflict or persecution and have crossed an international border to find safety in another country. The UN Convention Relating to the Status of Refugees 1951 (“Refugees Convention”) is a key legal document and defines a refugee as *“someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”*
- (3) It is totally unacceptable and unjust for Malaysia to return refugees and/or asylum seekers back to countries from where they fled, simply because these persons were simply considered “illegal” (or undocumented); for not entering Malaysia with the proper documentation; or simply because their passport (work permit, passes, etc) had expired, making remaining in Malaysia “illegal”.
- (4) Malaysia, to date, still does not have a Refugee and Asylum Seeker law, which defines “refugee” and “asylum seeker”, sets out the rights and obligations of those seeking refuge or asylum, the procedures for determination of whether the said person is a

refugee or asylum seeker, and the manner in which he/she will be dealt with after he/she has been determined to be a refugee / asylum seeker or not.

- (5) Many countries have specific laws, or have included provisions in other laws such as immigration laws, on how to deal with refugees / asylum seekers. The United States, for example, has the United States Refugee Act of 1980.
- (6) In Australia, the Migration Act 1958 has section 1A(2), which gives effect to Australia's obligation of non-refoulement — to not return a person in any manner whatsoever to the frontiers of territories where the person's life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion. Section 36(2) provides for the grant of a protection visa to a “non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol”.
- (7) Besides the United Nations Conventions, Article 12 of the Cairo Declaration on Human Rights in Islam 1990 also states that “Every man shall have the right, within the framework of Shari'ah, to free movement and to select his place of residence whether within or outside his country and, if persecuted, is entitled to seek asylum in another country. **The country of refuge shall be obliged to provide protection to the asylum-seeker until his safety has been attained**, unless asylum is motivated by committing an act regarded by the Shari'ah as a crime.
- (8) Malaysia, to date, has not signed and/or ratified the Refugees Convention and its 1967 Protocol. That is not a major problem if Malaysia has its very own law to deal with refugees and asylum seekers.
- (9) In other countries like India, which has not ratified / signed the Refugees Convention or have their own domestic laws on refugees and/or asylum seekers, the courts have created law on dealing with refugees / asylum seekers. Like India, Malaysia too acknowledges, in our Federal Constitution, the equality of persons (not just citizens), and all persons are accorded rights in many different laws of the land.
- (10) In the past, even though refugees / asylum seekers are not recognised in Malaysian law, Malaysia has provided refuge to them, and has respected the principle of non-refoulement in most cases. Malaysia recognised and treated differently, persons vetted and decided to be persons likely to be refugees / asylum seekers, as determined by the United Nations High Commissioner for Refugees (“UNHCR”).
- (11) After the recent repatriation despite a clear court order, there is a need for the commencement of **contempt proceedings**, to enable also the alleged person(s) or entities who ignored a court order a right to be heard, and for the court to thereafter make a clear decision, which would determine whether that act amounts to a contempt of court or not. This would be most beneficial for the people of the land too.

- (12) In the past, the Malaysian Government, vide the Immigration authorities, in several instances have simply caused the repatriation or even failed to stop “forced” sending back of migrants by employers, by taking the simplistic position that those who are “illegal” or those without proper documentation to remain in Malaysia shall be repatriated. This practice has impeded significantly the rights of many sent away from Malaysia, and also the administration of justice.
- (13) Those with complaints and legitimate claims against employers and/or others simply cannot access avenues, or complete their quest, for justice until the end. The absence of claimants / complaints often results in the end of proceedings at the relevant departments such as the Labour Department, tribunals and courts. The fact that victims of crimes and relevant witnesses in Malaysia, and Malaysia’s lack of resources / capacity to bring them back for trial, result in alleged criminals getting off scot-free — hence having an impact on the criminal justice system. In some jurisdictions, such victims, especially workers having outstanding claims against employers, are allowed to stay until the complaint / claim is speedily disposed of. Allowing perpetrators of crime to escape justice must end, and the State must ensure justice — not facilitate the escape of violators of rights and/or law.

THEREFORE, it is hereby resolved:

- (A) That the Malaysian Bar condemns the actions of the Malaysian Government, including the Immigration Department, for acting in violation of a court order when they repatriated 1,086 Myanmar citizens back to Myanmar;
- (B) That the Malaysian Bar calls for contempt proceedings to be commenced against the Malaysian Government, including the Immigration Department, for the violation of an explicit court order, which will also accord the alleged contemnor(s) the right to be heard and a fair trial, and for the court to pronounce a clear judgment;
- (C) That the Malaysian Bar calls for Malaysia to monitor and ensure the safety of the 1,086 Myanmar citizens repatriated to Myanmar despite a court order, and provide a report to the Malaysian Parliament and to Malaysians soon, as to whether those repatriated are safe;
- (D) That the Malaysian Bar calls for the enactment of a Refugee and Asylum Seeker Act or laws that will recognise refugees and asylum seekers, and determine their rights and stipulate proper and just procedures;
- (E) That the Malaysian Bar calls for a review of immigration laws, to ensure that victims of injustices and/or crimes, and possibly relevant witnesses, are not sent out of the jurisdiction of Malaysia, hence defeating one’s right to justice; and
- (F) That the Bar Council does all things necessary to give effect to the above resolutions.