

**THE GOVERNMENT OF MALAYSIA'S RESPONSE TO THE JOINT URGENT
APPEAL FROM SPECIAL PROCEDURES, OFFICE OF THE HIGH
COMMISSIONER FOR HUMAN RIGHTS**

The Government of Malaysia (“Government”) presents the following additional information in response to the allegations concerning the arrest of over 300 undocumented migrants in Malaysia in the context of COVID-19 testing, and subsequent detention in overcrowded immigration detention centres, which was brought to the attention of the Government *vide* a joint urgent appeal by the Special Rapporteur on the human rights of migrants, the Working Group on Arbitrary Detention, the Special Rapporteur on the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reference no.: UA MYS 2/2020) dated 14 May 2020.

2. The Government takes note that the communication was mainly premised on allegations in relation to certain actions taken by the Malaysian authorities as part of the Government’s efforts to tackle and combat the COVID-19 pandemic in the country. The clarification has been prepared based on the official information provided by the relevant Malaysian authorities.

3. This response is to be considered with the interim response of the Government of Malaysia conveyed on 26 May 2020.

Observations by the Government

(i) Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations

4. On 18 March 2020, Malaysia implemented the Movement Control Order (“MCO”) to contain the spread of COVID-19 in the country in line with section 11 of the Prevention and Control of Infectious Diseases Act 1988 [Act 342] (“the Prevention and Control of Infectious Diseases Act”). Pursuant to section 11(2) of the Prevention and Control of Infectious Diseases Act, a series of regulations had been published in the Federal *Gazette* of Malaysia to control movements and gatherings within infected local areas including the following:

- (a) the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 [*P.U.(A) 91/2020*], which was in force from 18 March 2020 to 31 March 2020;
- (b) the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 2) Regulations 2020 [*P.U.(A) 109/2020*] (“Regulations No.2”), which was in force from 1 April 2020 to 14 April 2020;
- (c) the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 3) Regulations 2020 [*P.U.(A) 117/2020*] (“Regulations No.3 ”), which was in force from 15 April 2020 to 28 April 2020;
- (d) the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 4) Regulations 2020 [*P.U.(A) 133/2020*] (“Regulations No.4”), which was in force from 29 April 2020 to 12 May 2020; and
- (e) the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 5) Regulations 2020 [*P.U.(A) 136/2020*] (“Regulations No.5”), which was in force from 4 May 2020 to 12 May 2020; and
- (f) the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 6) Regulations 2020 [*P.U.(A) 147/2020*], which was in force from 13 May 2020 to 9 June 2020.

5. Beginning 1 April 2020, infected local areas that had been identified to host large cases of infected persons with COVID-19 had been put under the Enhanced Movement Control Order (“EMCO”) pursuant to subregulation 3(3) of Regulations No.2, Regulations No. 3 and Regulations No. 4 to be read together with paragraph 11(3)(b) of the Prevention and Control of Infectious Diseases Act and subregulations 4(2) and 4(3) of Regulations No.5, in order for the Government to conduct thorough COVID-19 testing on all residents, and to curb the spreading of the virus out of the EMCO areas.

6. Selayang was the seventh area to come under the EMCO on 25 April 2020, following a spike of cases detected in the nearby Kuala Lumpur Daily Market and the Kuala Lumpur Wholesale Market. The EMCO was extended from 3 May 2020 to 15 May 2020 to allow the Health Ministry more time to check all residents for COVID-19.

7. Infected local areas under the EMCO are subjected to a stricter movement order as follows:

- (i) all residents and non-residents may move from one place to another within the infected local area;
- (ii) all residents and non-residents are forbidden from exiting the area except to those who are providing healthcare and medical services, or are given permission by an authorised officer;
- (iii) non-residents and visitors outside the area are prohibited from entering into the EMCO area;
- (iv) no business activities are allowed at EMCO areas;
- (v) adequate food supplies were provided to all by the authorities;
- (vi) any type of gathering or procession is prohibited;
- (vii) a medical base is established within the area; and
- (viii) all roads into the area are blocked and guarded by authorised officers.

8. The Government implemented a targeted health screening approach, which includes free testing and treatment, based on infection hotspots and among cluster groups regardless of their migration status. Due to the presence of a large number of foreigners within the EMCO vicinity, the Malaysian authorities conducted documentation checks for the purpose of contact tracing with the aim to contain the spreading of COVID-19. This is done pursuant to regulation 9 of Regulations No. 2, Regulations No. 3, Regulations No. 4 and regulation 10 of Regulations No. 5, which allow for an authorized officer to request for any information relating to the prevention and control of infectious diseases from any person or body of persons.

9. During the exercise at EMCO areas, the Government undertook strict measures, with the objective to conduct a thorough COVID-19 test for all residents, and to curb the spread of the virus out of the areas. Certain elements implemented during the exercise including the SOP would be re-evaluated and further improved in future, to further protect children, older persons and immigrants with vulnerabilities.

10. Foreigners who had in possession of proper travel documents, foreigners whose travel documents had expired and had not been able to apply for renewal during the MCO as well as the United Nations High Commissioner for Refugees (“UNHCR”) cardholders had not been detained by the Malaysian enforcement authorities. In this regard, the Government underscores that despite not being a State Party to the Convention Relating to the Status of Refugees, the UNHCR cardholders were not detained by the Malaysian enforcement authorities based on humanitarian grounds. These groups had been required to undergo mandatory COVID-19 swab tests and had been released after being verified by the Ministry of Health (“MOH”) to be negative.

11. Foreigners who had failed to produce proper travel documents, or had been found in possession of forged travel documents had been detained in depot centres for further investigations under the Anti-Trafficking in Persons and Anti-Smuggling of

Migrants Act 2007 [Act 670] (“ATIPSOM Act”), the Immigration Act 1959/63 [Act 155] (“Immigration Act”), the Passports Act 1966 [Act 150] (“the Passports Act”) and the Immigration Regulations 1963 [L.N. 228/1963] (“Immigration Regulations”).

12. In relation to children detainees, Malaysia is committed to comply with its obligations under the Convention on the Rights of the Child (“CRC”), including to guarantee and uphold the rights of every child not to be subjected to torture or other cruel, inhuman or degrading treatment, and unlawful or arbitrary detention as stipulated under article 37 of the CRC. The Government emphasises that the best interests of children detainees is the paramount consideration of the Government. This can be seen from the fact that children detainees were not separated from their mothers to ensure children detainees are placed with their legal guardians at all times.

(ii) **While we were encouraged to learn migrants, regardless of their migration status, were included in testing for the COVID-19, we would like to ask for information on measures taken to set up firewalls between service providers and immigration authorities.**

13. Similar to the measures undertaken by other countries worldwide, the Government’s efforts in tackling and combating the COVID-19 pandemic crisis is unprecedented, and requires all agencies to work closely together to protect the safety and security of both Malaysians and non-Malaysians.

14. The Government believes that such coordinated approach across relevant ministries and focal agencies during this unprecedented crisis is necessary in order to ensure that everyone, including illegal immigrants, are being screened and further prevented from being infected by the virus, especially those residing at the EMCO areas.

15. The Government had also cooperated with the UNHCR and civil society organisations such as the Islamic Medical Association of Malaysia’s Response and Relief Team, the Malaysian Relief Agency and MERCY Malaysia as partners in providing healthcare services to foreigners including illegal immigrants and the UNHCR cardholders.

(iii) **Please provide information regarding the legality, proportionality and necessity of the raids and the summary arrests of migrants living in City One, Malaya Mansion, and Selangor Mansion. Please explain what legal procedures are being followed in the detention and alleged intended deportations of those migrants, and what legal avenues are provided to the migrants to challenge their detention and deportation.**

16. The Government reiterates that the exercise of document checking towards foreigners had been done pursuant to Regulations No. 2 through No. 5 which allow for an authorized officer to request for any information relating to the prevention and control of infectious diseases from any person or body of persons.

17. Through the operations conducted, the Government managed to contain the spread of COVID-19 within the EMCO areas, as most illegal immigrants who were initially reluctant to come forward for voluntary health screening were able to be screened. Those who were tested positive were provided with medical treatment accordingly at zero cost to the illegal immigrants. Although the Government had on 23 March 2020 announced that action will not be taken against undocumented migrants, none of them came forward for testing. Those who were tested positive were provided with medical treatment accordingly at zero cost to the illegal immigrants.

18. The Government emphasises that any measures taken against any persons found to be without proper travel documents such as a valid entry permit and a valid pass lawfully issued to them to enter Malaysia, or to have been found in possession of forged documents had been done pursuant to the ATIPSOM Act, the Immigration Act, the Passports Act and the Immigration Regulations, which are legal measures taken by the Government in light of its sovereign responsibility within its territory in an effort to protect and preserve its national security, public order, morals, rights and freedom of others.

19. In this regard, subsection 39(1) of the Immigration Act empowers an immigration officer with the authority and power to arrest, detain or remove a person under the Immigration Act. Subsections 32(1) and 33(1) of the Immigration Act further provide for the removal of illegal immigrants by order of the Director General of Immigration.

20. The Government had cooperated with the relevant Embassies and High Commissions for the deportation and repatriation agreement of undocumented migrants. The foreign missions facilitated and verified its nationals, as to ensure that all documentations for deportation were in order.

(iv) Please provide information concerning allegations of xenophobia and hate speech against migrants perpetrated by the authorities, and what measures are being taken to counter the recent increase in xenophobia, hate speech, and attacks against migrants and migrant rights defenders.

21. Hate speech and xenophobic remarks are dealt with under subsections 211(1), 233(1) and 233(2) of the Communications and Multimedia Act 1998 [Act 588]

("Communications and Multimedia Act") to curb hate speech and xenophobic remarks. The provisions stipulate that any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive is an offence. Hate speech and xenophobic remarks can be categorised under the elements of 'offensive' or 'menacing' and upon direction by the Minister of Communications and Multimedia or complaint by any persons, the Malaysian Communications and Multimedia Commission ("MCMC") shall invoke section 68 or section 69 of the Communications and Multimedia Act for the purpose of investigation.

22. Apart from the Communications and Multimedia Act, section 4 read together with section 3 of the Sedition Act 1948 [Act 15] ("Sedition Act") and section 505 of the Penal Code [Act 574] ("Penal Code") may also be employed in order to curb the spread of hate speech and xenophobic remarks. In this regard, section 4 of the Sedition Act provides that any person who, among others, utters or publishes words or publication with a tendency to promote feelings of ill will and hostility between different races or classes of the population of Malaysia commits an offence. Meanwhile, section 505 of the Penal Code stipulates, among others, that any person who makes, publishes or circulates any statement, rumour or report with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity commits an offence.

23. With regard to the allegations of xenophobic remarks and hate speech, the Government is looking seriously into the allegations during these unprecedented times and has taken various actions against those who have committed offences under the relevant laws. The Royal Malaysia Police (PDRM) has been conducting the relevant investigations with the assistance of the MCMC. The MCMC is also working closely with the respective network facilities providers, network service providers or applications service providers in removing contents that are in violation of their community standards and terms of services. As of June 2020, PDRM and MCMC had opened 266 investigations papers to investigate the spread of fake news on COVID-19. Of the total, 179 are still under investigation while another 30 has been indicted in court with 18 pleading guilty while 11 were issued warning notices.

(v) **Please indicate the measures taken to prevent the outbreak and spreading of the virus during arrests and in immigration detention facilities.**

24. To ensure the prevention of new COVID-19 cases, the Government has adopted precautionary measures by issuing guidelines for the management of COVID-19 in detention centres, based on the technical advice provided by the International Committee of the Red Cross. These guidelines, including maintaining

social distancing, have been circulated to Assistant Medical Officers stationed at all immigration detention centres.

25. In addition, each detention centre is assigned to the nearest public health clinic in order to ensure the continued well-being of the detainees. All detainees are also subjected to a mandatory COVID-19 swab test before being placed in detention centres.

26. All positive cases, regardless of their migration status are referred to hospital for treatment. The Government has designated three centres to specifically treat illegal immigrants and migrant workers who have tested positive for COVID-19 namely the Sungai Buloh Hospital and the Kuala Lumpur Hospital, as well as the Malaysia Agro Exposition Park Serdang that has been transformed and equipped with health treatment facilities. These centres can accommodate up to 1,430 patients.

27. Every detainee who displays COVID-19 symptoms is given access to a thorough health screening to ensure that they are being screened and further prevented from being affected by the virus. Malaysia will continue providing assistance and protection to foreigners in the country during the COVID-19 pandemic based on the applicable policies on this matter.

28. The Government has been transparent on the number of migrants placed at four detention centres. The information has been shared to the public during the daily updates of COVID-19 cases by the Ministry of Health. Statistics for 'COVID-19 Swab Test' at Malaysia Immigration Detention Center for the period of 1 January 2020 until 31 May 2020 are as follows:

Cluster	Total Sample	Positive	Foreigners	Negative
<i>Bukit Jalil Immigration Detention Center</i>	1,545	283	283	1,262
<i>Semenyih Immigration Detention Center</i>	1,785	66	65	1,719
<i>Sepang Immigration Detention Center</i>	1,477	60	60	1,113
<i>Putrajaya Immigration Detention Center</i>	101	2	2	97

(vi) **Please indicate what specific legal and administrative measures have been taken to ensure that journalists and human rights defenders in Malaysia, are able to carry out their legitimate work, including through the exercise of their right to freedom of opinion and expression, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any kind.**

29. Subclause 10(1)(a) of the Federal Constitution guarantees the right to freedom of speech and expression. Nonetheless, while the Government guarantees such rights and further supports the rights of journalists and human rights defenders in Malaysia, the Government is bound to ensure that the safety of all parties is safeguarded.

30. In this regard, as widely reported by the media,¹ Malaysian authorities stationed at the EMCO areas have reported that items such as bottles, garbage bags and flower pots had been thrown on them from upper floors of the residences in the EMCO areas. In ensuring the safety of journalists and human rights defenders who had attempted to enter restricted zones including the EMCO areas, Malaysian authorities had implemented a strict no-entry policy into restricted zones and EMCO areas.

31. The Government also took the decision to deny any public entry to the detention centres, including by journalists and human rights defenders, to avoid unnecessary exposure of the public and the detainees to the pandemic.

CONCLUSION

32. The COVID-19 pandemic is an unprecedented crisis that has never been experienced by most countries globally which requires an extraordinary intervention and response in curbing the spread and deaths to the world population. Like many other countries, Malaysia is doing its level best to safeguard the safety and security of its citizens and all foreigners in Malaysia. The Government emphasises that the measures taken by the Malaysian authorities in its efforts in containing the spread of

¹ Bernama. "Selangor Mansion residents hurl bottles, flower pots at MAF personnel." New Straits Times, 11 April 2020, <https://www.nst.com.my/news/nation/2020/04/583261/selangor-mansion-residents-hurl-bottles-flower-pots-maf-personnel>. 10 August 2020; Zolkepli, Farik. "Police: Report received over objects being thrown at security forces at Selangor Mansion." The Star, 11 April 2020, <https://www.thestar.com.my/news/nation/2020/04/11/police-report-received-over-objects-being-thrown-at-security-forces-at-selangor-mansion>. 10 August 2020; "Police: Report received over objects being thrown at security forces at Selangor Mansion." YouTube, The Star, 11 April 2020, <https://www.youtube.com/watch?v=HBNeluKR0g4>; Bernama. "Police receive report of Selangor Mansion residents throwing objects at Armed Forces personnel." The Sun Daily, 11 April 2020, <https://www.thesundaily.my/home/police-receive-report-of-selangor-mansion-residents-throwing-objects-at-armed-forces-personnel-XB2245437>. 10 August 2020; "Soldiers pelted with garbage but not urine, says Mazlan Lazim." MalaysiaKini, 11 April 2020, <https://www.malaysiakini.com/news/520002>. 10 August 2020.

the COVID-19 pandemic and the actions taken by the Malaysian authorities against illegal immigrants were conducted pursuant to its domestic laws, which are measures taken in light of its sovereign responsibility within its territory, as recognised by international law in view of protecting its national security, public order, morals, rights and freedom of others. These laws are exercised carefully taking into consideration the Government's domestic and international obligations.

33. As a responsible state actor in the field of human rights, the Government has maintained constructive engagement with the United Nations Human Rights System including the Human Rights Council and its mechanisms, and is fully committed to continue its efforts in promoting and protecting human rights in the country while undertaking efforts to prevent the spread of the COVID-19 pandemic in Malaysia.

6 October 2020
