

**Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on the right 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**

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/21, 42/22, 42/16, 34/5, 34/35 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arrest of over 300 undocumented migrants in Malaysia in the context of COVID-19 testing, and subsequent detention in overcrowded immigration detention centers.**

According to the information received:

Since 27 March 2020, the government of Malaysia has started to put areas where large clusters of COVID-19 infections had been detected under Enhanced Movement Control Order (EMCO), as part of its efforts to contain the spread of COVID-19. Among other measures, people living in these areas were not allowed to leave their houses; food and medicine had to be delivered. An area put under EMCO is notably isolated through barbed wire fencing and patrolling of armed security officers. Personal information about the inhabitants of areas under EMCO is being collected, allegedly for the purpose of health screening and food aid.

On 22 March 2020, authorities had announced that there would be no arrest of undocumented migrants if they come forward for testing.

On 2 April 2020, City One in Kuala Lumpur was put under EMCO, followed by the Selangor and Malaya Mansions on 7 April 2020. The 3,200 residents in City One and 2,500 residents in Selangor and Malaya Mansions are mostly migrant workers and refugees. All residents of City One, Selangor Mansion, and Malaya

Mansions had undergone testing for COVID-19 by 17 April 2020 and were informed that their quarantine period would end on 30 April 2020.

On 1 May 2020, the police raided City One and Malaya Mansion in Kuala Lumpur allegedly under the pretext of testing the residents for COVID-19. Police officers reportedly rounded up approximately 3,000 people, including tourists and refugees. 1,700 individuals were released after authorities checked their passports and visas. The remaining 1,300 individuals were taken to a government-owned hall close by, where further checking of their identity documents and migration status was carried out. Around 950 individuals were subsequently released. Among them, most individuals had allegedly overstayed their visa during EMCO, and others whose employers had already applied for an extension of their work permits.

At the end of the raid of 1 May, around 350 individuals, mostly undocumented migrants, were reportedly arrested in handcuffs and long chains. They were allegedly put into vans without the possibility to observe physical distancing or being provided with masks. The arrested migrants include families with children, older persons and other migrants with vulnerabilities. Migrants remaining in detention are believed to be nationals of Bangladesh, Egypt, Indonesia, India, Myanmar, Nepal, Pakistan, Philippines and Sri Lanka.

On 2 May 2020, authorities picked up 20 migrants from Selangor Mansion, including four migrants who tested positive for COVID-19.

On 3 May 2020, another raid targeting migrants took place in Kuala Lumpur, at Selangor Mansion. This raid was conducted in a similar manner as the one on 1 May at City One and Malaya Mansion. As a result, approximately 150 migrants were arrested in handcuffs and connected with long chains. They were brought away in vans without the possibility to exercise appropriate physical distancing. The arrested migrants are believed to be from Bangladesh, India, Indonesia, Myanmar, Nepal, Pakistan, Sri Lanka, and Uzbekistan.

Some refugees, officially registered with UNHCR, were also among those that were initially arrested and later released. Personal information of these refugees is available in an ID verification application that law enforcement has been using for years. It remains unclear why they were arrested.

Since 5 May 2020, all migrant workers are requested to undergo testing before being allowed to resume work. It is unclear whether effective firewalls are in place to prevent health authorities from sharing personal information of migrant workers who participated in the testing with immigration authorities. Some employers have allegedly already told migrant workers and refugees not to come back to work, as they are afraid of raids and potential fines or sanctions.

On 5 May 2020, barbed wires were erected and conflicting information is circulating regarding further areas that were put under EMCO. These include densely populated areas inhabited also by migrants.

On 6 May 2020, according to local media, some migrants had run away from quarantine centers for fear of arrest and detention.

Since 7 May 2020, immigration officials and police have been reportedly going to migrant communities, schools and places of religious worship, specifically looking for information on other migrants. The purpose and legal basis for these inquiries are not clear, but are increasing the insecurity and fear among migrants regarding further raids, notably in other areas that are under EMCO. This fear is also based on announcements by the government regarding its intention to further arrest and detain undocumented migrants.

On 11 May 2020, another raid was conducted in Selayang. Selayang was also put under EMCO until 13 May. The raid reportedly followed the same process as the previous raids on 1 and 3 May, but unlike those previous raids, it was confirmed that this raid was led by the immigration authorities. The number of migrants arrested and detained are not available, but there were allegedly three trucks leaving the area that may have transported arrested migrants. Journalists who arrived to report on the raid were allegedly not permitted to access the area, and individuals trying to take photographs were verbally threatened by law enforcement officials.

More raids like these, targeting undocumented migrants, are allegedly being planned by Your Excellency's Government, increasing the fear among the entire migrant population.

The arrested migrants are reportedly being detained in Bukit Jalil immigration depot, while some were transferred to other immigration detention facilities due to a lack of space in Buki Jalil immigration depot. Reportedly, Malaysia's immigration detention centers are already overcrowded, with physical distancing impossible in practice.

There are at least three children among the migrants who currently remain in detention. These children are allegedly detained with their mothers, but the families are separated with the fathers held in a different location.

Authorities have allegedly started contacting embassies in order to negotiate the deportation of their nationals, without necessarily going through legal procedures. It is unclear whether the detained migrants have any access to legal representation, and whether they are allowed and practically in a position to produce proof of

their documentation or employment in order to challenge their detention and repatriation. There seems to be a lack of transparency from the side of the authorities regarding the location and number of migrants being held. Migrant rights defenders working for local non-governmental organisations have reportedly been denied access to immigration detention facilities to monitor the conditions and record the number of migrants detained. Furthermore, some civil society actors and journalists have reportedly been intimidated by government officials when attempting to report on the raids and detention of undocumented migrants. There have allegedly also been cases of journalists being summoned for questioning by the police after reporting on the raids.

In recent weeks, there seems to be a marked increase in xenophobic rhetoric and hate speech against migrants and refugees, targeting particularly the Rohingyas. Government officials allegedly made public remarks about migrants being dirty and unsanitary. In addition, human rights defenders working for civil society organisations that provide food aid in areas under EMCO have noted an alarming increase in negative and threatening posts online directed at them and their work. Hate speech and xenophobic remarks online include intimidation and harassment of migrants as well as migrants rights defenders. Some comments even contain death threats and threats of physical harm, as well as vile and abusive comments about the arrests, clearly exhibiting xenophobic attitudes. Some of these comments can allegedly be traced back to individuals connected to or affiliated with Government agencies, as well as public servants from police and immigration agencies.

Without prejudging the accuracy of the received information, we express serious concern about the raids and subsequent arrest and detention of migrants under the pretext of containing the COVID-19 pandemic. We also express our serious concerns regarding the alleged restricted access of journalists and human rights defenders from documenting the arrest and detention of migrants. We are particularly concerned by reports that detained migrants may be denied access to legal representation and thus prevented from challenging the legality of their detention and potential repatriation. Furthermore, we are concerned that if returned in the absence of individual assessments, some migrants may be subject to persecution.

We are also concerned about what seems to be a sudden and drastic change in Malaysia's policy concerning migrants in its response to the COVID-19 pandemic. While we were encouraged to see that migrants, regardless of their migration status, were provided access to testing, we are concerned that these migrants, especially those in an irregular situation, were reportedly persecuted by immigration authorities, allegedly based on the information they would have provided for the medical testing. The growing fear among migrants may seriously impede further efforts to test and quarantine, and raises serious concerns for the effective access to health care of migrants.

We are concerned about the integrity of migrant detainees in already overcrowded immigration detention centres where they may not be able to effectively observe necessary physical distancing as a preventive measure of COVID-19.

We observe with concern the rapid increase in hate speech against migrants and migrant rights defenders in recent weeks, especially as some of the discriminatory comments have reportedly been made by politicians, members of the Government, and public officials. In this respect, we would like to refer your Excellency's Government to Objective 17 of the Global Compact for Safe, Orderly and Regular Migration (the Global Compact on Migration) in which States committed "to eliminate all forms of discrimination, condemn and counter expressions, acts and manifestations of racism, racial discrimination, violence, xenophobia and related intolerance against all migrants".

We would like to refer your Excellency's Government to article 2 of the Universal Declaration of Human Rights (UDHR) which provides that "everyone is entitled to the enjoyment of the rights guaranteed in the Universal Declaration of Human Rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". We further remind Your Excellency's Government that the Durban Programme of Action (para. 26) "requests States to promote and protect fully and effectively the human rights and fundamental freedoms of all migrants, in conformity with the Universal Declaration of Human Rights and their obligations under international human rights instruments, regardless of the migrants' immigration status".

We would like also to refer your Excellency's Government to article 3 of the UDHR, which provides that everyone has the right to liberty and security of person. The detention of migrants should thus be a measure of last resort. The UDHR further stipulates that no one shall be arbitrarily arrested and detained (article 9) and that "all are equal before the law and are entitled without any discrimination to equal protection of the law" (article 7). The Global Compact on Migration, in its Objective 13, calls for the use of immigration detention as a measure of last resort. Moreover, the Durban Programme of Action urges States "to ensure that migrants, regardless of their immigration status, detained by public authorities are treated with humanity and in a fair manner, and receive effective legal protection" (para. 30 (d)); and that "the police and immigration authorities treat migrants in a dignified and non-discriminatory manner, in accordance with international standards" (para. 30 (e)).

For a more detailed overview of the international human rights standards governing the detention of migrants, including the obligation of States to always resort to alternatives to detention first, we would like to draw your attention to the 2012 report of the Special Rapporteur on the human rights of migrants (A/HRC/20/24) and the revised Deliberation No. 5 of the Working Group on Arbitrary Detention.

There are specific challenges of facing this pandemic in places of detention, and we would like to refer your Excellency's Government to the related Interim Guidance<sup>1</sup> published by the United Nations High Commissioner for Human Rights and the World Health Organisation and the public advice issued by the Subcommittee on Prevention of Torture (SPT), which calls on States to take full account of all the rights of persons deprived of liberty and their families as well as of detention and health care staff, taking cognizance of the principles of 'do no harm' and 'equivalence of care' when implementing measures to combat the pandemic. The advice notes that, "those who are being temporarily held in quarantine are to be treated at all times as free agents... they are not to be viewed as, or treated as if they were, 'detainees', [however], since quarantine facilities are *de facto* a form of deprivation of liberty all those so held should be able to benefit from the fundamental safeguards against ill-treatment".

Maintaining health in detention centres is in the interest of not only the persons deprived of their liberty, as well as of the staff of the facility but also to the general public. Persons deprived of their liberty face higher vulnerabilities as the spread of the virus can expand rapidly due to the usually high concentration of persons deprived of their liberty in confined spaces and to the restricted access to hygiene and health care in some contexts. International standards highlight that States should ensure that persons in detention have access to the same standard of health care that is available in the community, and that this applies to all persons regardless of citizenship, nationality or migration status.

Regarding the potential repatriations of the detained migrants, we would like to recall to Your Excellency's Government the para. 10 of the GA res. 62/156 which "urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations and take into account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification".

We would also like to draw the attention of your Excellency's Government to paragraph 16 of the Resolution A/RES/65/205 of the UN General Assembly which urges States "not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture". Furthermore, the prohibition of a return to a place where individuals are at risk of torture and other ill-treatment applies at all times, and is enshrined in the absolute and non-derogable right in article 5 of the UDHR and as an international norm of *jus cogens*.

We would like to further refer to the report of Special Rapporteur on the right to health on his country visit to Malaysia (A/HRC/29/33/Add.1) where he stressed that

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<sup>1</sup> [https://interagencystandingcommittee.org/system/files/2020-03/IASC Interim Guidance on COVID-19 - Focus on Persons Deprived of Their Liberty.pdf](https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf)

deportation of migrants on the basis of infectious diseases is contrary to the right not to be discriminated on the basis of health status, the right to privacy and informed consent. He also highlighted that referrals by health care workers of undocumented migrants and asylum seekers to the police when they seek medical attention is discriminatory and goes against both public health interests and the code of ethics of doctors. In addition, referrals by health care workers to the police may have adverse public health impact, as this deters seeking health care for fear of being reported with devastating impact on migrants' health status and the spread of communicable diseases.

With regards to the need for firewalls between service providers and immigration authorities, we would furthermore like to refer your Excellency's Government to the report of the Special Rapporteur on the human rights of migrants (A/73/178/Rev.1), and note that "as the only mechanisms that allow migrants to exercise and enjoy their human rights without fear of being reported to the immigration authorities, "firewalls" are an inescapable consequence of the State's obligation to protect all persons under its jurisdiction against discrimination, in accordance with international human rights norms and standards." In this connection, we would like to refer your Excellency's Government to Objective 15 of the Global Compact on Migration. In this objective, States underlined their commitment to ensure that all migrants, regardless of their migration status, have safe access to basic services, including the physical and mental health of migrants.

We further would like to draw your Excellency's Government's attention to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular Articles 1, 2, 5, 6 and 12.

As stated in the OHCHR Guidance related to COVID-19 and the human rights of migrants<sup>2</sup>, State authorities should ensure that the public discourse and response to COVID-19 does not contribute to xenophobia and racial discrimination, including by introducing measures to prevent, monitor and address stigma and incidents of racism, xenophobia, incitement to discrimination, hatred and violence, and holding those responsible to account.

We would like to recall that the Durban Declaration (para. 48) "strongly condemn the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them; and reaffirm the responsibility of States to [...] protect migrants against illegal or violent acts, in particular acts of racial discrimination". We would also like to remind Your Excellency's Government that the Durban Programme of Action (para. 30 (b)), urges States to "review and revise, where necessary, their immigration laws, policies and practices so that they

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<sup>2</sup> [https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance\\_COVID19\\_Migrants.pdf](https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf)

are free of racial discrimination and compatible with States' obligations under international human rights instruments".

We would like to appeal to your Excellency's Government to take all necessary measures to stop the alleged human rights violations, include migrants in the national response to counter the COVID-19 pandemic, and release migrant children and their families from detention. We furthermore call on your Excellency's Government to refrain from raiding migrants' neighbourhoods and pushing them underground; this is seriously hampering the attempts to stop the spread of the virus. We also urge your Excellency's Government to refrain from forcibly returning migrants to their countries of origin in view of the global COVID-19 pandemic. Finally, we urge your Excellency's Government to eliminate xenophobic rhetoric and hate speech against migrants and refugees, including by States' officials, and to prosecute and sanction those responsible.

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, we 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 our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. 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.
3. 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.
4. 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.

5. Please indicate the measures taken to prevent the outbreak and spreading of the virus during arrests and in immigration detention facilities.
6. 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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence and, in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Felipe González Morales  
Special Rapporteur on the human rights of migrants

Leigh Toomey  
Vice-Chair of the Working Group on Arbitrary Detention

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