

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights of migrants**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 42/22, 43/4, 43/16 and 43/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention and deportation of human rights defender Mr. **Rayhan Kabir**, in response to his defence of the rights of migrants and criticism of their treatment by the authorities of your Excellency's Government.

Mr. Rayhan Kabir is a human rights defender from Bangladesh who has been living in Kuala Lumpur for the past six years.

During this time, Mr. Kabir has provided assistance to Bangladeshi migrants in Kuala Lumpur, assisting them to make salary claims, or seek support from the Bangladeshi Embassy for cases of wrongful or extended detention. He has used his English language skills to help write letters to authorities. He has been critical of the treatment of migrant workers and their families by the authorities during the COVID-19 pandemic and the Enhanced Movement Control Order (EMCO) enforced to contain the spread of the virus in densely populated areas inhabited by migrant workers and refugees.

The arrest of over 300 undocumented migrant workers in Malaysia in the context of COVID-19 testing, their subsequent detention in overcrowded immigration detention centres and the threats and intimidation received by human rights defenders supporting the migrants, were the subject of a communication sent by Special Procedures mandate holders to your Excellency's Government on 14 May 2020 (MYS 2/2020). We would like to thank your Excellency's Government for its responses to the communication, dated 26 May 2020 and 6 October 2020.

According to information received:

On 3 July 2020, Al Jazeera released the documentary "Locked Up in Malaysia's Lockdown", covering the arrest and detention of undocumented migrants during COVID-19 testing in Kuala Lumpur. The documentary reported that areas of the city deemed to have a high infection rate were placed under EMCO, and that many of these areas were predominantly inhabited by migrant workers and refugees. Whilst conducting tests for COVID-19, officials reportedly requested individuals to show their passports and visas, and those whose working permits or visas had expired during ECMO were

reportedly handcuffed, put into vans, and transported to detention centres. The documentary noted that such arrests appeared to be at odds with a statement by the Government in March 2020 that undocumented migrants who came forward for testing would not be arrested.

Mr. Rayhan Kabir was interviewed as part of the documentary and expressed critical views of the Government's treatment and alleged targeting of the migrants. He also cited a growing climate of fear amongst migrants towards the authorities. He is quoted as saying in the documentary: "They made a trap for us. They may give food, they may give medication. All these things they give. So, no one is expecting that they're going to arrest people. They're not murderers. They're not criminals. They're just undocumented." Later in the documentary, Mr. Kabir is also quoted as saying: "This is a total, clear act of racism. That's the thing. A clear act of humiliating people. So, that's why I feel scared about the future of migrant people. I don't think people will give their trust again to the government because they'll be afraid."

Mr. Kabir also discussed the detention of his close friend, who was detained by the authorities during one of the COVID-19 testing operations as his visa had expired. The documentary showed Mr. Kabir discussing the case of his friend with a human rights lawyer specialised in providing legal assistance to migrant workers. When asked if his friend had filed a case against his employer before the Labour Department, in order to have his visa renewed, Mr. Kabir responded: "Miss, the thing is, people like them who are workers here, labourers here, how do they know these things? They don't know."

On 6 July 2020, the Immigration Department of Malaysia announced on its Facebook page that it had opened an investigation into Mr. Kabir under the Immigration Act 1959/63 (Act 155), and urged members of the public to report him to the authorities. The notice included a photograph of Mr. Kabir, his last known address and other personal details. The announcement and his personal information were also reported on by a number of news websites. Comments under the Facebook post and news articles included many xenophobic insults and incitements of violence against Mr. Kabir.

On 7 July 2020, the Director General of the Immigration Department stated in a press conference that individuals living in Malaysia with a temporary visa should avoid making statements that may be deemed critical of the country or its immigration policies. He is quoted as saying: "The Immigration Department strongly warns all foreigners especially the long-term pass holders such as Student Pass, Temporary Employment Pass, Residence Pass and others to be careful when making any statement. They are facing the risk of revocation of their passes and will be required to leave the country immediately if the statement is inaccurate and aimed at damaging Malaysia's image."

On 8 July 2020, the Immigration Department revoked Mr. Kabir's work permit, which was reportedly due to expire on 30 October 2020.

On 10 July 2020, the journalists working for Al Jazeera who had produced the documentary were summoned by police in Kuala Lumpur. They were questioned in relation to an investigation into the documentary for alleged

sedition, defamation and violation of the Communications and Multimedia Act. The journalists were released from questioning later that same that day.

On 24 July 2020, officers from the intelligence unit of the Immigration Department arrested Mr. Kabir in Jalan Pahang. No arrest warrant was presented at the time of the arrest, nor was Mr. Kabir informed of the reason for his arrest.

Following the arrest, Mr. Kabir was brought to a detention centre, the location of which he did not know. During the first three days of his detention, Mr. Kabir was reportedly detained in a dark, underground room where he was allegedly interrogated multiple times each day. After these three days, Mr. Kabir was transferred to a regular cell in the detention centre and was permitted to contact his lawyer for the first time. He was not permitted to contact his family directly, however, and relied on his lawyer to inform them of his arrest.

The following day, the Director General of the Immigration Department declared in a public statement that Mr. Kabir would be deported from the country and “blacklisted from entering Malaysia forever.” In the statement, the official did not state the reason for Mr. Kabir’s arrest, or whether he had been accused of committing a crime.

On 4 August 2020, in relation to Mr. Kabir’s arrest and deportation, the Home Minister stated that under Section 9 of the Immigration Act 1959/63, the immigration Director General had the authority to expel any migrant if they were deemed “unwanted”.

On 6 August 2020, the Immigration Department secured new authorization to renew Mr. Kabir’s detention, citing “national integrity”. No justification was given however, as to the threat that Mr. Kabir allegedly posed. Whilst detained, Mr. Kabir was reportedly not informed of the legal basis for his arrest and detention.

On 19 August 2020, Mr. Kabir was released from detention and two days later, on 21 August 2020, he was deported to Bangladesh. His passport was marked as ‘blacklisted’ in the airport, prior to his deportation flight.

Without prejudging the accuracy of the information received, we wish to express serious concern with regard to the alleged arbitrary arrest, detention and deportation of Mr. Kabir and his reported “blacklisting” from Malaysia, which appear to be in retaliation for the exercise of his right to freedom of opinion and expression, and for denouncing the alleged ill-treatment and targeting of migrant workers and refugees by authorities in Kuala Lumpur. We wish to express grave concern with regard to the apparently punitive and disproportionate response of your Excellency’s Government’s to Mr. Kabir’s exercise of his right to freedom of opinion and expression, and are concerned that his alleged arbitrary detention, revocation of his work permit and deportation do not meet the strict tests of necessity and proportionality established by international human rights standards. Further, we wish to express serious concern in relation to the reported conditions of Mr. Kabir’s detention and arrest, and denial of prompt access to his lawyer and family whilst detained.

We also wish to express concern with regard to the public comments made by high-level officials of your Excellency's Government in relation to Mr. Kabir's criticism of the targeting and treatment of migrants, which appeared to threaten that any individual living in the country on a temporary visa should refrain from expressing views that may be viewed as purportedly damaging to the country's image. Such comments are particularly concerning, for they contribute to the creation of a climate of fear for migrants and exacerbate the precarity of their status, deterring and precluding them from expressing dissent or reporting human rights violations to which they or others may be subjected. Further to this, we are concerned that such rhetoric may serve to legitimise and normalise increasingly prevalent xenophobic and discriminatory attitudes towards migrants in Malaysia, as evidenced by the comments online about Mr. Kabir, which included insults and incitements to violence. A similar climate of fear and chilling of civil society and civic space is also particularly concerning, as it inhibits human rights defenders from carrying out their legitimate work without fear of retaliation.

We are also concerned about the reported questioning of journalists in relation to an investigation into the documentary for alleged sedition, defamation and violation of the Communications and Multimedia Act. In this regard, we would refer to the recent Human Rights Council resolution 45/18 on safety of journalists adopted on 6 October 2020, in which the Council expressed "deep concerns about all attempts to silence journalists and media workers, including by legislation that can be used to criminalize journalism, by the misuse of overbroad or vague laws to repress legitimate expression, including defamation and libel laws, laws on misinformation and disinformation or counter-terrorism and counterextremism legislation, when not in conformity with international human rights standards, and by business entities and individuals using strategic lawsuits against public participation to exercise pressure on journalists and stop them from critical and/or investigative reporting".

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

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. Please provide information as to the factual and legal basis for Mr. Kabir's arrest, and the charges, if any, that were brought against him.
3. Please provide information in relation to Mr. Kabir's detention, and whether he was afforded his right to due process, including access to his lawyer and contact with his family.

4. Please provide information as to the factual and legal basis of the revocation of Mr. Kabir's work permit.
5. Please provide information as to the legal procedure that national authorities followed prior to Mr. Kabir's deportation.
6. Please provide information as to the factual and legal basis for the decision to "blacklist" Mr. Kabir from Malaysia and how this is in compliance with international human rights law.
7. Please provide information as to the factual and legal basis for the summoning of the journalists who contributed to reporting in the Al Jazeera documentary.
8. Please indicate what specific legal and administrative measures have been taken to ensure that human rights defenders, journalists and civil society actors 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 intimidations and harassment of any kind.

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

Moreover, we would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the allegation letter procedure and the regular procedure.

While awaiting a reply, we 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(s) responsible for the alleged violations.

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

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Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

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Special Rapporteur on the human rights of migrants

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to articles 2, 7, 9, 10 and 19 of the Universal Declaration of Human Rights (UDHR), which guarantee that every person is entitled to all the rights and freedoms set forth in the Declaration, 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, guarantee that all are equal before the law and are entitled without any discrimination to equal protection of the law, guarantees the right not to be subjected to arbitrary arrest, detention or exile, and the right to freedom of opinion and expression; including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

We would like to draw the attention of your Excellency's Government to the Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. This right applies online as well as offline. We emphasise that the right to freedom of expression protects, inter alia, political discourse, commentary on one's own and on public affairs, discussion on human rights and journalism (Human Rights Committee, General Comment No. 34, CCPR/C/GC/34 para 11). Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We would like to refer your Excellency's Government to the fundamental principles set forth in 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;

- and article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Under international law, the right to freedom of expression extends to everyone, including all migrants regardless of their status. The rights to freedom of expression and freedom of association for migrants and migrants rights defenders is essential to express their needs, protect their right to life and defend their economic, social, cultural and other human rights. As emphasised by the Special Rapporteur on the human rights of migrants, the work of migrants rights defenders and support from civil society organizations is crucial for migrants, particularly for those in an irregular situation or with vulnerabilities (A/HRC/44/42). Given the interconnected nature of human rights, restrictions on migrants' and their defenders' freedom of expression and association further hinder migrants' enjoyment of other rights. Furthermore, the importance of the right to defend the human rights of migrants was recently reaffirmed in the report on principles and practical guidance on the protection of the human rights of migrants in vulnerable situations (A/HRC/37/34); according to principle 18, States must "respect and support the activities of human rights defenders who promote and protect the human rights of migrants".

In this connection, we would also like to draw the attention of your Excellency's Government to the report of the Special Rapporteur on the human rights of migrants on the right to freedom of association of migrants and their defenders (A/HRC/44/42), in which the Special Rapporteur expressed concern on the troubling reports that migrant leaders of civil society organizations that work with migrants have been targeted for detention and deportation as a way of interfering with the work of their organization and dissuading other migrants from organizing. The Special Rapporteur urged States to ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass civil society organizations that work with migrants.

We would like to also refer to the report of the Special Rapporteur on the situation of human rights defenders concerning defenders of people on the move (A/HRC/37/51), including migrants. In this report, the Expert noted that these defenders, many of whom are themselves people on the move, face a constellation of challenges, arising from both some of the disturbing features of global migration policy and the general trend towards the closing of civic space to human rights defenders. The Special Rapporteur called on States to enable people to promote and protect human rights regardless of their immigration status; in particular, people on the move and those who defend their rights should be able to exercise, inter alia, their right to freedom of information, freedom of expression, freedom of association and freedom of assembly. As well as to ensure that people on the move and those who defend their rights have access to justice and to effective remedies through national courts, tribunals and dispute-settlement mechanisms, regardless of their immigration status; and to ensure that they are not threatened with or subject to arrest, detention or deportation when reporting crimes, labour rights violations, and other forms of human rights violations.



Finally, we would also like to draw the attention of your Excellency's Government to the provisions set out in the Global Compact for Safe, Orderly and Regular Migration (A/CONF.231/3) that your Excellency adopted on 10 December 2018, which affirms in its Objective 17 d) the commitment of States to establish mechanisms to prevent, detect and respond to racial, ethnic and religious profiling of migrants by public authorities, as well as systematic instances of intolerance, xenophobia, racism and all other multiple and intersecting forms of discrimination in partnership with National Human Rights Institutions, including by tracking and publishing trends analyses, and ensuring access to effective complaint and redress mechanisms. In this respect, we would like to also refer your Excellency's Government to the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants, of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and UN Special Rapporteur on the human rights of migrants.<sup>1</sup> In this Note, the Experts called on States to pro-actively prevent discrimination and scapegoating of individuals or groups of migrants. The Experts noted with concern xenophobic speeches or expressions associating the disease of COVID-19 with migrants or based on their ethnicity or if they are identified as nationals of a particular country. Minority communities, in particular, have faced attacks on individuals linked to fears about COVID-19.

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<sup>1</sup> [Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants.](#)