**MALAYSIA’S FEEDBACK FOR**

**QUESTIONNAIRE FROM THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS**

**ON THE IMPACT OF COVID-19 ON THE HUMAN RIGHTS OF MIGRANTS**

**Question 1:**

***Please provide information on the healthcare responses taken by your Government to counter the pandemic providing migrants and their families’ access to adequate health care on the same basis as nationals. These include equitable access to treatment, testing, vaccines, reproductive health, gender responsive health protocols, protective equipment and other health and basic services such as water, sanitation, and information.***

***Please also indicate if adequate firewall protections and professional capacities are available to ensure that migrants who fear seeking medical support can access health services without risking immigration enforcement measures; as well as personal data protection measures.***

Answer:

In Malaysia, migrants have access to appropriate medical and healthcare services throughout their stay in accordance with existing laws, regulations and policies.

The treatments provided are for prevention and control of endemic diseases, treatment of minor ailments & injuries, essential drug supply, health education, food safety and nutrition, safe water supply and environmental sanitation, as well as maternal and child health.

Government also provides free Communicable Disease Treatment for 10 diseases such as Yellow Fever, Ebola, Cholera, Malaria, Plague, Typhoid & Tuberculosis (1st line drugs), Avian Influenza, Leprosy and COVID-19.

During the COVID-19 pandemic, the Government provides free health screening and medical treatment related to COVID-19 for all foreign nationals regardless of their immigration status.

**Question 2:**

***Please indicate what solidarity measures and initiatives have been put in place or are planned by the Government, the civil society and other relevant stakeholders to support migrants in the context of the pandemic.***

Answer:

Migrant have access to appropriate medical and healthcare services throughout their stay in accordance with the existing laws, regulations and policies in Malaysia.

In the context of the pandemic, the Prime Minister of Malaysia has launched the National COVID-19 Immunisation Programme on 16 February 2021 to ensure as many residents in Malaysia as possible will receive the vaccine to save lives in the fastest possible time. The vaccine will be provided to all citizens and non-citizens of Malaysia including undocumented migrants and UNHCR card holders.

The provision of free vaccines to the migrants is an investment in the overall public healthcare objective of breaking the chain of COVID-19 infection in the country. By achieving herd immunity, the success of National COVID-19 Immunisation Programme will benefit the nation as a whole.

The government has also reduced extension levy fees for foreign workers in five sectors namely construction, manufacturing, service, plantation, and agriculture sectors, i.e. from RM10,000 to RM6,000 for the construction, manufacturing, and service sectors, and from, RM3,500 to RM2,000 for the plantation and agriculture sectors.

The Government has also distributed food provisions through the Welfare Department and Civil Society Organisations, accompanied by the Malaysian Volunteer Corps Department (RELA) or the Malaysian Civil Defence.

**Question 3:**

***In the context of immigration detention, please indicate if measures have been considered to minimize health risks associated with the COVID-19 transmission by reducing migrants’ detention and opting for alternative to detention and, if not, kindly elaborate on challenges preventing such options. Please indicate if immigration detention of children has been practised during the pandemic.***

Answer:

Malaysia has always adhered to the Standard Operating Procedures (SOP) issued from time to time by the Malaysian National Security Council in combatting/preventing the spread of COVID-19 virus. The COVID-19 prevention SOPs are enforced in all immigration detention centres. In order to protect the health of officers and detainees, all detainees are required to undergo COVID-19 test in the Ministry of Health facilities before being admitted to immigration detention centres.

To prevent the spread 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 the Assistant Medical Officers stationed at all immigration detention centres.

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.

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.

Every detainee who displays COVID-19 symptoms is given access to a thorough health screening to ensure their well-being and to prevent the spread of the virus.

It has been a policy that children/babies are allowed to stay with their mothers in the detention centres. The team also do health examination and check the immunisation status for children.

**Question 4:**

***Please provide information on actions taken to prevent and address racial discrimination, hate speech, xenophobia and related intolerance faced by migrants, particularly in the COVID-19 context.***

Answer:

Malaysia condemns the act of uploading racist material on social media and has been consistent in reminding the public against social media abuse and dissemination of material that can cause anger and affect public order.

Individuals or parties are encouraged to lodge complaints directly to the content owner or moderator. If there is no information about the owner or moderator, individuals or parties are advised to use the 'report abuse' service provided by the website or social media platforms. This is because a self-report from the affected individuals or parties, will be prioritised by website or social media platform administrator.

Alternatively, individuals or parties can lodge a complaint to the Malaysian Communications and Multimedia Commission (MCMC). MCMC can undertake take appropriate actions against online content that have breached the Communications and Multimedia Act 1998 (CMA 1998) and provide technical assistance to the relevant Lead Enforcement Agencies (LEAs) in accordance with Section 263 of the CMA 1998 to prevent the commission or attempted commission of an offense under any written law of Malaysia.

In this context, MCMC provides assistance to the Royal Malaysia Police (PDRM) in their investigations, should it involve violation of relevant legal provisions under their jurisdiction such as incitement and threats of violence. The assistance provided by MCMC to PDRM is on technical aspects of investigation, including information gathering and digital forensics among others.

As of 27 May 2021, MCMC has not received any public complaints regarding racial discrimination, hate speech, xenophobia and related intolerance faced by migrants, particularly in the COVID-19 context.

Proactively, Malaysia continues to focus on increasing awareness pertaining to COVID-19, through various advocacy and educational programs such as those under MCMC, such as “Klik Dengan Bijak (*Click Wisely*)”, Malaysia ICT Volunteers (MIV), “Semak Sebelum Sebar (*Check Before Spread*)” and *sebenarnya.my*. These advocacy programmes are designed to educate the public to be responsible digital-literate citizens and encourage them to use the Internet in an ethical manner.

**Question 5:**

***Please provide information on any emergency measures or declarations or any special legislation activating extraordinary powers based on the COVID-19 pandemic taken by your Government at national or local level, and whether such measures have been temporary and proportional and tailored to migrants’ human rights and fundamental freedoms.***

Answer:

On 12 January 2021, His Majesty the Yang di-Pertuan Agong of Malaysia issued a Proclamation of Emergency for the country, as a proactive step to curb the spread of the COVID-19 pandemic in Malaysia, which had surged to unprecedented highs since December 2020. The state of Emergency is effective immediately until 1 August 2021, or an earlier date, if the COVID-19 pandemic in the country is contained and brought under control before 1 August 2021.

Apart from the global threat of COVID-19, which has become a major threat to the economic life of the people in Malaysia, several states in Malaysia were also facing heavy flooding, posing major threats to the safety and economic life of the people. Thus, the Proclamation of Emergency would provide the Federal and State Governments with the necessary tools, additional resources, and political stability in order to curb the COVID-19 pandemic more effectively.

**Question 6:**

***Please provide information on any relevant legislation or policy adopted during the pandemic in relation to the regularization of migrants, including those in an irregular situation, through the adoption of for example regularization processes and pathways, extension of work visas, and other appropriate measures for improving decent work and dignified living conditions, strengthening migrants’ contributions and fostering cooperation.***

***Please indicate if the regularization programs are devised as long-term solutions.***

Answer:

The Government has initiated several policies related to migrants’ management during the COVID-19 pandemic situation. Under the Ministry of Home Affairs (MOHA), aside from allowing foreign workers to change employer subject to the terms and conditions, the Ministry has also launched Illegal Migrants Recalibration Program consisting of two programs as follows:

* 1. Repatriation Recalibration Program allowing illegal migrants to voluntarily return home without going through trial, prosecution and sentencing; and
  2. Labour Recalibration Program allowing illegal migrants to become legal foreign workers subject to terms and conditions set by the Government.

The Ministry of Human Resources has undertaken various approaches to ensure the impacts of the pandemic is minimized to all workers, including migrant workers. Among the initiatives and programmes are:

1. Amending the Minimum Standard of Housing and Amenities Act (Act 446) in June 2019 to provide for the minimum standard of accommodation, housing and safe environment to improve living conditions of workers in all sectors. The requirements in the Act are also in line with the physical distancing needs and can help to prevent not only COVID-19, but other communicable disease among workers.

1. Allowing foreign workers to change their employment that had been affected by the pandemic. This redeployment allows foreign workers to change or switch employers by submitting application to MOHA to be processed by its One Stop Centre (OSC). The applications must comply with the conditions set by the MOHA such as:
2. Change of employers can be done within the same industry sector; and
3. The current employer has ceased operation.
4. Implementation of screening programme for foreign workers through the SOCSO’s PRIHATIN Screening Programme.

**Question 7:**

***Please indicate if your country has adopted or is planning to adopt a COVID-19 socio-economic response and recovery plan, and if a human rights-based approach and human rights and gender-sensitive indicators are considered to ensure that no one will be left behind.***

***Please indicate which are the available mechanisms enabling different parts of the Government as well as civil society actors and other key stakeholders to participate at all stages of the response and recovery plans and to monitor them.***

Answer:

In combating the health and economic crisis due to the COVID-19 pandemic, the Malaysian Government has taken a systematic strategy and a holistic approach through its 6R National Economic Recovery Strategy. The strategy comprises of six phases, consisting of Resolve, Resilient, Restart, Recovery, Revitalise and Reform that would further spur Malaysia’s economic recovery.

The first phase - Resolve is to contain the virus by imposing the various Movement Control Orders (MCO) beginning in March 2020. The second phase is to build Resilience by introducing Economic Stimulus Package to assist the people and the economy. Meanwhile, the third and the fourth phases are to Restart and Recover the economy through short and mid–term planning. The fifth phase is to Revitalise the economy comprehensively and the final phase is to Reform the structure of the economy towards the ‘new normal.’

Individuals, private sectors, and NGOs are welcome to participate in the Government’s response and recovery plans of COVID-19. For example, individuals and NGOs take part as MyVAC volunteers under the National COVID-19 Immunisation Programme.

The Government through the Special Committee for Ensuring Access to COVID-19 Vaccine Supply (JKJAV) has implemented a whole-of-government and whole-of-society approaches together with various Ministries and Government Agencies, State Governments, Non-Governmental Organisations (NGO), private and community members to ensure that the National COVID-19 Immunisation Programme achieves its targeted goals. Meanwhile, COVID-19 Immunisation Task Force (CITF) acts as the coordinating committee to monitor the overall strategy and implementation of the National COVID-19 Immunisation Programme.

Malaysia has taken into consideration human rights-based approach and gender- sensitive indicators, especially during the pandemic COVID-19 and as reflected in the implementation of special economic recovery packages since 2020.

In ensuring no one left behind on the onset of COVID-19, Malaysia will continue to emphasize on inclusivity as a key principle in Malaysia's socio-economic well-being and development to ensure that all citizens benefit from the growth and development of the country, irrespective of race, gender, socioeconomic status and geographic location.

The Government works with non-governmental organisations (NGOs) such as Tenaganita Sdn. Bhd. and Global Shepherds Berhad (GSB) in the aspect of care and protection of women trafficked victims. These NGOs are given greater roles especially in handling shelter homes for trafficked victims. Currently there are two shelters operated by NGOs in Penang and Selangor.

The Government intends to enhance the existing infrastructure to cater for the protection of trafficked victims. In line with this, the Government subsequently approved the development of three new women shelter homes under the purview of the Ministry of Women, Family and Community Development in Kelantan, Kedah and Sarawak. The new women shelter in Kelantan was opened in April 2019 to cater for the needs of female victims of trafficking in the eastern region. The Government is also looking for NGO partners to complement the government's efforts in providing care and protection for trafficked victims.

**Question 8:**

***Has the Government experienced specific challenges in protecting and fulfilling the human rights of migrants in the COVID-19 context – including their right to health, housing, education, information, social protection, basic services, safe and dignified return and sustainable reintegration and others?***

***Kindly provide information on emerging practices and opportunities for strengthening the protection of migrants in the context of the COVID-19 pandemic.***

Answer:

Malaysia is part of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), as part of Malaysia’s commitment to strengthen protection for migrants.

Among the challenges experienced by the Government in protecting and fulfilling the human rights of migrants in the COVID-19 context are as follows:

1. Issues in tracing the undocumented migrants and managing community spread among them due to their living conditions; and
2. Undocumented migrants do not come forward for the screening of COVID-19 and vaccination as they are afraid of being detained.

The Government is providing free treatments to migrants for 10 types of communicable diseases such as Yellow Fever, Ebola, Cholera, Malaria, Plague, Typhoid & Tuberculosis (1st line drugs), Avian Influenza, Leprosy and COVID-19. The Government also provides free screening for COVID-19 for symptomatic cases including for migrants.

The main challenge is in terms of enforcement, whereby the various phases of Movement Control Order has made enforcement difficult, as well as the constraints faced by employers to abide by the minimum requirements for accommodation/housing under Act 446 due to financial difficulties caused by the pandemic.

In this regard, on 3 May 2021, MOHR has launched the Working for Workers mobile application as a platform for workers (foreign and local) to voice out their grievances and complaints. There are currently 17 categories of complaints in the WFW app and MOHR has committed to take action on the complaint within 7 days.

As at 30 May 2021, a total of 1,362 complaints have been recorded with the prevalent issues are concerning employers not allowing to work from home, unpaid and late payment of wages, dismissal without notice, no overtime payment and termination of benefit.

The Ministry of Women, Family and Community Development (MWFCD) through its agencies (the Department of Social Welfare and the Department of Women Development) has been vested with the responsibility through the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM 2007) to provide shelter for women, men and children of trafficked victims.

Under the provision of the Act, victims will be given interim protection order (IPO) for a period of 21 days and protection order (PO) up to 3 months (can be extended or revoked, if required) so that they can assist the enforcement officers in investigation and participate in the judicial process. The victims will be repatriated safely to their country of origin after their protection order expires or has been revoked.

The management of shelter homes for trafficked victims provides psychosocial support and services, online interview and counselling, guidelines in handling contagious diseases, segregation/ isolation of new victims, COVID-19 screening as well as legal assistances and supports.