



**Spotlight
Initiative**
*To eliminate violence
against women and girls*

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Protecting the rights of domestic workers in Malaysia during the COVID-19 pandemic and beyond



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Initiated by the European Union and the United Nations:





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Background

The Government of Malaysia has implemented a Movement Control Order (MCO) since 18 March 2020 to mitigate the spread of the COVID-19 virus. Measures under the MCO included the closing of national borders, restrictions on internal and international travel, closure of all businesses and government offices except for those providing essential services, closure of kindergartens, schools and universities, and a ban on gatherings. These measures are considered both important and necessary to stem the spread of the COVID-19 virus and have also resulted in serious labour market disruptions.

Beginning 4 May 2020, the Government of Malaysia implemented the Conditional

Movement Control Order (CMCO), easing many restrictions previously in place including allowing most businesses to reopen and loosening limitations on the number of people allowed to travel in a private vehicle. National borders, however, remain largely closed to prevent foreign nationals entering.¹ As of May 27, a total of 30,671 non-nationals in Malaysia have been tested for the COVID-19 virus, with 1,853 positive cases.²

The ILO estimates 68 per cent of the world's workforce are living in countries with recommended or required workplace closures.³ Businesses across a range of economic sectors are facing losses and insolvency, while workers are exposed to the

¹ New Straits Times: "CMCO: With few exceptions, foreign travellers still barred from entering country" in *New Straits Times*, 1 May 2020, <https://www.nst.com.my/news/nation/2020/05/589079/cmco-few-exceptions-foreign-travellers-still-barred-entering-country> [accessed 1 May 2020].

² J. Kaos Jr and T. Tan: "Health DG: Malaysia must address cramped living condition of foreign workers", in *AsiaOne*, 28 May 2020, <https://www.asiaone.com/malaysia/health-dg-malaysia-must-address-cramped-living-condition-foreign-workers> [accessed 28 May 2020].

³ ILO: *ILO Monitor: COVID-19 and the world of work. Third edition. Updated estimates and analysis*, 29 Apr. 2020, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_743146.pdf [accessed 22 May 2020].

risks of income loss and layoffs. The impact on income-generating activities is felt most by workers in the informal economy and others with limited de facto labour rights protections.⁴

Many domestic workers in Malaysia are women and work informally; they are among those most vulnerable to labour market disruptions stemming from the COVID-19 pandemic.

The domestic work sector is characterised by high levels of informality, private workplaces, as well as exclusion from full labour law and social protections on par with other sectors.⁵ During the COVID-19 pandemic, the decent work deficits of the domestic work sector in Malaysia have come into sharp focus. Domestic workers have faced food insecurity, dismissals, lost incomes, labour rights violations, lack of personal protective equipment (PPE), risks of being infected with COVID-19, and risks of gender-based violence.⁶ As many domestic workers are migrants in Malaysia, domestic workers also

grapple with additional challenges such as lost remittances, international and inter-provincial travel restrictions, the risk of arrest and detention by state officials,⁷ and negative public attitudes towards migrants⁸ during this public health crisis.

At this critical juncture where Malaysia is engaging in an exercise to rebuild, it is important for the Malaysian government to engage in making policy decisions that take into account the well-being of all people in Malaysia, especially those in the most vulnerable situations, including domestic workers. An inclusive and non-discriminatory approach to policy making is consistent with Malaysia's commitment to "leaving no one behind" in the 2030 Agenda for Sustainable Development. This note highlights the specific requirements of migrant domestic workers in light of the existing and emerging impacts of the COVID-19 pandemic and seeks to make recommendations to protect the rights of domestic workers in Malaysia.⁹

⁴ Ibid.

⁵ ILO: *Worker, helper, auntie, maid? Working conditions and attitudes experienced by migrant domestic workers in Thailand and Malaysia*, 2016, https://www.ilo.org/asia/publications/WCMS_537808/lang-en/index.htm [Accessed on 24 May 2020].

⁶ Participant discussion, "Consultative dialogue on COVID-19 and its impact on domestic workers in Malaysia", Safe and Fair and Ke-Arah 189, 17 Apr. 2020, online meeting. See also ILO: *Experiences of ASEAN migrant workers during COVID-19: Rights at work, migration and quarantine during the pandemic, and re-migration plans*, forthcoming. UN Women: *Addressing the impact of the COVID-19 Pandemic on women migrant workers*, 2020, <https://www.unwomen.org/en/digital-library/publications/2020/04/guidance-note-addressing-the-impacts-of-the-covid-19-pandemic-on-women-migrant-workers> [accessed 22 May 2020]. WHO: *COVID-19 and violence against women*, 2020,

<https://www.who.int/reproductivehealth/publications/vaw-covid-19/en/> [accessed 22 May 2020]. International Domestic Workers Federation: *The impacts of COVID-19 on domestic workers and policy responses*, 1 May 2020, https://idwdf.org/en/covid-19/the-idwdf/advocacy/idwf-policy-brief_final-eng.pdf [accessed 22 May 2020].

⁷ Reuters: "Malaysia rounds up migrants to contain coronavirus, UN warns of detention risks" in *The Straits Times*, 2 May 2020, <https://www.straitstimes.com/asia/se-asia/malaysia-rounding-up-migrants-to-contain-coronavirus-spread-police-say> [accessed 5 May 2020].

⁸ E. Fishbein: "Fear and uncertainty for refugees in Malaysia as xenophobia escalates", in *The New Humanitarian*, 25 May 2020, <https://www.thenewhumanitarian.org/news/2020/05/25/Malaysia-coronavirus-refugees-asylum-seekers-xenophobia> [accessed 28 May 2020]. ILO and UN Women: *Public attitudes towards migrant workers in Japan, Malaysia, Singapore and Thailand*, 2019, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_732443.pdf [accessed 7 May 2020].

⁹ The observations and recommendations made in this note are the results of a consultative dialogue on COVID-19 and its impact of domestic workers in Malaysia jointly organised by the Safe and Fair: Realising Women Migrant Workers' Rights and Opportunities in the ASEAN region programme and Ke-Arah 189, a coalition of civil society organisations advocating for the protection of domestic workers rights in Malaysia. The consultative dialogue was facilitated by Yen Ne Foo, Jodelen Mitra, and Florida Sandanasamy from the ILO. It was attended by the Asosasyon ng mga Makabayang Manggagawang Pilipino Overseas (AMMPO), International Domestic Workers Federation, North South Initiative, Persatuan Pekerja Rumah Tangga Indonesia-Migran, Persatuan Sahabat Wanita Selangor, Project Liber8, and Tenaganita.

Challenges and risks for women domestic workers



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Increased care responsibilities due to COVID-19 and the MCO

- Women domestic workers¹⁰ shoulder increased workloads during the pandemic and MCO/CMCO implementation, as employers stay at home and children remain out of school.¹¹ Increased workloads include more time spent maintaining cleanliness and hygiene levels at employers' homes and provision of additional care especially to children. This care burden persists during the CMCO, as kindergartens, schools and universities remain closed during this period.
- Domestic workers are also likely to be assigned the responsibility of caring for those who are ill in employers' households without being provided with personal protective equipment (PPE). Therefore, they face additional risks of being in contact with someone who has contracted COVID-19 in the course of employment.
- The Employment Act 1955 refers to domestic workers as 'domestic servants' and excludes them from the majority of the rights and benefits associated with employment, including regulated work hours, paid holidays and rest days, and maternity benefits. Section 60A (1) limits a regular working week to 48 hours, with

¹⁰ Approximately 73 per cent of all migrant domestic workers are women. ILO estimated that in 2013 at least 67 million people were employed as domestic workers globally. Asia and the Pacific has the largest percentage of domestic workers, at over 40 per cent of the global total. The region also hosts the largest share of women migrant domestic workers, at 24 per cent of the global total. ILO: *Global estimates on migrant workers*, 2015, https://www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang-en/index.htm [accessed 3 June 2020].

¹¹ See ILO: *Beyond contagion or starvation: giving domestic workers another way forward*, May 2020, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_743542.pdf [accessed 22 May 2020]. UN Women: *Addressing the impacts of the COVID-19 pandemic on women migrant workers*, 2020, <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/guidance-note-impacts-of-the-covid-19-pandemic-on-women-migrant-workers-en.pdf?la=en&vs=227> [accessed 7 May 2020].

maximum eight working hours per day and six working days per week.¹² These do not apply to domestic workers. Laws that govern minimum wage in Malaysia also explicitly exclude domestic workers from coverage.

- As living and working conditions for domestic workers remain largely unregulated, the greater care work demands as a result of COVID-19 and during the MCO/CMCO will translate to longer work hours and uncompensated overtime. The highly personal context of domestic workers' workplaces mean it can be difficult for domestic workers to set boundaries between working hours and rest hours. Restrictions of movement also mean that domestic workers are less able to access their paid day-off and paid time off.
- Labour rights violations experienced by domestic workers during the MCO/CMCO period and beyond will be largely undetected because the private homes of employers are not typically subject to inspection by labour inspectors or other enforcement officials.¹³

Loss of income

- Partial or full lockdown measures have had a direct and indirect impact on domestic

workers, whose employment is characterised by a high incidence of precariousness. Domestic workers face risks to income security due to loss of livelihoods and disruptions to wage payments.¹⁴

- Employers who face loss in their own incomes or uncertainty over future financial prospects may transfer additional financial burdens to domestic workers through forced deduction of wages, withholding or non-payment of wages, irregular payment of wages, and non-renewal of employment contracts and work permits during the MCO/CMCO.¹⁵
- Risks to income security are heightened for domestic workers with informal employment arrangements and 'live-out' accommodation, as they are unable to travel to employers' homes and can have their employment terminated without notice.¹⁶
- Sudden loss of income as a result of COVID-19 has led to food insecurity among informal workers and daily wage earners.¹⁷ Civil society organisations and the Welfare Department have mobilised to provide food aid during the MCO/CMCO period, but many workers in rural and isolated locations are out of reach.¹⁸

¹² Employment Act 1955, <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm> [accessed 7 May 2020].

¹³ ILO: *Worker, helper, auntie, maid? Working conditions and attitudes experienced by migrant domestic workers in Thailand and Malaysia*, 2016, https://www.ilo.org/asia/publications/WCMS_537808/lang--en/index.htm [accessed 24 May 2020].

¹⁴ Participant discussion, "Consultative dialogue on COVID-19 and its impact on domestic workers in Malaysia", Safe and Fair and Ke-Arah 189, 17 Apr. 2020, online meeting. See also ILO: "Beyond contagion or starvation: giving domestic workers another way forward" May 2020, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_743542.pdf [accessed 22 May 2020].

¹⁵ Ibid. See also International Domestic Workers Federation: "The Impacts of COVID-19 on Domestic Workers and Policy Responses" 1 May 2020, https://idwfed.org/en/covid-19/the-idwf/advocacy/idwf-policy-brief_final-eng.pdf [accessed 22 May 2020].

¹⁶ Participant discussion, "Consultative dialogue on COVID-19 and its impact on domestic workers in Malaysia", Safe and Fair and Ke-Arah 189, 17 Apr. 2020, online meeting.

¹⁷ T. Sukumaran: "Coronavirus: for Malaysia's migrant workers, lack of food is a bigger worry than Covid-19" in *South China Morning Post*, 26 Apr. 2020, <https://www.scmp.com/week-asia/health-environment/article/3081310/coronavirus-malaysias-migrant-workers-lack-food-bigger> [accessed 27 Apr. 2020]; Amy Chew: "One million Indonesian migrants in Malaysia lack food under lockdown, says N. Ulama" in *South China Morning Post*, 23 Apr. 2020, <https://www.scmp.com/week-asia/people/article/3081263/one-million-indonesian-migrants-malaysia-lack-food-under-lockdown> [accessed 27 Apr. 2020].

¹⁸ F. Wahab: "NGOs unhappy over new rules for food aid distribution", in *The Star*, 1 Apr. 2020, <https://www.thestar.com.my/metro/metro-news/2020/04/01/ngos-unhappy-over-new-rules-for-food-aid-distribution> [accessed 27 May 2020]; G. Chen: "JKM's new guidelines allow NGOs to distribute food to needy folk", in *The Star*, 2 Apr. 2020,

- As MCO/CMCO related travel bans and border closures into Malaysia are implemented, migrant domestic workers, who are *Pas Lawatan Kerja Sementara* (Temporary Employment Pass) holders and due to return to Malaysia for work or enter Malaysia to begin employment, have not been able to enter. This has resulted in loss of income, as well as labour shortfalls in Malaysia.

Loss of remittances for migrant domestic workers

- Some migrant domestic workers depend on employers to assist in remitting their earnings to countries of origin at regular intervals. Those with employers, who choose not to remit the workers' incomes or who are unable to do so when lockdown measures are in place, have been negatively impacted. Many families of women migrant domestic workers rely on remittances to meet basic needs in countries of origin, with poor families most vulnerable to lost remittances.¹⁹
- As many cash transfer service providers were closed during the implementation of the MCO, women migrant domestic workers faced limited options for money transfers.²⁰ While banks remained open and offer money transfer services, their higher exchange rates and fees as well as requirements for documentation such as passports are barriers to migrant domestic workers accessing money transfer services.²¹



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Violence against women domestic workers

- COVID-19 increases the risks of domestic workers to multiple forms of violence. The Ministry of Women and Family Development reported that its helpline, Talian Kasih, observed 57 per cent increase in calls. This helpline is not only for domestic workers, but is a broader service for those experiencing domestic violence

<https://www.thestar.com.my/metro/metro-news/2020/04/02/jkms-new-guidelines-allow-ngosto-distribute-food-to-needy-folk> [accessed 27 May 2020]

¹⁹ Participant discussion, "Consultative dialogue on COVID-19 and its impact on domestic workers in Malaysia", Safe and Fair and Ke-Arah 189, 17 Apr. 2020, online meeting. See also: World Bank: *World Bank predicts sharpest decline of remittances in recent history*, 22 Apr. 2020, <https://www.worldbank.org/en/news/press-release/2020/04/22/world-bank-predicts-sharpest-decline-of-remittances-in-recent-history> [accessed 22 May 2020].

²⁰ Participant discussion, "Consultative dialogue on COVID-19 and its impact on domestic workers in Malaysia", Safe and Fair and Ke-Arah 189, 17 Apr. 2020, online meeting.

²¹ Ibid.

and seeking social support services from the government. Similarly, the Women's Aid Organisation which operates hotlines and WhatsApp for domestic violence observed a 44 per cent spike in inquiries from February to March 2020.²² These increases in hotline call rates are indicative that violence has increased during the pandemic in Malaysia. Domestic workers can also be put at risk of violence in homes as employers and their families spend more time in close contact and confined living conditions while coping with additional stress and potential economic and job losses.²³

- The increase in reports of domestic violence is occurring at the same time as public resources such as social services, health, police and justice are being reprioritised to respond to COVID-19. Some civil society organisations providing services to women who experience violence are administering services such as counselling remotely to comply with the MCO.
- As social distancing and restrictions to movement become the 'new normal', domestic workers who experience violence will face additional barriers to accessing essential services such as social, health, police and justice services.²⁴
- The ability of migrant domestic workers to leave situations of violence and access support networks and services such as helplines and shelters will be further

compromised by limited access to credible information, language barriers, restrictions on usage of mobile phones, and retention of identity documents by employers.²⁵ Consequently, migrant domestic workers who experience violence may be forced to live with and remain closely monitored and controlled by perpetrators of violence.

- Undocumented migrant domestic workers who experience violence will be deterred from seeking assistance and access to essential services due to fear of arrest and detention by state officials.²⁶
- There is a need to support women migrant domestic workers who have experienced violence to access essential services. A survey conducted by the ILO and UN Women on public attitudes towards migrant workers in Japan, Malaysia, Singapore and Thailand in 2018 revealed that there is a high level of support in Malaysia for women migrant workers who have experienced violence to access holistic, integrated and quality services. 81 per cent of those surveyed in Malaysia said that migrant women should have access to shelters if they experience violence.²⁷

Exclusion from social protection and economic assistance packages

- Domestic workers have very limited access to contributory social protection schemes

²² Women's Aid Organisation: *Implement emergency response to domestic violence amid COVID-19 crisis*, 9 Apr. 2020, <https://wao.org.my/implement-emergency-response-to-domestic-violence-amid-covid-19-crisis/> [accessed 27 Apr. 2020].

²³ UN Women: *Prevention: Violence against women and girls & COVID-19*, 2020, <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/brief-prevention-violence-against-women-and-girls-and-covid-19-en.pdf?la=en&vs=3049> [accessed 22 May 2020].

²⁴ See International Domestic Workers Federation: *The impacts of COVID-19 on domestic workers and policy responses*, 1 May 2020, https://idwfed.org/en/covid-19/the-idwf/advocacy/idwf-policy-brief_final-eng.pdf [accessed 22 May 2020].

²⁵ T. Loganathan, D. Rui, C.-W. Ng and N. S. Pacock: "Breaking down the barriers: Understanding migrant workers' access to healthcare in Malaysia" in *PLOS ONE*, 3 Jul. 2019, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0218669> [accessed 22 May 2020].

²⁶ T. Sukumaran: "Coronavirus: for Malaysia's migrant workers, lack of food is a bigger worry than Covid-19" in *South China Morning Post*, 26 April 2020, <https://www.scmp.com/week-asia/health-environment/article/3081310/coronavirus-malaysias-migrant-workers-lack-food-bigger> [accessed 27 Apr. 2020].

²⁷ ILO and UN Women: *Public attitudes towards migrant workers in Japan, Malaysia, Singapore and Thailand*, 2019, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_732443.pdf [accessed 7 May 2020].

that are accorded to other workers in Malaysia.²⁸ Domestic workers are specifically excluded from the Employment Injury Scheme (EI Scheme) under the Social Security Organisation (SOCSO), which provides protection to workers against accidents and occupational diseases arising out of or in the course of employment.²⁹

- Domestic workers face additional risks associated with care responsibilities during the COVID-19 pandemic. Though they or their employers can purchase private health insurance, the lack of social protection (as above) compromises domestic workers' ability to access comprehensive healthcare. This is compounded by existing barriers to accessing health care services such as limited access to credible information and language barriers.
- As domestic workers are exempted from coverage by SOCSO, they also do not qualify for subsidised COVID-19 screening provided to all documented migrant workers.³⁰
- Undocumented migrant domestic workers have been hesitant to access health

services since the start of the MCO.³¹ Large scale arrests of undocumented migrants implemented by the Government since the start of May 2020 will further deter undocumented migrant domestic workers from accessing public health services, making them more vulnerable to negative health outcomes.³²

- Migrant domestic workers and their employers have also been largely excluded from economic stimulus measures aimed at protecting jobs. The additional PRIHATIN SME Economic Stimulus Package announced on 6 April 2020 by the Prime Minister provided that levy of migrant workers will be reduced by 25 per cent for all companies with employees holding work permits that will expire in the period of 1 April to 31 December 2020. This reduction is not applicable to the domestic work sector.³³

²⁸ There is not a current explicit requirement for employers of domestic workers to pay into contributory social protection schemes. See: Immigration Department of Malaysia: "Foreign domestic helper (FDH)", <https://www.imi.gov.my/portal2017/index.php/en/foreign-domestic-helper-fdh.html> [accessed 3 Jun. 2020]. Domestic workers can, however, they can make voluntary self-contributions to retirement funds (public and private) and to private insurance schemes. Some migrant domestic workers, such as those from Viet Nam for instance, are required to make contributions to country of origin social protection schemes. See ILO: *Social Protection Policy Papers Paper 16 – Social protection for domestic workers: Key policy trends and statistics*, 2016, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_458933.pdf [accessed 22 May 2020].

²⁹ See Section 3 Employees' Social Security Act 1969, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/43901/99443/F970138794/MYS43901%202013.pdf> [accessed 7 May 2020].

³⁰ SOCSO: "Employer and Employee Eligibility Act and Regulations", in *SOCSCO Website*, <https://www.perkeso.gov.my/index.php/en/social-security-protection/employer-employee-eligibility> [accessed 5 May 2020]. See Section 3 Employees' Social Security Act 1969, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/43901/99443/F970138794/MYS43901%202013.pdf> [accessed 7 May 2020]. C. Chung: "Bosses to get RM150 subsidy for screening of workers" in *The Star*, 31 May 2020, <https://www.thestar.com.my/news/nation/2020/05/31/bosses-to-get-rm150-subsidy-for-covid-19-screening-for-workers> [accessed 3 June 2020]

³¹ Participant discussion, "Consultative dialogue on COVID-19 and its impact on domestic workers in Malaysia", Safe and Fair and Ke-Arah 189, 17 Apr. 2020, online meeting.

³² Bernama: "Government to send illegal immigrants in areas under EMCO to immigration facilities", in *The Edge Markets*, 29 Apr. 2020, <https://www.theedgemarkets.com/article/government-send-illegal-immigrants-areas-under-emco-immigration-facilities> [accessed 29 Apr. 2020].

³³ Prime Minister's Office of Malaysia: "Additional PRIHATIN SME Economic Stimulus Package (PRIHATIN SME+)", in *Prime Minister's Office of Malaysia Official Website*, 6 Apr. 2020, <https://www.pmo.gov.my/2020/04/langkah-tambahan-bagi-pakej-rangsangan-ekonomi-prihatin-rakyat-prihatin/> [accessed 27 Apr. 2020].



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Risks of arrest for immigration offences for migrant domestic workers

Time required to process renewals of employment pass and related documents³⁴

- Immigration offices were closed while the MCO was in place. The Government of Malaysia announced that migrant workers whose visas and employment passes expired while the MCO was in place were allowed an additional 14 days to renew their documentation to comply with immigration rules. If the pass holder is not in Malaysia and her/his pass expired during the MCO period, the pass holder is allowed to return to Malaysia within three months after the MCO period ended and is required to renew the pass within 30 days from the date of entry into Malaysia.³⁵
- Consular offices of countries of origin and Malaysian immigration offices are likely to face a surge in applications related to the renewal of employment passes at the end of the MCO period and may require additional time to process applications. Migrant domestic workers rely on employers to renew expired employment passes within the 14-day period. Any administrative bottlenecks may be compounded if employers of domestic workers delay or refuse to facilitate the renewal of employment passes for migrant

³⁴ Observations in this section are informed by the results of a multi-stakeholder consultation jointly organised by the Malaysian Bar Council Migrants, Refugees and Immigrations Affairs Committee in collaboration with the ILO and IOM. The consultation was attended by representatives of foreign missions from Bangladesh, Cambodia, Indonesia and Nepal. "Strategic engagement with missions on sharing on experiences in supporting the needs of migrants during the COVID-19 crisis", Malaysian Bar Council, ILO, IOM, 29 Apr. 2020, online meeting.

³⁵ *New Straits Times*: "Guidelines for Malaysians overseas, foreigners in M'sia" in *New Straits Times*, 20 Mar. 2020, <https://www.nst.com.my/news/nation/2020/03/576609/guidelines-malaysians-overseas-foreigners-msia> [accessed 27 Apr. 2020].

workers, putting domestic workers at risk of penalties for failing to comply with immigration requirements.³⁶

- For migrant domestic workers whose passports do not have the 18-month validity period required for employment pass renewal, additional time is required to obtain new passports from their respective consular offices. The 14-day allowance to renew an employment pass which expired during the MCO period will not be sufficient if consular offices remain closed or require additional time to deliver new passports from countries of origin due to lockdown measures and closure of borders. This will put migrant domestic workers at risk of being arrested and detained for immigration offences.³⁷
- Some migrant domestic workers in Malaysia have contracts of employment which have ended, but they are unable to return to countries of origin due to flight cancellations, travel bans and closure of borders. These workers are not required to apply for the Special Pass after the MCO period ends if they are in possession of a valid passport. Notwithstanding, as air routes out of Malaysia remain limited, migrant domestic workers who are found to be without a passport due to retention by employers and without a valid work visa are at risk of arrest.³⁸

Arrests of undocumented migrants

- Inclusive and non-discriminatory policies are essential to strengthen Malaysia's response and recovery from COVID-19. The Government of Malaysia's announcement in March 2020 that migrants, regardless of nationality and documentation status, will receive COVID-19 testing and treatment with no risk of arrest were instrumental to the country's successful response to the pandemic.³⁹
- However, the Government of Malaysia has implemented large scale arrests of undocumented migrant workers since the start of May 2020 on the basis of curbing the spread of COVID-19.⁴⁰ Undocumented migrants who have been arrested have been placed in detention centres.⁴¹ This policy reversal has negative public health consequences. Social distancing and other measures necessary to prevent the spread of COVID-19 are not possible given the overcrowded conditions in detention centres and prisons. This puts detainees as well as those who work in prisons and detention centres at risk of being infected with COVID-19, as evidenced by the emergence of new infection clusters in detention centres after large scale arrests were implemented.⁴²
- Arrests of undocumented workers have caused pervasive fear and lack of trust towards state officials among migrant domestic workers, particularly

³⁶ Participant discussion, "Strategic engagement with missions on sharing on experiences in supporting the needs of migrants during the COVID-19 crisis", Malaysian Bar Council, ILO, IOM, 29 Apr. 2020, online meeting.

³⁷ Ibid.

³⁸ Participant discussion, "Consultative dialogue on COVID-19 and its impact on domestic workers in Malaysia", Safe and Fair and Ke-Arah 189, 17 Apr. 2020, online meeting. Participant discussion, "Strategic engagement with missions on sharing on experiences in supporting the needs of migrants during the COVID-19 crisis", Malaysian Bar Council, ILO, IOM, 29 Apr. 2020, online meeting.

³⁹ See United Nations Malaysia: *Use alternatives to detention in the fight against COVID-19*, 2 May 2020,

<http://un.org.my/2020/05/05/use-alternatives-to-detention-in-the-fight-against-covid-19/> [accessed 20 May 2020].

⁴⁰ S. Augustin and A. Aiman: "Undocumented migrants held in major swoop at Menara City One", in *Free Malaysia Today*, 1 May 2020, <https://www.freemalaysiatoday.com/category/nation/2020/05/01/illegals-held-in-major-swoop-at-menara-city-one/> [accessed 1 May 2020].

⁴¹ Bernama: "Government to send illegal immigrants in areas under EMCO to immigration facilities", in *The Edge Markets*, 29 Apr. 2020, <https://www.theedgemarkets.com/article/government-send-illegal-immigrants-areas-under-emco-immigration-facilities> [accessed 29 Apr. 2020].

⁴² United Nations Malaysia: "Use Alternatives to Detention in the Fight Against COVID-19", 2 May 2020, <http://un.org.my/2020/05/05/use-alternatives-to-detention-in-the-fight-against-covid-19/> [accessed 20 May 2020].

undocumented migrant domestic workers. Fear of arrest and detention by law enforcement or other officials forces undocumented migrants into hiding and prevents them from seeking essential services, including health and justice services. Undetected infection among the migrant population will present significant challenges to public health management during the continuing pandemic.

Negative public attitudes towards migrant workers

- The pandemic has brought to the fore anti-migrant sentiments in Malaysia.⁴³ Migrant workers have reported that they are experiencing discrimination and are stigmatised for causing the spread of the COVID-19 among local communities and on social media.⁴⁴ Civil society organisations advocating for the protection of the rights of migrant workers have similarly observed anti-migrant sentiments

among nationals and dissatisfaction about public resources being allocated to support migrants.⁴⁵

- Negative attitudes can condone discrimination, exploitation, and violence against migrant workers, including migrant domestic workers. For migrant domestic workers who already have to confront multiple and intersecting forms of discrimination and inequalities, negative public attitudes during a public health crisis will heighten challenges associated with seeking health care and other essential services.⁴⁶
- As discussed above, the Government has mandated that documented migrant workers are required to undergo COVID-19 screening if they are to be allowed to resume work after the easing of restrictions put in place by the MCO.⁴⁷ The same requirement does not however apply to national workers, and equal treatment is important in order to ensure safety for all at Malaysian workplaces.



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⁴³ E. Fishbein: "Fear and uncertainty for refugees in Malaysia as xenophobia escalates", in *The New Humanitarian*, 25 May 2020, <https://www.thenewhumanitarian.org/news/2020/05/25/Malaysia-coronavirus-refugees-asylum-seekers-xenophobia> [accessed 28 May 2020].

⁴⁴ S. W. Jun: "Don't blame us for spreading Covid-19 in Selayang, migrant workers plead" in *The Malay Mail*, 27 Apr. 2020, <https://www.malaymail.com/news/malaysia/2020/04/27/dont-blame-us-for-spreading-covid-19-in-selayang-migrant-workers-plead/1860442> [accessed 27 Apr. 2020].

⁴⁵ S. Augustin: "Virus scare provoking migrant bashing say NGOs" in *Free Malaysia today*, 16 Apr. 2020 <https://www.freemalaysiatoday.com/category/nation/2020/04/16/virus-scare-provoking-migrant-bashing-say-ngos/> [accessed 1 May 2020].

⁴⁶ ILO and UN Women: *Public attitudes towards migrant workers in Japan, Malaysia, Singapore and Thailand*, 2019, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_732443.pdf [accessed 7 May 2020].

⁴⁷ D. Kanyakumari: "COVID-19 tests made compulsory for all foreign workers in Malaysia" in *Channel News Asia*, 4 May 2020, <https://www.channelnewsasia.com/news/asia/covid-19-malaysia-foreign-workers-tests-compulsory-ismail-sabri-12700324> [accessed 5 May 2020].

Recommendations

Domestic workers including migrant domestic workers are among the most affected by the COVID-19 pandemic and mitigation policies. To ensure the protection of domestic workers' rights, and in the interests of public health, this note makes the following recommendations to the Government of Malaysia:

Protecting domestic workers' rights during the COVID-19 pandemic

- Provide domestic workers with personal protective equipment, including masks, gloves, hand sanitizer, as well as soap and water. Additionally, provide them with adequate safety information to ensure that they are able to work, and travel to work, safely. Information campaigns with targeted messages on how to apply preventive measures in households, especially when domestic workers are caring for the ill, should be implemented. Such information should be disseminated in languages understood by migrant domestic workers.
- Strengthen social dialogue to foster inclusive and responsive COVID-19 policy measures, especially for women, migrant, and informal sector workers. Emergency or relief measures responding to the COVID-19 pandemic should specifically include domestic workers.
- Implement non-custodial and community-based alternatives to detention, and where relevant avoid detention all together. Social distancing and safety must be ensured for all migrant workers.
- Engage with foreign missions of migrant workers' countries of origin to ensure that guidelines on and implementation of immigration processes, including the duration allowed for the renewal of employment passes take into consideration nuances and challenges faced by migrant workers during the COVID-19 pandemic
- Engage with foreign missions of migrant workers' countries of origin to facilitate safe repatriation of migrant workers whose employment contracts have been terminated or ended during the COVID-19 pandemic.
- Ensure that women, including migrant domestic workers, who have experienced violence are able to leave their house or workplace without risk of penalties for breaching the CMCO or immigration offences. Services for the elimination of violence against women such as hotlines/helplines, shelters, counselling and health services should be accessible to all women and girls regardless of nationality and documentation status.
- Ensure that domestic workers, irrespective of their nationality and migration status, have access to essential services including health, police, justice and social services, to facilitate the exercise of their human and labour rights during the COVID-19 pandemic and beyond.
- Create administrative separation between immigration enforcement activities and public service provision, to allow migrant workers to seek immediate healthcare, including testing and treatment for COVID-19. Fear of arrest and detention may particularly push undocumented migrant workers further into hiding and prevent them from seeking treatment, with negative consequences for their own health and increased risk of COVID-19 spreading to others.

Protecting domestic workers' rights beyond the COVID-19 pandemic

- Recognise domestic work as work and domestic workers as workers by legislating working and living conditions of domestic workers consistent with international labour standards, especially the Domestic Workers Convention, 2011 (No. 189). There is an urgent need to set legal standards and enforce protections, including limitation on work hours, minimum rest period, paid-day off and sick leave.
- Extend social protection coverage afforded to other workers to domestic workers, including informal domestic workers.
- Ensure that all migrant domestic workers, irrespective of their nationality and migration status, have access to legal remedies and compensation for unfair treatment, forced labour and violence and harassment, and interpretive services to assist in their access to justice.
- Issue public service announcements on zero tolerance of violence against women and girls, including women migrant workers and domestic workers. Messaging should also be targeted for dissemination to migrant women and girls and disseminated in different languages.



Spotlight Initiative

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