

Statement: In Light of the Spread of COVID-19 in Immigration Detention Centres, Reconsider the Detention Approach to Migration

Bangkok, 9 April 2021: APRRN renews its call to states to treat detainees in line with their obligations under international human rights law and to reconsider their use of immigration detention during an airborne pandemic. Shortly after the outbreak of COVID-19, civil society organisations called upon states to release people from immigration detention, warning that outbreaks were likely as physical distancing is impossible, sanitary facilities are typically inadequate, and access to protective equipment and medical care is minimal in the often-overcrowded facilities in which migrants are detained. One year on, migrants throughout the region have been exposed to outbreaks of COVID-19:

- In Japan, over 40% of detainees at the Tokyo Regional Immigration Bureau's detention centre have been infected;¹
- In Malaysia, outbreaks in detention centres have been ongoing since late 2020, with recent outbreaks in Malacca and Serian;²
- In Thailand, 400 cases of COVID-19 were recorded in immigration detention centres in Bangkok.³

While states have acted to test the detained people and isolate those who had already contracted the virus, this should not have happened in the first place. As interpreted by the Human Rights Committee, the International Covenant on Social and Political Rights mandates that immigration detention must be

*reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time... Decisions regarding the detention of migrants must also take into account the effect of the detention on their physical or mental health. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons.*⁴

The impact of COVID-19 on detained people's physical and mental health was foreseeable and avoidable. For example, on 17 March, Thailand's Centre for COVID-19 Situation Administration reported that up to 68 of the 77 detainees who had been infected at the time had been detained together in a small cell. The outbreaks in multiple countries have demonstrated that the detention is not taking place in appropriate, sanitary facilities. Their detention could not and cannot be justified under international human rights law.

¹ Asako Tekeuchi, "1st Known Virus Cluster at Japan Immigration Detention Center Spreads to 40% of Detainees", *The Mainichi*, 8 March 2021, <https://mainichi.jp/english/articles/20210306/p2a/00m/0na/018000c>.

² "Malacca Immigration Detention Centre Among Five New Covid-19 Clusters", *The Malaysian Insight*, 11 March 2021, <https://www.themalaysianinsight.com/s/304773>; "Serian MP Appeals for Calm After Announcement of Semuja Cluster", *Borneo Post Online*, 20 March 2021, <https://www.theborneopost.com/2021/03/20/serian-mp-appeals-for-calm-after-announcement-of-semuja-cluster/>.

³ "134 New COVID-19 Cases Recorded in Thailand on Friday", *Thai PBS World*, 26 March 2021, <https://www.thaipbsworld.com/134-new-covid-19-cases-recorded-in-thailand-on-friday/>.

⁴ Human Rights Committee, General Comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 18, <https://undocs.org/CCPR/C/GC/35>.

Further, Malaysia and Thailand’s continued use of immigration detention—including of fellow citizens of ASEAN Member States—violates their obligations under the ASEAN Human Rights Declaration: Detaining people during a pandemic of a highly transmissible virus violates their “right to the enjoyment of the highest physical and mental health” (para. 29(1)); detaining people in cramped, unsanitary facilities during a pandemic, when safer options are available, can hardly be considered to be “creat[ing] a positive environment ... in the prevention, treatment, care and support of people suffering from communicable diseases” (para. 29(2)).⁵

Safer options are available, including granting leave to detained or otherwise restricted people who have not been made to contract the virus or who have recovered from it. Deportation of people held in detention centres is not, however, a rights-respecting option, especially given recent events in Myanmar and the Malaysian government’s continued prevention of UNHCR from accessing Malaysian detention facilities. Laws, policies, and practices concerning migration governance, immigration detention, and public healthcare shape the vulnerability of migrants, stateless persons, and refugees to COVID-19’s spread and effects.

As civil society called for a year ago, authorities must:

1. Provide treatment to the detained people who have contracted the virus, on par with the treatment afforded to nationals;
2. In collaboration with civil society, develop plans for the safe release of detained people to prevent further outbreaks and to fulfil obligations under international human rights law;
3. Scale up and urgently implement non-custodial, community-based alternatives to immigration detention in accordance with international law;
4. Improve conditions in places of immigration detention, while alternatives are being scaled up and implemented, to the same standard of healthcare available in the community;
5. Stop new detentions of migrants for migration- or health-related reasons and introduce a moratorium on the use of immigration detention;
6. Include all people in national response plans to COVID-19, including vaccination plans, regardless of immigration status and without discrimination.

The Asia Pacific Refugee Rights Network (APRRN) is a network of over 450 civil society organisations and individuals from 29 countries committed to advancing the rights of refugees in the Asia Pacific region. APRRN aims to advance the rights of refugees and other people in need of protection through joint advocacy, capacity strengthening, resource sharing and outreach. While APRRN statements are prepared in consultation with members, they do not necessarily reflect the views of all APRRN members.

⁵ ASEAN Human Rights Declaration, 19 November 2012, para. 29, <https://asean.org/asean-human-rights-declaration/>.