RESTRICTION OF HUMAN RIGHTS DURING MOVEMENT CONTROL ORDER: A MALAYSIAN APPROACH IN HANDLING COVID-19 PANDEMIC

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ABSTRACT

Malaysia, like many other countries in the world, has been affected by the spread of Covid-19 pandemic. This has triggered the Malaysian government to implement movement control order (MCO) to break the chain of infection. The MCO has been put in place in stages beginning the on 18th March 2020. Since then, Malaysia went through 8 phases of MCO with all the strict actions recommended by the World Health Organisation (WHO) to effectively contain the COVID-19 outbreak. During this MCO period, almost every day-to-day activity has been restricted. Employees in most sectors were forced to work from home while in certain sectors some have been terminated. Schools, universities, and places of worships were closed, and most business activities have also been asked to cease operation temporarily. This article aims to explore the nature of human rights restriction as the result of MCO and how this method reflects the Government’s human rights duty and obligations towards its citizen. Using qualitative method, various primary and secondary sources have been examined to identify the Malaysian experience in this matter. The preliminary finding from this article indicates that the Government has discharged its duty to protect human rights i.e. right to health and life of the people and this has to be done by restricting the enjoyment of certain human rights through the implementation of MCO.

Keywords: MCO, Covid-19, Human Rights, Malaysia

Introduction

The world is currently facing an extraordinary global crisis. The Covid-19 pandemic, having initially started in Wuhan, China in December last year, has by June 2020 escalated into an unprecedented worldwide outbreak. The virus has affected more than eight million people around the world (OECD, 2020). Having spread on a scale unprecedented for a century, the pandemic requires a global response with far-reaching consequences for our economic, social and political lives. A successful response to Covid-19 must protect the health and human rights of all people. It is important to ensure that the commitment to the protection of human rights and dignity remains intact (Mohd Khalib, A., 2020). Undeniably, the priority is none other than to save lives. This is in accordance with the State’s duty under international law to protect human life, including by addressing the general conditions in society that give rise to direct threats to life (UN, 2020). Taking appropriate measures that can break the chain of infection can therefore be considered as mechanism discharge the duty to protect human life. This probably the reason that led more than half of the world’s population to experience a lockdown with strong containment measures – the first time in history such measures being applied on a large scale.

Malaysia has similarly responded to the growing pandemic with the implementation of nationwide lockdown or popularly called Movement Control Order (MCO) beginning on 18th March 2020. For majority of the population, the MCO will be remembered as the first time ever in the country’s history. This article therefore aims to explore the implementation of MCO as the government’s strategy to discharge its paramount duty to save life. Initially, this article briefly examines the pandemic response and the State’s duty to protect human life under international law. To analyse how this duty has been executed, this article further discusses the implementation of MCO including the method being used as well as the laws which have been applied. Accordingly, the next section discusses about the rights which have been restricted during MCO and to what extent this restriction is justifiable. Finally, the conclusion section summarises the whole article.
Pandemic Response and the State’s Human Rights Duty

It is important to note that the pandemic response should be made on human rights-basis taking into consideration that the response’s ultimate aim is to protect and save human lives. Invoking the right to life reminds us that all States have a duty under international law to protect human life, including by addressing the general conditions in society that give rise to direct threats to life. International human rights law lays down duties and responsibilities of States towards its citizens. The human rights legal framework spells out those responsibilities with the following three obligations, to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights (UN, OHCHR, n.d.).

The UN Secretary General, Antonio Guterres (2020) has reminded in his statement on Covid-19 that the pandemic is not merely a public health emergency, but it is far more. It is an economic crisis, a social crisis, and a human crisis that is fast becoming a human rights crisis. As such, while shaping the pandemic response, the governments should always put human dignity and the promise to the Universal Declaration of Human Rights at the core of their work, both for the public health emergency and the broader impact on people’s lives and livelihoods. Responses that are shaped by and respect human rights result in better outcomes in beating the pandemic, ensuring healthcare for everyone and preserving human dignity. Human rights save human lives. Rights should be protected without discrimination in the Covid-19 response and should not be sidelined during the imposition of emergency measures (New Straits Times, 2020).

Indeed, guaranteeing human rights for everyone poses a challenge for every country around the world to a differing degree. The public health crisis is fast becoming an economic and social crisis and a protection and human rights crisis rolled into one. The spread of Covid-19 has triggered the governments in all countries to take all the necessary measures to contain the virus. Since this pandemic is primarily transmitted from human-to-human through respiratory droplet, the immediate response by majority of the governments was to limit and restrict the movement of the people in their respective countries. Controlling the social interactions through lockdown was therefore seen as practical measures to help break the chain of infection and minimise the possibility of wider spread of the virus.

Nevertheless, implementing lockdown is not without a ‘cost’. Limiting people’s social interactions may imply restrictions of other rights because freedom of movement is a crucial right that facilitates the enjoyment of many other rights. Its restriction will affect jobs, livelihoods, access to services, including health care, food, water, education and social services, safety at home, adequate standards of living and family life can be severe (UN, 2020).

The Implementation of MCO

In view of the exceptional situation and to preserve life, countries have no choice but to adopt extraordinary measures. Extensive lockdowns, adopted to slow transmission of the virus, restrict by necessity freedom of movement and, in the process, freedom to enjoy many other human rights (UN, 2020). Malaysia has joined majority of other affected countries by implementing lockdown which is known as Movement Control Order (MCO), as a preventive measure in response to the Covid-19 pandemic in the country. The implementation of this order was announced by Prime Minister Muhyiddin Yassin in a televised speech on 16th March 2020. The MCO has become an unprecedented and first-time experience for most Malaysians. Beginning on 18th March 2020, Malaysia went through 8 Phases of Movement Control Order, with all the strict actions recommended by the World Health Organisation (WHO) to effectively contain the Covid-19 outbreak (Flanders Trade, 2020).

The MCO in Malaysia has so far implemented in 8 phases:

- Phase 1 - Movement Control Order (MCO) from 18th till 31st March 2020
- Phase 2 - Movement Control Order (MCO) from 01st till 14th April 2020
Restriction of Human Rights during MCO

The 2020 MCO, often referred to as partial lockdown, signifies a major step taken by the Malaysian Government to contain the Covid-19 pandemic. The MCO restricts the Malaysians’ right to freedom of movement. The right to freedom of movement is provided under article 9 of the Malaysian Federal Constitution. However, it was stated in article 9 (2) that the freedom is subject to restriction that can be made by the government for the purpose of maintaining public health and public order. Considering that freedom of movement is a crucial right that facilitates the enjoyment of many other rights, the restriction imposed on it shall therefore affect other freedoms and rights such as freedom of religion, freedom of speech and expression, rights to equal treatment, and the rights under the cluster of economic, social and cultural rights which include right to work and education. The following analysis will discuss how restriction of freedom movement during MCO has affected other rights.

i. Freedom of Movement

Akin to a cordon sanitaire, the MCO implies the stay-at-home policy where all Malaysians were instructed primarily to stay indoors. Inter-state travel has been banned and the country’s border was also closed. The order escalates travel restrictions, with sanctions required for all Malaysians travelling overseas as well as continued medical screening and 14-day quarantine of returning Malaysians. In addition, all foreign visitors are prohibited from entering Malaysia (Prime Minister’s Office of Malaysia 2020a). Additionally, to ensure better compliance with its SOPs, the MCO saw progressively more stringent enforcement, with roadblocks established across the country and the military forces mobilised to enhance MCO enforcement (Bernama 2020). Residents in locations identified as hotspots of Covid-19 underwent stricter MCO, with prohibition of permanent and temporary residents in those areas from leaving their homes and prohibition of non-residents from entering. Food was provided by the government to the affected individuals, and medical bases were set up in those areas (Prime Minister’s Office of Malaysia 2020b). Subsequently, from 1 April onwards, all citizens were confined to a 10-km travel radius while traveling for the purchase of essentials was limited to only one person at one time from each household (Bernama 2020).

ii. Freedom of Religion

During the MCO also, to a certain extent, manifestations, and practices of freedom of religion have partially been restricted. Muslims for example, have been prohibited from going to mosque to perform prayers including the weekly Friday prayers because the congregational prayers will involve social interactions that MCO aims to restrict in order to contain the Covid-19 pandemic. This has never happened before, but considering that saving life is also an integral part of the objective of Islamic law (Maqasid Al-Shariah), the Islamic religious authorities in every state in Malaysia has issued circular and instructions to the Muslims to perform prayers with family members at home. This include Tarawih prayers during Ramadhan and Aidilfitri prayers to mark the end of Ramadhan (The Star Online, 2020). It was also the first time Muslims celebrated Aidilfitri only with family members at home because no open house or social visit are allowed. ‘Balik kampung’ trips which have long been the celebration tradition have also been prohibited (Malaysiakini, 2020).

In addition, Muslim marriages have also been instructed to be conducted with a very strict SOPs. Among others, only limited number of people can attend the solemnisation ceremony, the event period...
should be shortened, and no reception is allowed as it will involve mass gathering and movement. This restriction does not only affect Muslims’ right to freedom of religion, but non-Muslims also cannot attend any religious gathering at their respective places of worship (Kumar D et. al., 2020).

iii. Freedom of Speech and Expression

Under article 10 of the Federal Constitution, it was provided that the rights to peaceful assembly and the right to form association are part of the enjoyment of freedom speech and expression. However, during the MCO, all forms of assembly or peaceful demonstrations have been restricted. Also, the meetings or annual general meetings of the organisations have also been prohibited to avoid mass social interactions in the community.

iv. Right of Equal Treatment

During the MCO also, there have been reports where some elements of ‘double standards’ have taken place in determining the Covid-19 SOP enforcement and in the imposition of punishment to the offenders. In general, violators of the MCO are subject to a fine amounting to RM1000 and a maximum of 6 months imprisonment which was provided under Act 342 (Prevention and Control of Infectious Diseases Act 1988). There have been concern from some Malaysians that some VIPs were not treated in such a way that ordinary Malaysian were treated. However, this allegation has been rejected by the Prime Minister (Prime Minister’s Office, Malaysia, 2020c).

v. Economic, social and cultural rights

The rights that falls within the cluster of economic, social and cultural rights probably the most affected rights during the MCO. These rights include the right to work, the right to an adequate standard of living and the right to education. During MCO, all facilities have been closed except primary and essential services such as health services, water, electricity, telecommunication and food supply companies (Aziz NA, et al., 2020). In addition, all industries have been closed except for infrastructure services and supermarkets, wet markets, grocery stores and multi-functional stores selling daily necessities. All business premises except manufacturers, suppliers, retailers, and food outlets have also been ordered to cease operation. For the permitted business sectors, operating hours of were limited to 8 am to 8 pm. This restriction has resulted in the loss of income or closure of some companies. As the results, many employees have lost their job due to the retrenchment policy applied by their employers. The loss of job of some unfortunate Malaysians will affect their rights to an adequate standard of living because they no longer have source of income (Free Malaysia Today, 2020).

Additionally, the rights of education of Malaysians have also been restricted during the implementation MCO. All nurseries, government and private schools, including boarding schools, international schools, tahfiz centres, primary, secondary and pre-university education institutions, public and private universities, and vocational training centres were all closed. This has led to the implementation of virtual learning activities using various internet platforms and applications. The poor internet coverage in some areas, especially in the rural areas, may become a problem to some students. This will result in their inability to effectively follow the learning activities.

Conclusion

Since the spread of Covid-19 to Malaysia early this year, the government has taken swift actions and measures to contain the pandemic including the implementation of the unprecedented MCO. This reflects the governments awareness of its human rights duty towards its citizens. The strict enforcement and improved awareness of the impacts of Covid-19, in addition to the MCO have brought significant improvement in compliance, which has been deemed the main reason behind the decrease in new Covid-19 cases since mid-April. Based on the downtrends of new and active Covid-19 cases, it can be concluded that the MCO has been effective, provided that compliance to the MCO is maintained (Tang, K.H.D., 2020). Nevertheless, the decreasing trend in term of the daily new recorded cases does not last
long as Malaysia is now facing the third wave of the pandemic. As of 31 October 2020, some states have been imposed CMCO due to the increase of red zones. The states are Selangor, Federal Territories and Sabah. Despite this situation, it can be concluded the government intervention through MCO has been successful in containing the virus. Nonetheless, the socioeconomic implications of such interventions require attention and proper handling.
References


