



Government policy and the challenge of eradicating human trafficking in Malaysia

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Abstract

Malaysia is a destination, and simultaneously, though to a lesser extent, a source and transit country for women and children subjected to human trafficking activities, in particular, those that pertain to forced prostitution and forced labour. Malaysia was placed on Tier 2 of the Watch List of the U.S Department of State's Trafficking in Persons Report for a second consecutive year in 2011. This was for not fully complying with the Trafficking Victims Protection Act's minimum standards for the elimination of trafficking although it did make significant efforts to comply with those standards. This study identifies the causes of Malaysia's human trafficking and examines the reasons why the government has not been entirely successful in addressing human trafficking problem in this country. The study employs qualitative data by interviewing victims at a detention camp known as *Rumah Perlindungan 5*, Kuala Lumpur. Interviews were also conducted with the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) which was established under the Anti-Trafficking in Persons Act 2007 and enforced since February 2008 and amended in 2010 to also include the smuggling of migrants. The findings revealed that the root cause of the government's lack of success in curbing and eradicating human trafficking has much to do with the fact that trafficking agents or syndicates were able to operate under the guise of legitimate employment agencies, and that there are restrictions such as border problems hampering proper and adequate monitoring of certain strategic and crucial sites. It was also found that the government's use of conventional media to educate the masses on the dangers of human trafficking has not been very effective in delivering the desired results, thus pointing the way for the use of new media - social media in particular - to complement the public education effort.

Keywords: forced labour, forced prostitution victims, government anti-trafficking policies, human trafficking and smuggling, migrants, trafficking syndicates

Introduction

Human trafficking is a multi-dimensional issue. It is a crime that deprives people of their human rights and freedoms, increases global health risks, fuels growing networks of organized crime, and can sustain levels of poverty and impede development in certain areas. The impacts of human trafficking are devastating. Victims may suffer physical and emotional abuse, rape, threats against self and family, and even death. But the devastation also extends beyond individual victims; human trafficking undermines the health, safety, and security of all nations it touches.

Malaysia is a destination, and to a lesser extent, a source and transit country for women and children subjected to human trafficking, specifically involving forced prostitution and forced labor. The majority of the victims were foreign workers who migrated willingly to Malaysia from Indonesia, Nepal, India, Thailand, China, the Philippines, Burma, Cambodia, Bangladesh, Pakistan, and Vietnam in search of greater economic opportunities and some of whom subsequently encountered forced labor or debt bondage at the hands of their employers, employment agents, or informal labor recruiters.

In 2009, the United States State Department placed Malaysia at Level Three in addressing the problem of human trafficking. In 2011 US Department of State's Trafficking in Persons Report (TIP) ranks countries based on their level of compliance with minimum standards to combat human trafficking. Level One refers to full compliance and Level Two is for significant efforts to comply with the Trafficking Victims Protection Act of 2000 (TVPA), while Stage Three is a country that has not made any effort to comply with the minimum standards of TVPA. Malaysia was placed on Tier 2 Watch List for a second consecutive year in the 2011 U.S Department of State's Trafficking in Persons Report for not fully complying with the Trafficking Victims Protection Act's minimum standards for the elimination of trafficking but making significant efforts to comply with those standards. The government has increased the number of convictions obtained under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act during 2010 and continues public awareness efforts on trafficking. However, it has not effectively investigated and prosecuted labor trafficking cases, has failed to address problems of government complicity in trafficking, and lacks provision of effective victim care and counseling by authorities. There remain many serious concerns regarding trafficking in Malaysia, including the detention of trafficking victims in government facilities.

In 2013, the U.S. State Department placed Malaysia at Level Three in addressing the problem of human trafficking. Trafficking in Persons Report lists countries rankings based on their level of compliance with minimum standards of combating trafficking. Level one refers to the level of full compliance and Level Two were for significant efforts to comply with the TVPA, while Level Three is the country which has not made any attempt to comply with the TVPA's minimum standards. According to the report, the government is now very concerned about the issue of human trafficking, taking various measures including improving investigation and prosecute those involved in such cases and improve the training of officers involved in the prevention and investigation. However, Malaysia is still a major transit destination for human trafficking. Malaysia provides a conducive environment and a point of transit for human trafficking activity. Many victims migrate willingly to Malaysia seeking employment opportunities in plantations, construction sites, textile factories, and as domestic workers but subsequently encounter forced labor or debt bondage at the hands of their employers, employment agents, or informal labor recruiters.

While many of the trafficking offenders in Malaysia are individual business people, large organized crime syndicates are also behind trafficking (<http://www.humantrafficking.org/countries/malaysia>). The aim of this paper is to trace the causes of human trafficking and the steps taking by the government in combating this menace. A qualitative approach involving interviews with victims and secondary information sources was used to obtain data for the study.

Method of data collection

This study uses qualitative data by interviewing the victims at a detention camp (Rumah Perlindungan 5, Kuala Lumpur) where the victims are located. Some seven informants or 20 percent of the total of 34 victims there were interviewed. The interviews used unstructured questionnaires aimed at obtaining information on the background, experience as victims and the reasons for being involved in human trafficking. The majority of the victims which were from Vietnam, Cambodia and Indonesia followed by a minority of Africans from Nigeria and Uganda. Due to language problem, only informants who spoke English were selected for the study.

The concept of human trafficking and smuggling

Apart from the lack of consensus on a definition, a number of authors have noted that there is no consistent theoretical framework that structures analysis and empirical research on this question. Motivated by the stark lack of knowledge on their particular research subject and by indignation, many

have confined themselves to the basics in describing the phenomenon, indicating the players involved, the routes, the practices, the consequences and the mechanisms for combatting it (Okolski, 2000).

An agreed definition of human trafficking now exists under Article 3 of the ‘Palermo Protocol’ on trafficking in persons, which has come into force on 25 December 2003. This internationally agreed definition focuses on exploitation of human beings – be it for sexual exploitation, other forms of forced labour, slavery, servitude, or for the removal of human organs. Trafficking takes place by criminal means through the threat or use of force, coercion, abduction, fraud, deception, abuse of positions of power or abuse of positions of vulnerability. It relates to all stages of the trafficking process: recruitment, transportation, transfer, harbouring or receipt of persons. Trafficking is not just a transnational crime across international borders-the definition applies to internal domestic trafficking of human being (<http://www.un.org>).

The United States’ Trafficking Victims Protection Act of 2000 (TVPA) defines “severe forms of trafficking” as: (a). sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or (b). the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. A victim need not be physically transported from one location to another in order for the crime to fall within these definitions (Trafficking in Persons Report 2009).

Table 1. Identification of human trafficking (process, means, purpose)

Process	Means	Purpose
<ul style="list-style-type: none"> • Recruitment • Transportation • Transfer • Harbouring • Receipt of persons 	<ul style="list-style-type: none"> • Threat • Force • Coercion • Abduction • Fraud • Deception • Abuse of power • Abuse of vulnerability • Giving and receiving of Payments 	<ul style="list-style-type: none"> • Exploitation which includes: <ul style="list-style-type: none"> a) Prostitution and other forms of sexual exploitation b) Forced labor and services c) Slavery and similar practices d) Involuntary servitude e) Removal of organs

Source: UNODC (2009), Anti-Human Trafficking Manual for Criminal Justice Practitioners <http://www.unodc.un.org>

In identifying human trafficking, Table 1 above shows the process, means and purpose of human trafficking. The process begins from recruitment to harbouring of victims. Various means ranging from threat to deception are used to forced victims into human trafficking. The exploitation includes prostitution and forced labour, among others.

The crime of human trafficking affects virtually every country in the world and has been associated with transnational criminal organizations, small criminal networks and local gangs, violations of labor and immigration codes, and government corruption. Historically, trafficking has been defined most often as the trade in women and children for prostitution or other immoral purposes. More recently trafficking has been defined to include other types of force, fraud, or coercion beyond sexual exploitation. It has been further clarified that victims do not need to be transported across international or other boundaries in order for trafficking to exist. In 2000, the international community developed and agreed to a definition for trafficking in persons that can be found in Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children:

Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or

benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Smuggling of migrants shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident. There are key differences between human trafficking and migrant smuggling as depicted in Table 2 below. The table serves as a guide for legal practitioners and the authorities concern with monitoring and handling human trafficking cases.

Table 2. Key differences between human trafficking and migrant smuggling

	Human trafficking	Migrant smuggling
Actions(s)	<ul style="list-style-type: none"> Recruitment, transportation, transfer, harbouring or receipt of a person by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position vulnerability or of the giving or receiving of payments or benefits 	<ul style="list-style-type: none"> Procurement of illegal entry of a person into a country of which the person is not a national or permanent resident
Transnationality	<ul style="list-style-type: none"> Not required 	<ul style="list-style-type: none"> Required
Purpose	<ul style="list-style-type: none"> Exploitation which includes: <ol style="list-style-type: none"> Prostitution and other forms of sexual exploitation Forced labor and services Slavery and similar practices Involuntary servitude Removal of organs 	<ul style="list-style-type: none"> For financial or other material benefit

Source: UNODC (2009), Anti-Human Trafficking Manual for Criminal Justice Practitioners

Trend and nature of human trafficking in Malaysia

Human trafficking and smuggling of migrants is a cross-border crime involving violence, money laundering, cyber crime, arms smuggling, drug trafficking, economic crime, including human trafficking. Table 3 shows the statistics of human trafficking from 2008 to 2011 under the Interim Protection Order (IPO). Interim Protection Order (Provisional) is when a human trafficking offense information is received directly by the police. IPO can be issued by the court pending police investigation of victims involved in trafficking offenses. IPO will cease after the police complete their investigation. The above table shows the number of rescued victims between the years 2008-2010 which has increased every year. In the year 2010 there was a reduction from the previous year of only 870 people who had been rescued. This amount is further reduced to 443 people in 2011. Statistics also clearly shows that women are more easily to become victims of human trafficking in Malaysia. The involvement of the public in helping the government is very important so that more victims could be saved. Sexual exploitation is a crime that often occurs in human trafficking. Victims were promised good paying jobs and brought into this country illegally. The victims are finally tricked into becoming prostitutes. In addition to sexual exploitation, there is also labor exploitation, which is brought in illegally. The victims involved are monitored making it difficult to escape. Usually the victims are forced to work without salary or wage.

Table 3. Statistics of victims saved in 2008-2011 under IPO

	Year								Total	
	2008		2009		2010		2011			
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
	85	2	617	339	549	321	32	121	1573	783
Total	87		956		870		443		2356	

Source: Sekretariat Majlis Anti Pmerdagangan Orang dan Penyeludupan Migran (2011)

This study interviewed victims from Uganda and Indonesia who have been saved by the authority. This home (*Rumah Perlindungan 5*) provides a shelter where the victims are placed for 14 days before being deported to their countries of origin. During this study, there were 24 victims who had been placed in this detention center. Usually, in cases of human trafficking, agents or syndicates will manage all the affairs that will enable the victims' arrival in Malaysia, including business visas, airline tickets, accommodations and others. According to them, there are a number of transits, such as Jakarta, Suluk and Palembang before arriving in Kuala Lumpur. This is to prevent the movement of the syndicates and the victims from being known to the authorities, especially the customs and immigration. Syndicates from Jakarta will contact their group in Suluk before arriving, to ensure safe conditions there. Besides that, it is to facilitate the group from Suluk to provide accommodation for victims who are brought from Jakarta. The process of this movement takes place until arrival in Malaysia. The study found that the victims who are involved is due to fraud by the syndicates and also the living conditions in their country of origin.

Rebecca who comes from Uganda said before coming to Malaysia, she was promised a job as a waitress in a restaurant. After arriving in Malaysia, she was ordered to take a taxi to the employment agencies which supposed to "offer" her a "job". When she arrived, Rebecca was not offered a job as promised, but was forced to work as a prostitute. Rebecca refused the offer. However, all her documents like passport, money and phone and personal items were seized by the syndicate or the so call employment agency. Rebecca was threatened to be killed and the syndicate ordered the victim to reimburse them for costs such as transportation, passport and other documents amounting to RM20, 000. Rebecca was also threatened if she refused to become a prostitute she would be raped by a group of triad or be killed. Due to fear, she, along with two other colleagues from Uganda, fled and hid in the bushes around Cheras for three days. Finally she decided to report the matter to the police (interview on May 11, 2012).

Sonia is 26 years old and comes from West Java, Indonesia. She lived in Jakarta, Indonesia before coming to Malaysia. Her past life is very difficult. Before coming to Malaysia, she worked as a cleaner of Swiftlet nest in Batam, working in the school canteen and Jackport. The original intent of Sonia to Malaysia is to find a job that offers a lucrative salary. Sonia was persuaded by her friend who was in Batam to work in Malaysia as it offers a higher salary than in Indonesia. Upon arrival in Malaysia, Sonia and Endang were brought to an entertainment centre to work as stewards. On the first two days, Sonia still could survive working in the entertainment center. On entering the third day of work, Sonia and her friend Endang, could no longer cope serving customers, who often smoke Nakoba. Sonia requested that the owner of the entertainment center allow her return to Indonesia. However, Sonia was forced to work for a month on the ground that she needs to settle a debt of RM3000. If Sonia does not treat her customers well, she would be scolded by the owner of the entertainment center (interview on May 11, 2012). Sonia finally told this to her brother in Malaysia and asked that she and Endang cases be reported to the police.

Implementation of the anti - trafficking laws in Malaysia

To eradicate human trafficking in Malaysia, there are a few Sections that outline the punishment for offenders involved. Among them are Section 12, Section 13, Section 14, Section 15 and Section 15A. Section 12 is the crime of trafficking in persons who are not children for the purpose of exploitation. Offenders involved shall be liable to imprisonment not exceeding 15 years and a fine (Secretariat

Trafficking in Persons and Smuggling of Migrants, 2011). In addition, Section 13 of the offense of trafficking in persons other than children, for the purpose of exploitation by one or more means of threat, use of force or other forms of force, deception, abuse of power, abuse of a position of vulnerability to trafficking in persons, and giving or receiving of payments or benefits to obtain the consent of a person who have control over the trafficked person. Offence that can be imposed is imprisonment of not less than three years but not more than 20 years and a possible fine (Secretariat Trafficking in Persons and Smuggling of Migrants, 2011).

Section 14 is an offense of trafficking in children for the purpose of exploitation. For this offense the punishment that can be imposed is imprisonment of not less 3 than years but not exceeding 20 years and a possible fine (Secretariat Trafficking in Persons and Smuggling of Migrants, 2011).

Offence of getting profit from the exploitation of trafficked persons is contained in the offense in Section 15. The offender is liable to imprisonment not exceeding 15 years and a fine of RM500, 000 but not exceeding RM1, 000,000 (Trafficking in Persons and Smuggling of Migrants, 2011). Besides that, Section 15 A is an offense to transit the trafficked person through Malaysia (land, sea and air) or arranging or facilitating its commission. Penalties that may be imposed are imprisonment not exceeding seven years and fine (Secretariat Trafficking in Persons and Smuggling of Migrants, 2011).

Table 4. Prosecution statistics for the period 2008-2011 in Malaysia

Categories of Cases	Total
Cases that have been accused	384
Cases on Trial	244
Cases Completed (Free)	59
Convicted	60

Source: Sekretariat Majlis Anti Pemerdagangan Orang dan Penyeludupan Migran (2011)

Interview with Miss Nor Azlina Ibrahim of the Council for Anti-Trafficking in Persons (ATIP) and Anti-Smuggling of Migrant (MAPO) brought information on the fight against this problem and the National Action Plan for Trafficking in Persons 2010 to 2015. The ATIP Act of 2007 led to the implementation of measures which made Malaysia being recognized and placed in Tier Two of the U.S. Watch List, while the MAPO and the National Action Plan for Trafficking in Persons (2010-2015) reiterated the government seriousness in addressing the issue. However, there are restrictions such as border problems where not all places could be monitored properly and syndicates posing as prim and proper employment agencies. Among the measures that have been put in place are:

- Eliciting public cooperation

The general public must be concerned and help eliminate the problem. This may include reporting to the police and other relevant authorities if they become aware of human trafficking. The public should not be afraid to make such reports.

- Enforcing the ‘One district one investigation officer’ approach

In terms of enforcement, The Malaysian Royal Police (known as PDRM) has taken initiative targeting the ‘One district one investigation officer’ as experts referee to make sure trafficking in persons cases and migrant smuggling are handled systematically. The Attorney General Office of Malaysia has also taken initiative to appoint two deputy prosecution officers (*specialist prosecutor*) in every state as experts referees for trafficking in persons cases and smuggling of migrants. This is to make sure that such cases are handled more efficiently and to avoid the delays in recording of statement and also handling of prosecution.

- Establishing a pilot Task Force

A Task Force is to be set up in each state headed by the state of Chief of Police. The Task Force works to coordinate and resolve cases involving trafficking in persons and smuggling of migrants at the state level. For starters, a state will be selected as pilot project. This pilot Task Force will identify weaknesses and room for improvement before it is carried out to all other states.

- Strengthening the legal regulatory mechanism

This includes amending the Act by incorporating as a new offense the smuggling of migrants and increasing the penalty for the offense of trafficking in persons. In addition is the inclusion of the offense of trafficking in persons (enacted) and smuggling of migrants (not enacted) in the Second Section 3 of the Interpretation of Heavy Offences Act and Anti-Money Laundering and Counter-Terrorism Financing Act 2001. The Standard Operating Procedures (SOPs) were also updated in accordance with the amendments to the Act and included guidelines for cases involving forced labour.

- Integrating operations

For integrated operation involving intelligence sharing among enforcement agencies as well as the tightening of security at border checkpoints. In addition, having public awareness campaigns on an ongoing basis through a variety of print and electronic media including trailer shows in local television networks and broadcast-radio jingles on the radio and billboard installation. Seminars are also conducted involving local companies to explain the employers' responsibilities to their employees and also offences under Anti Human Trafficking and Anti Smuggling of Migrants Act 2007.

- Mobilising the NGOs

There are five NGOs appointed to the MAPO and they include the National Council of Women's Organizations (NCWO), Council of Child Welfare, Institute of Malaysian and International Studies (IKMAS), Human Rights Commission (SUHAKAM) and the Coalition to Abolish Modern -Day Slavery in Asia (CAMSA). These organizations have contributed their ideas and expertise as well as participate in organizing public awareness campaigns. For example NWCO organized an awareness campaign at the state level besides organizing 'training for trainers' workshop to train more spokesperson on human trafficking. Family Planning Association has organized programs including seminars and dialogues related to trafficking in persons as a space for the NGOs to share ideas and also provide assistance to the government, especially in terms of protection of victims.

- Cooperating with foreign countries

Malaysia is harnessing its bilateral cooperation with strategic counterpart countries such as Australia, Britain, United States and Netherlands. At the multilateral level, Malaysia has signed UN Convention about cross-border crime. This Convention is supported by three protocols including the protocol about trafficking in persons, especially women and children where Malaysia became a signatory on February 28, 2009. In addition, Malaysia is also working with international bodies such as the United Nations High Commissioner for Refugees (UNHCR), the International Labor Organization (ILO), United Nations Inter-Agency Project on Human Trafficking (UNIAP) and United Nations Office on Drugs and Crime (UNODC) to address these crimes. Furthermore, there are also local law enforcement agencies that have established cooperation in terms of sharing and exchange of information and intelligence on regional and international level.

Harnessing the role of new media in preventing human trafficking

Given the real constraints in implementing existing measures to combat human trafficking Malaysia would need to look at the role of new media to help improve its anti-human trafficking crusade. The potential of new media, especially internet, as a medium for global activism was predicted long ago. Many forms of activism such as human rights or protest on a global level seem impossible without the global communication and coordination capabilities of the internet. The presence of digital communication channels such as email, lists, organization and campaign websites as well as mobile phones can facilitate information exchange, coordinate action, and establish electronic records of common cause (Bennet, 2003).

The International Labor Organization (2012) observes that human trafficking is a global problem. No country is spared. Women and children have become the main targets as well as men. It is reported that forced labor claims 20.9 million victims, of which 18.7 million (90%) are exploited in the private economy. In the era of digital technologies, new media such as internet and social media can be a medium to fight against human trafficking as well as to build awareness of this issue. Internet and social media can be the platforms of information sharing for anti-human trafficking organizations (University of Southern California Center on Communication Leadership & Policy, 2011). There are now more than 800 million people from around the world who are using social networks to interact with each other. The most inspiring part is the relative absence of racial, ethnic, and religious discrimination in this great channel of a universal nation that is the online world (Khan, 2011). This indicates that immediate action is required to develop monitoring and prevention techniques to combat human trafficking trough online.

The importance of internet and social media in anti-human trafficking movement is crucial as it enables us to create awareness campaigns about human trafficking (Khan, 2011). For instance, the movement on the internet through social media is Youth Against Human Trafficking which is created in response to the feedback from young people aged 15-24 years wanting to become more involved in raising awareness and taking action against this illegal trade and grievous violation of human rights. Not only Facebook page, this program also had Twitter and Youtube accounts to gather people to combat human trafficking (<http://www.endhumantraffickingnow.com>). In addition, the technology called Photo DNA, initially created by Microsoft Research. It was further developed by Hany Farid, a leading digital-imaging expert and professor of computer science at Dartmouth College, to help National Center for Missing and Exploited Children America in its efforts to find hidden copies of the worst images of child sexual exploitation known today (<https://www.microsoft.com>).

Finally, digital activism in the form of online petitions. Many petitions relating to human trafficking consistently ranks among the 12 “Top Causes” featured on the Change.org homepage (Latonero et al., 2011). Facebook with more than one billion users worldwide has become a natural hub for socially conscious networking, and consequently many anti-human trafficking NGOs have created Facebook groups or pages to expand their audience (Latonero et al., 2011). Twitter also has a significant role by hosting many influential individuals and organization focused on human trafficking and appears to be a central platform for information sharing among these users. Twitter accounts that are related to anti-human trafficking are Polaris Project, the CNN Freedom Project, Not for Sale & the Freedom Youth Center which have thousands of followers (Latonero et al., 2011).

Conclusion

Most victims of human trafficking are young and desperate to change their way of life. Malaysia is one of the main destinations of human trafficking. The U.S. State Department placed Malaysia at Level Two in addressing the problem of human trafficking based on the level of compliance with minimum standards of combating trafficking. Although various institutional measures have been taken by the government to address this issue such as the establishment of MAPO and the National Action Plan for Trafficking in Persons (2010-2015) the government would now need to push the frontier by mobilising the new social

media. In the era of globalization and information technology, access for and diffusion of new information has become easier. Hence, new media should be used to enlighten the public, especially the younger generation, so as not to get involved in human trafficking activities.

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