

## EXAMINING HUMAN TRAFFICKING ISSUE IN MALAYSIA'S POST-PANDEMIC ERA: PREVENTIVE MEASURES AND CHALLENGES<sup>©</sup> $\Sigma$

ZARINA OTHMAN\*, NAFISAH ILHAM HUSSEIN<sup>†</sup>,  
AND NORHAFIZA MOHD HED<sup>‡</sup>

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### ABSTRACT

Human trafficking is a serious issue that has received international attention since the 1990s and has affected security and human rights, including Malaysia. In Malaysia, this crime is increasing despite various eradication efforts carried out by the Malaysian Government in terms of policy, legislation, enforcement, care and protection, media and publicity and awareness. The Report on Human Trafficking issued by the United States (TIP) 2021 states that Malaysia has been downgraded to Level 3, which is an unsatisfactory level. Therefore, this study aims to examine the issue of human trafficking in Malaysia during the post pandemic era by focusing its analysis on challenges and preventive measures that the government can take to fill the gaps in the enforcement of government policies and legislation. This research was conducted using qualitative methods using primary sources obtained from in-depth interviews, direct observation through field studies in selected areas as well as document analysis from authoritative sources such as official government documents and reports. The findings of the study conclude that there are two main challenges facing Malaysia in dealing with the issue of human trafficking, First, the enforcement aspect, mainly the coordination between the various responsible government agencies. Second, the delay in prosecution is an obstacle to the resolution of this issue from a legal perspective. Thus, this study found that it is very timely for the government to implement more proactive, effective measures continuous efforts to solve the crime of human trafficking in Malaysia.

**Keywords:** human trafficking, securitization of trafficking in Malaysia, durable solution, human security threats in Malaysia,

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\* **First Author:** Zarina Othman, PhD (*Denver*) is a current Professor at the Research Centre for History, Politics, History, and International Affairs, Faculty of Social Sciences and Humanities, Universiti Kebangsaan Malaysia 43600, Bangi, Selangor, Malaysia. Email: zo@ukm.edu.my / zaiiothman02@gmail.com

<sup>†</sup> **Second and Corresponding Authors:** Nafisah Ilham Hussein, PhD (*UPM*), Senior Lecturer, Faculty of Human Sciences, Universiti Pendidikan Sultan Idris, 35900 Tanjung Malim, Perak, Malaysia. Email: nafisah@fsk.upsi.edu.my

<sup>‡</sup> **Third Author:** Norhafiza Mohd Hed, PhD (*Sheffield*), Senior Lecturer and Deputy Dean (Academic and Internationalisation), Faculty of Human Sciences, Universiti Pendidikan Sultan Idris, 35900 Tanjung Malim, Perak, Malaysia. Email: norhafiza@fsk.upsi.edu.my

## **MENYELIDIKI ISU PEMERDAGANGAN ORANG DI ERA PASCA-PANDEMIK MALAYSIA: LANGKAH PENCEGAHAN DAN CABARAN**

ZARINA OTHMAN, NAFISAH ILHAM HUSSEIN,  
DAN NORHAFIZA MOHD HED

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### **ABSTRAK**

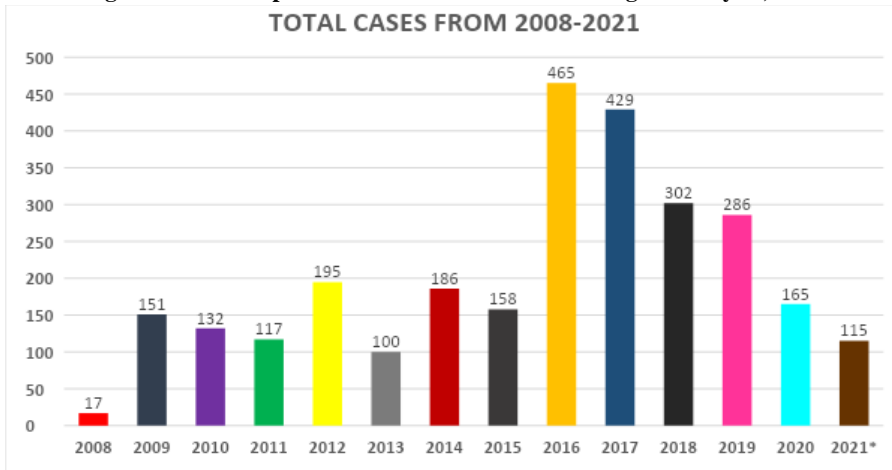
*Pemerdagangan orang adalah isu yang serius yang telah mendapat perhatian antarabangsa sejak 1990-an dan telah menjejaskan keselamatan dan hak manusia, termasuk Malaysia. Di Malaysia, jenayah ini semakin meningkat walaupun pelbagai usaha pembasmian dilakukan oleh Kerajaan Malaysia dari segi dasar, perundangan, penguatkuasaan, jagaan dan perlindungan, media dan publisiti serta kesedaran. Laporan mengenai Pemerdagangan orang yang dikeluarkan oleh Amerika Syarikat (TIP) 2021 menyatakan bahawa Malaysia telah diturunkan taraf kepada Tahap 3, iaitu tahap yang tidak memuaskan. Oleh itu, kajian ini bertujuan untuk menyelidiki isi pemerdagangan orang di Malaysia pada era pasca pandemik dengan memfokuskan analisisnya kepada cabaran dan langkah pencegahan yang perlu diambil kerajaan dalam mengisi kelompangan pada penguatkuasaan dasar dan perundangan kerajaan. Penyelidikan ini dijalankan menggunakan kaedah kualitatif dengan menggunakan sumber primer yang diperoleh daripada temu bual mendalam, pemerhatian secara langsung lapangan di kawasan terpilih serta analisis dokumen dari sumber autoritatif seperti dokumen dan laporan rasmi kerajaan. Dapatan kajian merumuskan bahawa terdapat dua cabaran utama yang dihadapi Malaysia dalam menangani isu pemerdagangan orang., Pertama, aspek penguatkuasaan terutamanya penyelarasan antara pelbagai agensi kerajaan yang bertanggungjawab. Kedua, kelewatan pendakwaan menjadi halangan kepada penyelesaian isu ini dari aspek perundangan. Justeru, kajian ini mendapati amat tepat pada masanya kerajaan melaksanakan langkah pencegahan yang lebih proaktif, efektif dan usaha yang berterusan bagi menyelesaikan jenayah pemerdagangan orang di Malaysia.*

**Kata Kunci:** *pemerdagangan orang, sekuritisasi pemerdagangan di Malaysia, solusi berkesan, ancaman keselamatan insan di Malaysia*

### Introduction

Human trafficking is a global phenomenon and has been identified as the world's third largest profitable organised crime after drugs and weapon trafficking (Friedman and Johnston 2018; Sadiq 2005). Politically, human trafficking as part of modern slavery ecosystem is not a novel phenomenon, but it begins thousands of years ago in the form of human subjugation and 'forced servitude' (Wylie 2016, 23). History has shown that it existed long before the colonial era where women from China and Japan migrated through Singapore to Southeast Asian countries to serve as sex workers (Othman 2006, 43). In recent years, women and children continue to be vulnerable as commodities of global trade, for sexual exploitation (Abdul Hamid, 2021, 21). In fact, Malaysia has been characterised as a country of origin, as transit, and for profitable destination for traffickers to transport their victims. This in part due to its strategic location and wide economic opportunities (Nafisah 2021; Zulaikha and Yarina 2017; Mat *et al.* 2018). Although the crime has long begun, in Malaysia, it started to gain attention in 2007 after being assessed by the United States (US) government through the *Trafficking in Person (TIP) Report* (Othman 2009, 1038).

**Figure 1: Total Reported Cases of Human Trafficking in Malaysia, 2008-2021**



Source: (MAPO 2021)

Consequently, Malaysian Government then drafted and gazetted the Anti-Trafficking in Persons Act 2007 (Act 670)/AAPO 2007 (Act 670) and the creation of Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrant (MAPO). The Act was passed on April 24, 2007, and it came into force on February 28, 2008 (Othman *et al.* 2018, 5). It was made into law in combating the crime of human trafficking to meet the global requirements of the Trafficking in Person Protocol (TIP). The political instability in the aftermath of infamous *Langkah Sheraton* brought in several administrations with frequent shift of prime ministers in the Malaysian electoral scenes (Othman and Mat 2022, 2). Apart from alarming concern of human's security dilemma in the Southeast Asia, geopolitical and transborder security predicament of Malaysia have amplified vulnerable turbulence of victimisation of human being subjected to trafficking crimes and overlapped with numerous transnational human security and human rights violations (Othman and Idris 2016; Othman *et al.* 2015; Othman *et al.* 2013).

Upon this contested nature of human security, the Malaysian overall security progress in overcoming human trafficking subjected the country into the global politics of TIP tier and rankings (*US Department of State* 2020). Existing literature raised politically biased of the US Department of Justice (DoJ) and their heavy reliance over the usage of artificial intelligence (AI) (Harmon *et al.* 2022, 446). As part of the fourth industrial revolution (IR 4.0), the widely used of the auto machine reading of algorithm for global and random online readings of Malaysia and other countries (deemed as poorly performed in combating trafficking) in the annual TIP tier subject to controversial of ethical concerns and AI politics in human security issues (see Strock 2022). Given the paucity of localising approach to global human security literacy and policy implementation, we argued along the line of proponents of *Bangi Human Security Approach* (BAGHUS) and the needs of “glocal” approach to present human security understanding and practice in Malaysia (see Ramli *et al.* 2012; Chen *et al.* 2022).

While we agreed with the political problem of relying with DoJ’s TIP tier in measuring Malaysian’s progress in combating trafficking, there is an immediate local need to empathised human security perils of those violated and victimised in the trafficking ecosystem (Ab Hamid and Mohd Kamal 2022, 64). Thus, in this article, we highlight the unfinished lacuna of anti-human trafficking enforcement wherein pandemic and brinkmanship electoral politics between the 14th and 15th General Election (2018-2022) exacerbated further national security, legal and supportive measures to rescue those who we involuntarily forced to be victimised as an object of trafficking. Our aim is not to blame but provide constructive avenues for all relevant stakeholders to understand the controversy and challenges in overcoming the problem. Furthermore, existing woes in local human rights improvements and bleak humanitarian discourse unravelled complexed and intricated realities of trafficking. It is hard to form a cohesive policy and plan of action when the existing criminality system loopholes induce further incentives for undocumented (illegal) migrants and unrecognised refugees to be part of the problem than solution. Thus, a new framework is required to bring all relevant stakeholders into the picture of the solution, as well as exporting lessons from Malaysian human security polemics of trafficking into the global literature of non-traditional security dilemma, trafficking, and other transnational economic crimes.

In this article we provide our original research finding from several years of fieldwork before the and during the outbreak of Covid-19, and the implementation of the *Movement Control Order* (MCO), and early phase of the endemic shift. It is argued here that the intersection between pandemic and human trafficking concern illuminate new understanding and require new framework to synergise multidimensional, multicausal and various stakeholders beyond criminality loopholes of combating trafficking in Malaysia. Discussions will be divided into several parts. The first part highlight reported numbers of the trafficking cases and TIP victims. Second, we illustrate our methodological explanations. Third discuss Malaysia as transit and destination hubs for trafficking. Fourth, we briefly present three actual case studies from our fieldwork, final discussion explores persistent issues, challenges, and government efforts.

### **Reported Cases and Figures of Trafficking Crimes in Malaysia**

As presented in the Figure 1 (see above), there was an increase of total cases especially in 2016. Following our discussion with selected anonymised informants, human trafficking in the country was closely related to the Wang Kelian issue in September 2015 (*NST* December 20, 2017). In the Wang Kelian case, the nation was shocked with

the discovery of migrant camps with about 139 mass graves in Wang Kelian (located in the state of Perlis, in the northern part of Peninsular Malaysia). The mass graves contained the bodies of trafficked Rohingya ethnics as well as Bangladeshi migrants (Hoffstaedter and Missbach 2022). It was known later that those were the victims of extortion and torture. In the following year in 2016, Malaysian government had taken a proactive effort in the form of awareness campaigns on human trafficking including on prosecution (Department of Immigration 2021).

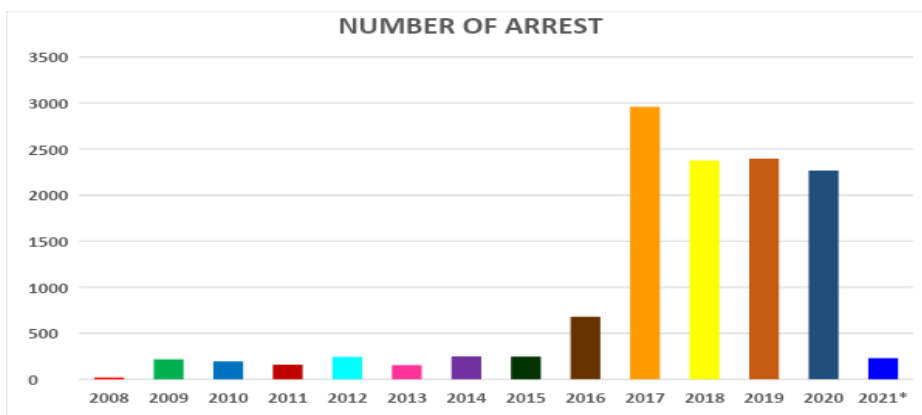
**Figure 2: Total Victims of Human Trafficking in Malaysia, 2008-2021**



Source: (MAPO 2021)

As exemplified in the following Figure 2 (see above), the crime of human trafficking is becoming more serious despite the efforts made by the Malaysian government in terms of policy, legislation, enforcement, custody and protection, media coverage, and publicity, as well as awareness. Nevertheless, there were a decrease in terms of arrest towards the end as shown in Figure 3, which was believed partly due to pandemic Covid 19 (Personal communication with the Enforcement Officer February 7, 2022).

**Figure 3: Total Number of Trafficking Related Arrests, 2008-2021**



Source: (MAPO 2021)

Nonetheless, based on the empirical research and field work focusing on human trafficking issues in Malaysia, this article is designed to evaluate the actions taken by the Malaysian government especially as it relates to Universal Periodic Report (UPR) 2018 (see also Mohd Amin *et al.* 2016). It then discusses contemporary human trafficking issues and challenges faced by Malaysia. Finally, it will recommend some of the innovative actions that should be taken by the Malaysian government based on the best practices of selected countries.

### Methodological Explanations

This study was qualitative research. It is the most appropriate strategy to “discover” subjective understanding and contested meaning of human trafficking phenomena in Malaysia and to find ways in designing the best mechanism combating the issue. By doing so, it helped to provide detailed data in order to re-evaluate actions taken by the Malaysian government with regards to UPR 2018 proposals thereby able to recommend innovative actions that should be taken by the Malaysian government. Moreover, the data was gathered and divided it into secondary and primary sources. To triangulate the data, we have adopted document analyses, made observation and conducting an in-depth interviews with anonymised informants from various state and non-state actors in the formal and informal setting of Malaysia’s enforcement and trafficking scenes.

In collecting secondary data, official documents from the United Nations Human Rights Council (UNHRC) and Malaysian government were consulted in this research. Qualitative Content (Document) analysis has been corroborated by interviews with selected key informants, as official documents and statements only tend to reflect the surface of the issue and do not reveal the internal processes leading up to those positions. In addition, it also referred to various types of documents, ranging from scholarly articles to newspapers clippings. The current research did not only enable the researchers to get a better perspective on the issues and challenges faced by Malaysia in combating human trafficking, but more importantly, to “locally understand” and the factors why Malaysia has been downgraded to Tier 3 by the TIP Report in 2021 and 2022 (US Department of State 2021a).

Meanwhile, primary data for this research came from semi-structured interviews which have been collected since April 2021. The semi-structured interviews involved predetermined questions, developed by the researcher on several topics. Sixteen

informants ranging from enforcement officers (Royal Malaysia Police, Immigration Department of Malaysia, Department of Labour of Peninsular Malaysia (JTKSM), Royal Malaysian Customs Department); officers from government agencies (Ministry of Home Affairs Malaysia, Ministry of Human Resources Malaysia, Ministry of Education Malaysia, Ministry of Women, Family and Community Development, Attorney General Chambers of Malaysia, Malaysian Communications and Multimedia Commission); academics; and non-governmental organisations (NGOs) such as the United Nations High Commissioner for Refugees (UNHCR) and Persatuan Prihatin Pelarian have been interviewed. These informants were chosen because of their experience, expertise, and knowledge about the human trafficking issues in Malaysia. Most interviews were conducted through an online audio chat, due to the MCO and to lessen the risk of contaminating Covid-19. However, researchers had the opportunity to make some participant observations with reference to the case of Palm Oil, Top Gloves and Shelters, once the MCO was lifted in early February 2022. As such, data was analysed thematically to find patterns and conclusion to the puzzle of the human trafficking issues in Malaysia.

### **Malaysia as a Transit and Destination Hubs**

Trafficking in persons or people trade is a pressing public health concern which transcends all races, social classes, demographics, and gender (Ross-Sheriff and Orme 2008). No population is exempt from the ever-present threat of traffickers. People as a global commodity is unimaginable and definitely a human rights issue (Spapens 2018, 536). Human traffickers are motivated by greed, driven by quota, and are devoid of respect for human rights, preying upon the vulnerable and damaging the psychological and physical well-being of their victims (Sharapov 2018, 527). It is not a new phenomenon, thus signalling some of the possible best mechanisms that may be suitable to deal with the issue. Being a maritime state with wide open borders make it vulnerable and difficult to police the syndicates (Mahalingam and S. Sidhu 2020, 309).

There are several contributors to human trafficking in Malaysia. The strategic location of Malaysia, which is situated in the heart of Southeast Asia, in addition to its vast borders and economic prosperity have attracted workers and smugglers (Buckley *et al.* 2022). Meanwhile, the economic crises, domestic and regional conflicts, political instability, displacement, and global economic problems in some of the countries have become push factors for people to emigrate to Malaysia in search of better job opportunities. In the process of migrating, some may become trapped in the trafficking circle (Eusof 2016, 17).

According to Hoffstaedter and Missbach (2022) human trafficking, to some extent, relies on diaspora networks in the retrieval, transportation, and exploitation of victims. In particular, there is a strong relationship between the citizenship of traffickers and victims, as well as between traffickers and their intermediaries and collaborators (Howard 2018, 512). This finding applies in the case of transnational or across between and among countries and domestic trafficking.

Trafficking in women is an issue of increasing concern in Malaysia (Ollus and Jokinsen 2018, 478). The main factor that influenced the high number of women being trafficked is migration because of weak border security protection and smuggling (Nur Zulaikha and Ahmad 2017, 15). In addition to weak border patrol, law enforcement is the next another major factor which contribute to obstacles and challenges for the effectiveness of the implementation process (Friedman and Johnston 2018, 2). Rapid development, including the process of globalisation, profitable business and corruption

among authorities, have further toughen the issue to be dealt with (Howard 2018, 521). On top of this pressing issue, the sad truth is that most of the Malaysian community are not aware or do not care about human trafficking (*Malaysia Now* April 29, 2022). Presently, media including social media is the society's main source of information and awareness on human trafficking issues (Friedman and Johnston 2018, 3). In other words, the issue may be unknown if one is media illiterate or do not have access to the internet.

Similarly, our study which was conducted from June 2018 to January 2019, has demonstrated that showed eight out of every 1,000 oil palm plantation workers were in a 'forced labour' situation, where a higher prevalence rate can be found in Sarawak than in Peninsular Malaysia and Sabah (US Embassy in Malaysia 2021). Employers use practices that depict forced labour such as movement restrictions, breach of contract, wage fraud, assault, threats of deportation, incurrence of heavy debts, and passport detention to exploit some migrant workers into labour trafficking in oil palm plantations and agriculture, construction sites, factories and in the domestic worker sector (Arhin 2016, 79). Our recent fieldwork that was conducted in February 2022, in Rembau, Negeri Sembilan, portrayed the situation of this force labour like situation. In other words, while women have been sexually exploited, men were vulnerable to forced labour situation. Housing was too small, salary was below minimum wages, they worked for a long working hour, their medical needs were not provided. In an interview made, these workers mentioned that they had no choice but to stay and work to survive (Personal communication with the Victim, Rembau February 8, 2022).

### **The Contested State of Human Security: Contemporary Trafficking Crimes and Issues**

There are many human trafficking issues encountered by Malaysia (see also Ab Hamid and Mohd Kamal 2022; Abd Jalil 2021; Othman *et al.* 2018). During the third UPR, Malaysia received a total of 268 recommendations on human rights issues from 108 Member States (*UNHRC* 2018b). In the cycle, Malaysia was pleased to accept 147 proposals on human rights (fully supported) and another 37 proposals have only been partially accepted (*UNHRC* 2018a). Outright acceptance is whereby the Government of Malaysia is able to adhere fully to the principles and spirit of the recommendations (*UNHRC* 2021b). On the other hand, those accepted in part means that the Government of Malaysia agrees with and is able to implement part of the recommendations due to existing Government policies or positions (*UNHCR* April 1, 2021). Malaysia also takes note of 84 recommendations due to several reasons, which amongst others being in contradiction with the Federal Constitution or existing laws (*Bernama* February 6, 2018). Additionally, some recommendations which were made were formulated based on inaccurate assumptions or assertions (*UNHRC* 2018b). Malaysia received 11 recommendations in terms of human trafficking issue. The recommendations can be divided into two, namely Enforcement and Protection. Member states like Cambodia, the United Kingdom and Northern Ireland, the United States of America (USA), Algeria, Djibouti and Nigeria have urged Malaysia to increase enforcement in combating the issue (*UNHRC* 2018a). Meanwhile, countries like Hungary, Senegal, Thailand, Angola and the US recommended Malaysia to increase protection to the victims of human trafficking, thus signalling the issue of human rights for the victims.

Malaysia has fully accepted 10 (ten) of the recommendations (*UNHRC* 2020).



However, one recommendation received from Saudi Arabia has been partially accepted by the Government. Saudi Arabia had recommended Malaysia to increase assistance to victims of human trafficking; 151.115 - "... continue providing physical, psychological and social integration assistance to victims of trafficking in persons." (UNHRC 2018a). The reason is mainly Malaysia's inability to provide such assistance to the victims of human trafficking (Personal communication with UKM Academician, September 29, 2021).

Besides, challenges in terms of the understanding of Malaysian law enforcement agencies on the issue of human trafficking have resulted in Malaysia being categorized as a "FAILURE" in providing human rights protection based on the results of the United Nations (UN) observations in 2015 (UNHRC 2018b). UN observers also agree that Malaysian enforcement officers do not have sufficient capacity to identify victims of human trafficking accurately (US Department of State 2020). The lack of coordination between government agencies to combat this crime is a result of, a) the different commitments between agencies; b) different understanding of trafficking crime; and c) its different effects and relevance to the agencies (Personal communication with the Officer, Attorney General Chambers, September 21, 2021). Government actions from the aspects of policy, legislation, enforcement, custody and protection, media, publicity, and awareness have been carried out. For example, in terms of publicity received on the issue, at least 39,000 announcements were made through government and private radios while 29,000 locations around the country have been visited by various government officers in spreading awareness of the issue throughout 2020 (Personal communication with the Officer, Ministry of Communications and Multimedia, November 22, 2021). The actions of the NGOs have also contributed in terms of literacy and helping victims in shelters but there are still shortcomings in terms of protection that affect human rights (HAM) in Malaysia, for example, shortage of human resources and resources. Recent cases include online sexual exploitation of children in Malaysia (trafficking in children) that require greater attention from enforcement agencies (Personal communication with the Officer, Ministry of Communications and Multimedia, November 22, 2021).

Referring to United States' Trafficking in Persons (TIP) Report, 2021, 15 US TIP Report Proposals (US Department of State 2021b) which have been seen as accusations against Malaysia as shown below.

**Table 1: Four Categories of Human Trafficking Issues in Malaysia**

Categories	Issues
Forced Labour	<ul style="list-style-type: none"> <li>● North Korean forced labour in Sabah</li> <li>● Chinese National workers working for Malaysian Construction Projects in Johor (unpaid overtime etc.)</li> <li>● Forced begging of refugee children</li> <li>● Malaysian women and children forced labour</li> <li>● Forced labour in palm oil plantations in Sabah</li> <li>● Indonesian forced labour</li> </ul>
Sexual Exploitation	<ul style="list-style-type: none"> <li>● Young women and girls including Nigerians who are exploited and trafficked to work in restaurants, hotels and beauty salons</li> <li>● Rohingya women from Bangladesh refugee camps working in Malaysia illegally (commercial sex)</li> <li>● Commercial sex exploitation of Malaysian women and men</li> <li>● Online sexual exploitation of children in Malaysia (trafficking in children).</li> </ul>

	<ul style="list-style-type: none"> <li>● Malaysians trafficked to Cambodia with the promise of high paying jobs (but are being exploited)</li> </ul>
Stateless	<ul style="list-style-type: none"> <li>● Unresolved cases of stateless children in Sabah</li> </ul>
Misconduct of	<ul style="list-style-type: none"> <li>● Ongoing corruption among authorities</li> </ul>
Authorities	<ul style="list-style-type: none"> <li>● Bribes by immigration officials at border crossing</li> <li>● Government officials' extortion and exploitation of migrants</li> </ul>

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Source: (US Department of State 2021b)

Latest issues involving big companies and the plantation sector such as:

### ***Case 1: Palm Oil Issue***

A study conducted from June 2018 to January 2019 showed that eight out of every 1,000 oil palm plantation workers in Malaysia were in a forced labour situation, where a higher prevalence rate can be found in Sarawak than in Peninsular Malaysia and Sabah. Employers use practices that depict forced labour such as movement restrictions, breach of contract, wage fraud, assault, threats of deportation, incurrence of heavy debts, and passport detention to exploit migrant workers in labour trafficking in oil palm plantations and agriculture, construction sites, factories, and domestic worker sector. Meanwhile, a 2018 NGO report showed various indicators of forced labour related to palm oil production in Malaysia, including forced practices such as threats, violence, lack of clarity regarding terms and conditions of employment which are subject to employers' manipulation, lack of protection by the police, debt, high incumbent costs, and involuntary overtime work (Mohamed Razali 2022; Mohd Amin *et al.* 2016). Smugglers use the high smuggling debt borne by labours to force them to work to pay the debt.

A year-long investigation revealed the use of forced labour in the production process. Investigations found widespread exploitation in the oil palm industry, from debt bondage to outright slavery. The United States' investigation has received more than 130 plantation workers and former employees at 24 companies across Malaysia and Indonesia. As a result, the US has announced immediate restrictions on imports of palm oil and related products from Malaysian companies (US Department of State 2019).

Meanwhile, Sime Darby is the third Malaysian company to be slapped with a ban by the United States in 2020 over forced labour allegations, after FGV Holdings (FGVH.KL), another Malaysian palm oil producer, and latex glove producer Top Glove (TPGC.KL). Malaysia relies on over 337,000 migrant workers from countries like Indonesia, India and Bangladesh to harvest palm fruit. United States imported about \$ 410 million worth of crude palm oil from Malaysia in the year to September 2020, accounting for just over 30% of total U.S. palm oil purchases.

In Malaysia, conscientious oversight of the industry including the equitable distribution of viable plots for small holders has powered that country's development and altered the fortunes of millions. Malaysia has complemented such prudent policies with a commitment to the Malaysian Sustainable Palm Oil (MSPO) scheme, which has realised the widespread adoption of sustainable standards across the country.

FGV Holdings Berhad stated that the allegation of labour abuse stated by the US agency was in 2015 and the matter has already been resolved. FGV Holdings issued a statement on 26 September 2020 stating that the company is committed to respecting

human rights and upholding its labour standards. FGV stressed that the sustainability and human rights agenda is a priority and that it has dedicated energy towards improving labour practices. In addition, FGV has implemented long-term plans aimed at further strengthening various aspects of its labour practices such as the recruitment process, human rights training programmes, workplace and living environment conditions and grievance mechanisms (McAdam 2021, 789).

Our researchers had made attempts to interview these forced labours. We had the opportunity to conduct an observation in one of the Felda (palm oil plantation in Negeri Sembilan) on February 8, 2022. We managed to interview a group of male palm oil workers. Five of the labourers were from Bangladesh, 4 from India and 4 from Indonesia. They all lived in a small, shared house in the palm oil plantation except for the Indonesians who had a separate house. The Indians and Bangladeshi shared the same house despite the Indians being Hindus while those from Bangladesh are Muslims. Interviews conducted revealed that discrimination and forced labour took place in the plantations. Salary and working hours were not consistent, and medical facilities were not provided (Personal communication, Felda Palm Oil Plantation, Negeri Sembilan February 8, 2022).

### *Case 2: Top Glove Sdn. Bhd.*

On 16 July 2020, the United States Customs and Border Protection (CBP) banned products made by two of Malaysia's Top Glove subsidiaries, Top Glove Sdn. Bhd. and TG Medical Sdn Bhd, on evidence of forced labour practices including debt bondage, excessive overtime, abusive working and living conditions, and retention of identity documents. The latest ban applies to all disposable gloves made in Malaysia by the parent corporation and its subsidiaries. Two months later, in September 2021, the United States lifted the ban on imports of medical gloves made by Top Glove, according to the United States Customs and Border Protection and the Malaysian company (US Department of State 2021b).

Top Glove has taken steps to make restitution and payments to the migrant workers involved. On 10 August 2020, the company announced that it had made its first repayment of RM4.4 million, which is part of a RM53 million (US\$ 12.5 million) package to be paid to its migrant staff to be removed from import restrictions by the United States.

On February 8, 2022, our researchers had the opportunity to visit Top Glove. Interviews were conducted with four workers comprising one female worker from Indonesia and three male workers from Bangladesh. The female worker has been with Top Glove since 2019 while the male workers have all worked for almost four years at Top Glove.

Our researchers also had the opportunity to move around in the area especially in the male hostels. There were three groups of workers. The workers comprised locals from Malaysia and foreign labours from Indonesia, Bangladesh and Nepal. They were separated from each other. One small house accommodated about 20 workers with 2 bathrooms. The room were small, stuffy, and not comfortable. They worked three shifts but may work extra hours. Salary were paid differently to locals and foreigners. Overall, they were dissatisfied with their condition and felt that they have been victimised by their employers (Personal communication with victim of top Gloves February 8, 2022).

### ***Case 3: Human Trafficking Shelters***

Issues of dissatisfaction regarding shelters have been raised in the UPR 2018. We had the opportunity to visit two shelters established by the government. One is for child victims while the other is for male victims. The shelters were clean, food were abundant, and the schedule was prepared carefully for the victims. We were quite impressed with the situation and the environment in the two shelters. We interviewed the managers as well as the victims. We discovered that many of the issues were closely related to legislation (Personal communication with victim February 14, 2022). For some, they were in the shelters for far too long waiting for their turn to be prosecuted or to be heard in court. We were told that many times, their cases had to be postponed although at times they were already at the court and had no choice but to return to the shelters because the hearing was postponed. They were not told of the reasons for the postponement of the hearing.

Many of the cases involved forced labour for males. Meanwhile, for the females/children, it was sex exploitation. The victims were young, under age (in this case 13-16 years old) did not know about the job when they were offered to come and work here; at the same time, they did not run away when they found out as they were given money which they considered was quick and easy money. They were underage and were exploited by their employers before they were rescued and taken to the shelters (Personal communication with victim February 14, 2022).

### **Existing Woes of the Government Policy and Security Measure**

In general, there are initiatives taken by the government to combat the crime of human trafficking. However, the most important action implemented by the Malaysian government was drafted and gazetted the Anti-Trafficking in Persons Act 2007 (Act 670)/AAPO 2007 (Act 670) which was passed on 24 April 2007 and came into force on 28 February 2008. It was made into law as well as a Malaysian national policy to specifically combat the crime of human trafficking and to meet the requirements of the TIP Protocol (*Trafficking in Person Protocol*). ATIPSOM's focus is on prevention, prosecution, rehabilitation, and protection and the latest is in collaboration with the NGOs. This Act was amended twice in 2010 and 2015 to improve the elements of enforcement, prosecution and protection of victims of human trafficking. A few existing clauses in the ATIPSOM Act are being improved to ensure that the Act remains relevant and leads to higher convictions in human trafficking and forced labour cases. The government is now in the final process of drafting the necessary amendments in accordance with current needs and developments and they (proposed amendments) are expected to be tabled in Parliament when it convenes again later. Since then, the government has set up the National Anti-Trafficking in Persons Action Plan/NAPTIP (2010-2015; 2016-2020), and the latest National Plan is for a period between 2021 to 2025.

The government has enforced the ATIPSOM Act 2007, developed and implemented NAPTIP 2021-2025, and improved the victim identification aspect based on the indicators set out in the National Guidelines on Human Trafficking Indicators (NGHTI). NGHTI comprises special indicators developed to assist enforcement agencies in identifying human trafficking victims. The indicators are crucial in ensuring that all

victims of human trafficking are identified and rescued and placed in government-designated shelter. NGHTI was developed based on the requirements and obligations outlined under Article 14 of the ASEAN Convention on Trafficking in Persons, especially Women and Children (ACTIP) to establish national guidelines on the victims. The government also established ATIP Special Sessions Court in 2018.

Apart from the above mentioned, the government has established the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) in 2008. Later, the name was changed to the Secretariat of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Council (November 15, 2010). It was then followed by the establishment of the National Strategic Office for MAPO (NSO-MAPO) and is now known as NSO-MAPO. The Malaysian government also cooperates with several NGOs and International NGOs (INGOs) such as *Tenaganita*, *Suka Society*, *National Council of Women's Organisation (NCWO)*, *United Nations High Commissioner of Refugees (UNHCR)* and so on. The government, through MAPO has cooperated with international organisations and airlines (*MAS*, *Air Asia*, and *Malindo Air*) to provide trafficking victim identification training to cabin crews (*Bernama* February 6, 2018). Furthermore, the Malaysian government has set up eight government shelters and two NGO shelters for the placement of victims of human trafficking in Malaysia: one (1) for men, five (5) for women, and two (2) for children. These NGO shelters operated by Good Shepherd Berhad and Tenaganita, respectively. Also, there are seven shelters (*RP-Rumah Perlindungan*) to protect victims of human trafficking under the Department of Women Development (JPW) where 5 RPs are for women including Rumah Perlindungan Khas Wanita Kuala Lumpur (Special Women Shelters - RPWKL), Rumah Perlindungan Wanita Zon Tengah (Central Zone Women Shelters - RPWZT), RP Sabah in Kota Kinabalu (Women Shelters in Sabah – for East Malaysia Zone), RP Johor Bahru (Women Shelters in Johor Bharu – for Southern Zone) and RP Kelantan (Women Shelters in Kelantan for Northern Zone) . RP for boys in Kempas, Johor Bahru, RP for girls in Rembau, Negeri Sembilan and RP for males in Tanjung Kling, Melaka. RP5 is the first RP to be gazetted. The original location of RP5 is in Bukit Ledang and it has now moved to a new location near *Dewan Bahasa dan Pustaka (DBP)* in Kuala Lumpur.

In addition, various Memorandum of Understanding (MoU) was signed with other countries in an effort to combat human trafficking such as MoU with Saudi Arabia on 18 April 2011; MoU with China on 2 August 2012; MoU with Bangladesh on 26 November 2012; MoU with Canada on 6 October 2013. The government also set up a Working Group on Human Trafficking and People Smuggling with Australia; MoU on Immigration to Incorporate TIP and People Smuggling with the United Kingdom (UK); MoU on Immigration to Incorporate TIP and People Smuggling with the Netherlands; Capacity Building Prosecution and Enforcement with the United States. Within Southeast Asia, Malaysia and nine ASEAN member countries have signed the ASEAN Convention against Trafficking in Person (ACTIP) (Signed on 21 November 2015) and approved ASEAN Plan of Action against Trafficking in Persons (APA) which was adopted on 21 November 2015. Malaysia has actively participated in several international forums and conferences to combat human trafficking and transnational crime which included the ASEAN Ministerial Meeting on Transnational Crime (AMMTC); ASEAN Senior Officials Meeting on Transnational Crime (SOMTC); Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) and Asia-Europe Meeting. This initiative was to enhance international cooperation in regional and international information sharing, capacity building for law enforcement, law harmonisation, police cooperation, and intelligence sharing.

In term of public complaints and awareness, the government has coordinated various efforts in disseminating information on the issue using various channels such as television, radio, and social media to educate the public that trafficking in persons as well as smuggling of migrants is a serious crime. A platform to report any activity related to human trafficking or smuggling of migrants has been provided by the government via special hotline through 03 - 8000 8000 in collaboration with 1 Malaysia One Call Centre (1MOCC) (KDN, 2021). Moreover, Ministry of Women, Family and Community Development has provided a careline (NUR line 15999) as medium for public and victims to complaints. The public can also make a complaint via the MAPO chatbot application at its website (MAPO 2021). The MAPO Chatterbot/Chatbot features Artificial Intelligence (AI) that stimulates human conversation through voice or text or both and is available in 6 languages (Malay, English, Indonesian, Burmese, Nepali and Bengali) to help victims of human trafficking. The government also provides brochure on the Legal Process of Victims of Human Trafficking in 4 languages (Mandarin, Khmer, Tamil, Vietnamese).

### Persisted Trafficking Security Worldview and Perils

Despite of various efforts made by the government to combat the crime of human trafficking, there are some challenges in terms of prevention, prosecution, protection, and partnership faced by the government as outlines in table 2 below:

**Table 2: Problems and Challenges faced by the Malaysian Authorities**

No	Focus	Challenges
1	Prevention	<ul style="list-style-type: none"> <li>● The KDN (Ministry of Home Affairs) website lacks updates making it difficult for the public to access and obtain information (Personal communication with Academics November 15, 2021).</li> <li>● Lack of officers as well as exchange of officers. Officers who are constantly changing - new officers who are less skilled and take time to train (Personal communication with Attorney General Chambers September 21, 2021).</li> <li>● Corruption is another problem (<i>Harian Metro</i> August 4, 2021 and Personal communication with Academics September 29, 2021).</li> <li>● Limited budget allocated for human trafficking cases, for example outdated facilities (Personal communication with Enforcement Agency Officials, February 7, 2022)</li> <li>● The level of literacy, the lack of awareness of the public regarding this crime (Personal communication with Academics September 27, 2021).</li> <li>● At the ASEAN level, Malaysia does not have a specific MoU on human trafficking, but instead an MoU on transnational crime which comprehensively includes crimes such as human trafficking, combating terrorism, money laundering, piracy and sea robbery, cybercrimes, migrant smuggling, and other transnational crimes.</li> </ul>

## 2 Prosecution

- The Anti Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM) is less effective because the offenses of criminals who exploit human beings receive light punishment if they refer to Sections 12, 13, 15 and so on. The syndicates are able to pay the amount punished. Jail sentences are too short and not severe enough (Personal communication with Academics November 6, 2021).
- Failures to arrest syndicate leaders; only subordinates were arrested (Personal communication with Academics September 29, 2021).
- Prosecution of the victim takes longer time and pending cases as a result of the weakness of enforcement agencies from multiple aspects such as investigation, namely identifying the victim, the duplication of IO duties, as well as the prosecution and the judiciary (Personal communication with AGC September 23, 2021).
- Misuse of Visa on Arrival (VOA) - (Personal communication with Academics September 29, 2021).

## 3 Protection

- Not enough shelters, as a result the available shelters are too crowded; for example, shelter is too small (e.g., RPWKL).
- Duration of stay at the shelter is too long– more than three months (e.g., RPWKL) (Personal communication with Protection Manager February 10, 2022)
- Unprotected national borders (Personal communication with Academics November 6, 2021; Personal communication with Enforcement Officers February 7, 2022)
- Insufficient number of translators and counsellors to interview the victims who do not understand the language. E.g., victims from Cambodia.
- The Anti Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM Act) also requires victims of human trafficking to be subjected to physical detention instead of providing protection to victims of human trafficking (TIP Report January 29, 2021)

## 4 Partnership

- Lack of cooperation between the NGOs and the government particularly the discussion before sending the report to the US (TIP Report, 2021). As a result, the report from TIP is different from the report submitted by the Malaysian government (Personal Communication, Officer, Attorney General Chambers September 21, 2021).
  - No coordination between data/statistics from the Council for Anti Trafficking in persons (MAPO) and the sub-committees. In other cases, there is often an overlap of areas of work (Personal communication with Attorney General Chambers September 21, 2021).
  - The public themselves are afraid to provide information out of concern for their safety (Personal communication with Academics September 29, 2021).
  - The Anti-Trafficking in Persons Council (MAPO) has compiled various Standard Operating Procedures (SOPs), but they have not been disseminated to non-government organisations (NGOs). This situation has resulted in
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Malaysian law enforcement agencies facing constraints in identifying victims of human trafficking (lack of communication).

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Source: (Developed and compiled by the Authors 2022)

### **Essential and Preliminary Recommendations**

Based on the issue and interviews as well as our observation, there is room for improvement. we are recommending improving protection and prosecution or enforcement aspects.

#### ***Protection Aspect***

First, from protection aspect, we strongly suggest that the Malaysian government should open specialised shelters and one-stop service centre in Kuala Lumpur. Besides, raising the standards of the operation procedure for human trafficking investigations such as care for victims and provide a fully equipped room for forensic investigation of children; set up rehabilitation and reunification programmes by providing psycho-social support, medical services, legal aid, life aid, skills training and reunification services to identified victims and updating the national reference system.

Second, providing a Manual on TIPS for Forced Labour to accommodate issues relating to forced labour/human trafficking, i.e., definitions, elements, indicators, and its difference from other relevant laws to commit more protection centres separately for children, men, and women victims and to provide psycho-social support and trauma relief to all surviving and recovering victims.

Third, the services provided should include case management, temporary shelter, social welfare, daily life assistance, education/skills training, hygiene kits, referrals for victim/witness assistance, flight aid, transportation aid, house visits, medical and financial assistance and conduct training and workshops to increase the capacity of frontline workers and public awareness.

#### ***Prosecution/Enforcement Aspect***

Developing an action plan for the government's roadmap: (a) advocacy and prevention; (b) protection and assistance; (c) enforcement and prosecution; (d) victim support and reintegration; (e) partnership; and (f) legal structure and framework in several immediate areas:

- First, developing a Quick Task Force in each district and airport consisting of public prosecutors, enforcement investigators, law enforcement, welfare officers and non-governmental organisations (NGOs).
- Second, supporting intelligence, surveillance, and rescue operations under the Anti-Trafficking Law.

Additional recommendation included the proposal for the authority may include:

- Malaysian Labour Ministry should mandate the licensing and regulation of recruitment agents that limit the maximum hiring fee that an employee can pay



to an agent at one month of pay for each year of a valid work permit or during the term of an employment contract (whichever is shorter) and subject it to an overall maximum of two months of pay.

- Establishing the Witness Protection Act and the Labour Protection Act.
- Setting up human trafficking committee chaired by the Prime Minister and accompanied by the Deputy Prime Minister, the Attorney General, the Commissioner of Police, related ministries, and experts in the field. The committee provides recommendations to the cabinet on government policies in the prevention and suppression of human trafficking, and on the review of laws, regulations and acts, establish plans to prevent and combat human trafficking and to monitor the implementation of plans, laws, acts and regulations as well as agency performance and relevant officials in preventing and combating these crimes.
- Training officers to identify victims of trafficking and use interviewing techniques in obtaining information from the victim so that the victim has a safer environment to report.

### **Conclusion**

The Malaysian government has made various effective efforts in combating the crime of human trafficking. Yet, there are numerous obstacles and Malaysia is still placed at an unsatisfactory level especially in helping the victims. From the research, it has been shown that at least two major challenges still face the country, namely from the aspects of enforcement and legislation. Coordination among the different government agencies responsible seem to be a hurdle to tackle in addressing the human trafficking issues. Meanwhile, the long wait for the prosecution and the delays seems to be another obstacle that needs to be addressed to solve the issue of human trafficking crime.

In relation to the recommendations in the UPR Report, it has been proven difficult for the government to execute all the recommended measures because of budget constraints and issues such as victims not being equated with the local population. The government has also looked at practices from several other countries, where they have applied some of the policies but forgo some others. Evidence from the research also suggests that Malaysia is still facing the issue of forced labour in the palm oil industry. Meanwhile, a glance at the Top Glove' hostels in Meru, Kelang area demonstrated that there are some unresolved issues such as cramped and crowded hostels and long hours of work. The research concluded that some improvements were observed in the situation at the shelters for the victims especially those managed by the governments.

Unpredicted factors, including the Covid 19 pandemic, may contribute to the worsening of the situation of human trafficking in the country. Likewise, the high demand for foreign workers seems to be the push factor for the trafficking activities to continue in the country. It is high time for the government to impose income tax on these foreign workers. Free tax may be one of the reasons why these workers have chosen Malaysia as their favourite destination. Yet, from the research, we cannot deny that the government of Malaysia has adopted relevant policies to address the issue.

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1. Personal Communication with the Malaysian Maritime Enforcement Agency, February 7, 2022.
2. Personal Communication with the UKM Academician, September 29, 2021.
3. Personal Communication with the Attorney General Chambers (AGC) Officer, September 21, 2021.
4. Personal Communication with the Ministry of Communications and Multimedia's Officer, November 22, 2021.
5. Personal Communication with the Victim 1, Felda Palm Oil Plantation, Negeri Sembilan, February 8, 2022.
6. Personal Communication with the Victim 2, Top Gloves, Feb 8, 2022.
7. Personal Communication with the Victim 3 from human trafficking shelters, Feb 13, 2022.

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