

Organised Crime: Governments Initiatives, Laws and Investigation of Human Trafficking In Person and Smuggling of Migrants in Malaysia

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Introduction

There is no region is immune from the global reach of transnational organised crime syndicates. Organised crime groups continue to branch out beyond their traditional parameters, take quick advantages of new opportunities and move easily into new geographic areas. In Malaysia the organised criminal group consist of three or more persons existing for a period of time and acts in concert with the aim of committing one or more serious crimes. The group obtains, directly or indirectly, a financial or other material benefit. In today environment the organised crime trends are:-

- Global in reach
- Multiple forms of criminal activity
- Expanding their criminal markets
- Employing violent means
- Linked to terrorist groups
- Unique strategies.

Organised Crime Group involving in Human Trafficking

Malaysia has been claimed a transit and a destination country and to certain extent a source country for women and children trafficked. Due to the economic development and strategic geographical factor, transnational organised criminal make Malaysia the preferred target of the human traffickers and people smugglers. Trafficking in persons is the practice of humans being tricked, lured, coerced or otherwise removed from their home or country, and then forced to work with no or low payment or on terms which are highly exploitative. Mostly the reasons for human trafficking are as follows:-

- For the purpose of commercial sexual exploitation,
- Men, women and children trafficked for the purpose of forced labour,
- Subjected to condition of involuntary servitude in the domestic, agriculture, food service, construction, plantation, industrial and fisheries sectors.

Human Trafficking and People Smuggling in Malaysia

In Malaysia, most of the victims for trafficking in persons are mainly females and non-nationals. Victims of trafficking persons are nationals from 20 countries encompassing South East Asia, South Asia, and Asia Pacific region. Nationals from Indonesia, China, Sri Lanka and the Philippines are high on the list of victims for trafficking in persons in the country in which bulk of them were for sexual exploitation including domestic servitude. With regards to male victims of trafficking in persons, they are mainly victims of labour exploitations.

The majority of trafficking victims are foreigners who mostly migrate willingly to Malaysia from Indonesia, Nepal, India, Thailand, China, Philippines, Myanmar Bangladesh, and Vietnam Cambodia in search of greater economic opportunities. Most of the victim were conned or duped by syndicate into coming to Malaysia by recruiters in their home country. Majority of the victims rescued were women and victims were brought into Malaysia legally or illegally. A significant number of young women are recruited for work in Malaysia restaurants and hotels, some of whom migrate through the use of 'student' visa but subsequently are coerced into Malaysia's commercial sex trade.

Transnational organised criminal syndicates are responsible for the bulk of human trafficking. It is one of the most profitable illegal businesses. Syndicate in these organised crime will ensure the victim passports taken away and kept by the syndicates and were bound to dept bondage. The dept was set by the syndicates for the cost of bringing the victims into Malaysia. To settle this dept, victims were forced into prostitution, or being forced to work as labours or domestic helpers with very little pay or no pay at all and some of them had to work in very bad working conditions.

Some Malaysian citizens are trafficked internally and abroad to Singapore, Hong Kong, France and the United Kingdom for commercial sexual exploitation.

Presently, the Criminal Investigation Department (CID) has been specifically tasked in tackling human trafficking activities, especially on the aspect of labour or sexual exploitation. People smuggling issue however, is being tackled by the Special Branch particularly to procure intelligence on the identification and the syndicates involved in the movement of human cargo across international border affecting Malaysia.

Organised Crime Syndicate - Modus Operandi

The organised crime syndicates employ various modes in furtherance of their illicit trade. The intelligence gathering identified modes of trafficking in person are as follows:-

- **Illegal Recruitment** - is used by individuals pretense as recruiters and projecting themselves as representatives or sales agents of a bogus recruitment agency authorized to recruit and deploy foreign workers to other countries. Victims are promised an expense-free recruitment process that includes air tickets, passport processing, accommodation and foods will be provided with the assurance that work permits will be issued at the country of destination. Once the victims are transported, most are sold to prostitution dens and they begin to incur sky-rocketing debts leaving them no choice but to go out and render sexual services to customers to pay said debts.

- Illegal Migration - is committed by the local with international link organised syndicate for people from Bangladesh, Afghanistan, Sri Lanka, who desire to permanently live or work abroad either in Singapore, Malaysia or Australia.
- Marriage Contract – involves foreigners brought to Malaysia then registered as a wife to the local before they can work with the entertainment outlets. The members of the syndicate look for young, single women who are then paired off with Malaysian. Pictures are published through the internet or other mode of communication and some end up into prostitution.

The Laws before the Year of 2007

Before 2007, there was no law in Malaysia that specifically addressed trafficking in persons and people smuggling. The Royal Malaysia Police is the leading enforcement agency to combat the crime relied on provisions that were contained in the Penal Code, Child Act and the Immigration Act 1959 and 1963. Today, people smuggling is internationally acknowledged as a transnational crime. Referring to the United States Trafficking in Persons Report in 2007, Malaysia was positioned Tier 3 group; which means under countries whose government do not fully comply with the minimum standards of the trafficking victims Protection Act's and are not making significant efforts to do so. Since then, Malaysia has made significant strides in combating human trafficking.

Anti-Trafficking in Persons Act 2007

The Anti-Trafficking in Persons Act 2007 (ATIP) was introduced to create a specific and comprehensive law for the purpose of combating trafficking in person's activities. In this law it covers all aspect of offences that relates to trafficking in persons including the removal of human organs. The Act provides for:-

- The protection and support of trafficked persons;
- The offence of trafficking in persons;
- The establishing for the Council for Anti-Trafficking in Persons; and
- Matters connected therewith.

The Act has given a definition of 'Trafficking in Person's which consist the elements of 1) recruitment, 2) physical transportation, 3) physical or psychological coercion, 4) exploitation of the work, and 5) absence of informed consent, which allows the Royal Malaysia Police and other enforcement agencies to act upon the criminal in such act.

Malaysia has passed amendments on Anti –Trafficking in Persons Act 2007 to include investigating cases relating on smuggling of migrant. This amendment came into force on 15th November 2010. This will include Labour Department as one of the enforcement agency to enforce the above mentioned law. Besides that there are other complement laws such as:-

- Immigration Act
- Malaysian maritime Enforcement Agency Act
- Customs Act
- Evidence Act
- Court of Judicature Act
- Child Act
- Penal Code and
- Restricted Residence Act.

Statistics of Successes since 2008 until 31st December 2012.

Since the Act came into force in February 2008, The Royal Malaysia Polis under the Ministry of Home Affairs together with other enforcement agencies has rigorously launched operations and initiatives to combat organised crime syndicate from committing the crime of human trafficking. The statistics below shows the success achieved:-

Statistic on Human Trafficking In Person since 2008 till 31/12/2012

| NO | ITEM | TOTAL |
|-----------|----------------------------------------------|--------------|
| 1 | Total number of cases | 612 |
| 2 | Total of victim of human trafficking (IPO) | 3570 |
| 3 | Total number of Protection Order Issued (PO) | 1371 |
| 4 | Total number of arrestee | 835 |
| 5 | Total number of criminal Prosecuted | 488 |

Statistic of Exploitation and Smuggling of Immigrants

| NO | OFFENCES | TOTAL |
|--------------|------------------------------|--------------|
| 1 | Exploitation | |
| | 1.1. Sex | 346 |
| | 1.2. Force labour | 171 |
| | 1.3. Slavery | 0 |
| | 1.4. Transfer of human organ | 0 |
| 2 | Other Offences | |
| | 2.1. Smuggling of immigrants | 26 |
| | 2.2. Visa Exploitation | 32 |
| | 2.3. Selling of baby/infant | 37 |
| TOTAL | | 612 |

Current Statistics on Prosecution

Below is the prosecution's statistics, as of 27th September 2012. The statistics below highlighted all cases charged under Anti-Trafficking in Person and Anti-Smuggling of Migrant Act 2007 (ATIPSOM 2007). Hence, the listing also included cases of people smuggling as well.

No. of cases based on registration court no (28/2/2008-17/5/2013);

| CASES CATEGORY | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | TOTAL |
|----------------------------------------------------|------|------|------|------|------|------|-------|
| Cases charged | 8 | 142 | 192 | 22 | 63 | 15 | 488 |
| Cases pending trial | 0 | 27 | 109 | 7 | 16 | 15 | 280 |
| Cases Acquittal | 2 | 50 | 41 | 10 | 19 | 0 | 87 |
| Cases Discharged Not Amounting To Acquittal (DNAA) | 3 | 18 | 2 | 1 | 10 | 0 | 25 |
| Conviction | 3 | 47 | 40 | 4 | 18 | 0 | 96 |
| Total of accused persons | 8 | | 62 | 58 | 133 | 0 | 330 |

Total number of accused person;

| NO | TOTAL NUMBER OF ACCUSED PERSONS BY YEAR | TOTAL |
|----|-----------------------------------------|------------|
| 1 | Total of accused persons (2008) | 8 |
| 2 | Total of accused persons (2009) | 69 |
| 3 | Total of accused persons (2010) | 62 |
| 4 | Total of accused persons (2011) | 58 |
| 5 | Total of accused persons (2012) | 119 |
| | Total of accused persons | 316 |

Breakdown of charges;

| NO | CATEGORY OF CHARGES | 2008 | 2009 | 2010 | 2011 | 2012 | TOTAL |
|-----------------------------|---------------------|----------|------------|------------|-----------|------------|------------|
| 1 | Section 12 | 2 | 105 | 120 | 9 | 46 | 282 |
| 2 | Section 13 | 6 | 32 | 63 | 8 | 12 | 121 |
| 3 | Section 14 | 0 | 18 | 8 | 2 | 5 | 33 |
| 4 | Section 15 | 0 | 3 | 0 | 0 | 0 | 3 |
| 5 | Section 23(2) | 0 | 5 | 0 | 0 | 0 | 5 |
| 6 | Section 26A | 0 | 0 | 0 | 15 | 28 | 43 |
| 7 | Section 26C | 0 | 0 | 0 | 0 | 1 | 1 |
| 8 | Section 26H | 0 | 0 | 0 | 6 | 1 | 7 |
| 9 | Section 26J | 0 | 0 | 0 | 2 | 44 | 46 |
| 10 | Section 26K | 0 | 0 | 0 | 2 | 3 | 5 |
| TOTAL NO. OF CHARGES | | 8 | 163 | 191 | 44 | 140 | 546 |

Trends for Trafficking in Persons

The Anti-trafficking in Person (ATIP) Act was promulgated in 2007 and came into force on 28 February 2008. Since the enforcement of the Act, 163 cases were charged under the Act in 2009 while, 191 cases were charged under the said Act in 2010. However there was evident of significant decline in 2011 as reflected in the statistics where charges for trafficking in persons stood at 19. The marked drop in 2011 could be attributed to the following factors:-

- Success of awareness campaign programs among the masses conducted by Government as well as cooperation with the NGOs;
- Effective coordination and integrated efforts to counter this crime by enforcement agencies; and
- Strong deterrence following the amendment of the ATIPSOM 2007. It provides for stiffer penalties and longer imprisonment for the commission of this crime.
- Two prosecution officers in every state have been trained as the specialist prosecutors for trafficking in persons.
- Established a special court in Kuala Lumpur to expedite trial for trafficking cases. In addition a special code (61AT and 62AT) for trafficking in person cases was introduced for better management and monitoring.

Based on the available statistics, most of the trafficking in person offenders were charged under Section 12 and followed by Section 13 of the ATIPSOM 2007. Section 12 involved the element of exploitation which was the most crucial element for the commission of this crime. Meanwhile Section 13 dealt with elements such as threat, abduction, fraud and deception etc.

In 2011, the conviction rate was encouraging in which 16 out of 48 (33%) cases have been successfully convicted for trafficking in persons cases. The increased of the conviction rate could be attributed to the capacity building programs conducted for judges, prosecutors and investigators in enhancing their knowledge and skills of this crime. Additionally, it was also supported by the evidence given by the victims.

Other Government Initiatives to Combat Trafficking in Persons

Malaysia continues to combat such crime and developed Five-Year National Plan which was launched on 25 March 2010 by Minister of Home Affairs. The plan consists of:-

- **Strengthen laws**

- Increase in penalties – fine for trafficking set at between RM500,000/ and RM1 Million, compared to the current penalty of between RM50,000/ to RM500,000/.
- Address the issue of smuggling of migrants - One of the important aspects concerning the amendments to Anti Trafficking in Persons and Smuggling of Migrants (ATIPSOM) 2007 was to include all actions involved in acquiring or maintaining labour or services of a person through coercion. Nevertheless, there is a specific internal guideline that has been prepared amongst which non-payment of salary for three month would constitute as labour exploitation.

Prior to the amendments of ATIPSOM 2007, labour exploitation cases were handled by the Labour Department under the Employment Act 1955. In 2010, 90 employers have been fined for such cases while another 136 individuals has faced similar consequences in 2011. In addition, there were cases where the Labour Department managed to recover non-payment salaries, i.e.:

- 1) Restaurant Shamugam Villas involving 3 Indian nationals (2010),
- 2) Work Agency 'Sri Sejati' involving 34 Indonesian nationals (2010),
- 3) Spectra Alucast Sdn. Bhd involving 8 Vietnamese nationals (2010).

Total amount of compensations paid in these cases were RM31,099,325.00. The Labour Department has conducted capacity building programs for its personnel since 2009 to enhance the skill and knowledge of the Labour Officer in Peninsular Malaysia as well as in Sabah and Sarawak particularly in dealing with labour cases.

- **Coordination and Cooperation Internationally**

- Malaysia has work closely with several countries such as United Kingdom, Australia and related international bodies namely International Organization for Migration (IOM) in conducting capacity building programs encompassing prevention, protection, prosecution and awareness.
- Signing of Memorandum of Understanding in Combating Transnational Crime - Malaysia views the threats of transnational crime very seriously due to the complexities of the crime. This is due to the fact that transnational crime would involve elements with regards to movement of people, financial transaction as well as involvement of organised crime syndicates. In this relation, trafficking in persons is one of the elements under organised crime and transnational crime. To ensure that this crime could be tackled effectively, Malaysia has signed Memorandum of Understanding on Transnational Crime/Security with strategic partners namely the Australia, United Kingdom, Saudi Arabia, United States and China. The MoU/Agreement provides for exchanges of information and intelligence between law enforcement agencies, capacity building program and exchange of best practices.

- **Raise public awareness**

- Conduct awareness through school, institute of higher learning and Media,

- **Work with NGOs**

- Engagement with Non Governmental Organizations (NGO) / International Organization
- Engaging with NGO for the initiative of bringing jobs inside the shelters instead of allowing the victims to work outside the shelters.
- Cooperating with the IOM and 'Suka Society' for counselling.
- Collaboration with the 'Rotary Club of Bandar Sunway' to provide health programs for shelter homes. Activities carried out were as follows:
- Health screening for victims, volunteers and supervisors;
 - Health talk;
 - Screening for hepatitis disease control and
 - Basic life support course.
- Conducting various programmes for the trafficking victims such as English classes and psychological therapy class, Patchwork, cooking classes and necklace design in collaboration with NGOs.
- Collaboration with IOM in conducting "The Smile Buddy Program".
- In order to develop occupational skills among the victims, Ministry of Women had conducted classes with collaboration by local companies.

- **Conduct training in Education and Awareness Programme**

- In its effort to educate employers and migrant workers, Malaysia Anti-Trafficking In Person Organisation (MAPO) had conducted such forums in Cameron Highland, Pahang and Penang in February and March 2012. During this forum, the employers have been informed about the ATIPSOM 2007 and the penalties which can be charged.
- Media and Publicity Committee continues the Awareness Campaign through electronic and printed media. They also conducted talk programmes in local radio and television stations.
- This committee also conducted 6 series of '*Program Minda Setia 1 Malaysia*' in order to create awareness among the mediator i.e. state information officers, state social officers and 1 Malaysia Community Committee members.
- National Council of Women Organisation (NCWO) also conducted numbers of Awareness Campaign as well as Training for Trainers (TOT) involves teachers, students, nurses, government officers and also NGOs.
- Malaysia Council for Child Welfare (Majlis Kebajikan Kanak-Kanak Malaysia) has conducted dialogs among NGOs in order to combat trafficking in persons.

- **Strengthen law enforcement.**

- Conducting awareness programmed for government offices
- Conducting and attending Investigation and Prosecution Training for all Enforcement Agency in the country and abroad.
- Provide discussion, forum, workshop and seminar for the Senior Government Official from the relevant agencies.

Recognition - Tier 2 (watch list) US Department of Labour Report

Malaysia has submitted two consecutive reports to the US States Department on 19 August 2011 and 3 February 2012. In the report, Malaysia refuted the forced labour allegations stated in the US DOL reports. Malaysia also listed down measures taken by the Government to tackle this issue covering the aspects of law and regulations, enforcement activities as well as the establishment of a special committee to improve the wellbeing of workers in the oil palm sectors.

The United States Trafficking in Persons Report in June 2010 - Malaysia was upgraded to Tier 2 Watch List. Governments fully comply with the minimum standards of the Trafficking Victims Protection Act's. Therefore, war against human trafficking far from over.

Comprehensive Solution Programme for Foreign Workers and Illegal Immigrants 6P Programme

The 6P Program has been carried out since 1st August 2011 which comprises of registration, legalization, amnesty, supervision, enforcement and deportation. The added value feature of the 6P Program is the registration of illegal and legal immigrants in the country by using the biometric system. The 6P Program is important for compiling data such as details of their employers and work place. This exercise is expected to provide Malaysia with the latest and updated list of foreign workers in the country and simultaneously would ensure that they were not be exploited by irresponsible employers which is linked to the crime of trafficking in persons.

The 6P Program has created the platform for Malaysia (labour receiving country) to establish strategic collaboration with countries of origin such as Indonesia, Bangladesh, Vietnam, Myanmar, India and Pakistan. This would ensure an orderly manner of entry for foreign workforce into the country so that they would be well protected from any kind of exploitation particularly from becoming the victim of trafficking.

Protocol Amending the Memorandum of Understanding between Malaysia and Indonesia on the Recruitment and Placement of Indonesians Domestic Workers

Malaysia and Indonesia have concluded the above protocol on 30th May 2011 in Bandung, Indonesia. The document has allowed for better protection and safeguards for Indonesian domestic workers in Malaysia in terms of:-

- allowing them to keep their passport in their possession,
- enjoying one-day off in a week
- A monthly wage at the rate determined by the marked forces in Malaysia.

Protection

The Government provides allocations for shelter homes through the Ministry of Women, Community and Development as well as the Ministry of Home Affairs. Shelter homes provide the following medical and psychological services:

- Emergency and immediate medical assistance for emergency cases;
- Scheduled medical checkups for pregnant victims;
- Immediate mental health assessment for victims that is having mental-like symptoms;
- Group and personal counselling by counsellors from the Department of Social Welfare and Department of Women's' Development; and
- Psychology assessment of the victim by the Department of Social Welfare.
- Income generating activities for victims.

Each victim will be handed over to the immigrations authorities for repatriation only after their documentations are completed. For the female victims who rescued with their baby/children, they were allowed to stay together with their baby/children.

Bali Process Workshop

Malaysia has hosted the Bali Process Workshop on Protection for Victims of Trafficking in Persons on 12-13 January 2012 in Kuala Lumpur. This workshop is co-hosted by the Ministry of Home Affairs and the International Organisation of Migration (IOM) was attended by 90 participants from 23 Bali Process member countries.

The two day workshop focused on the aspect of victims of trafficking particularly on the elements of protection, care and recovery. The holding of this workshop reflects Malaysia's concerned on the aspect of victims' protection particularly in emulating international best practices among Bali Process member countries concerning the matter.

Victims of Trafficking in Persons to take up employment

On the sideline of the Bali Process Workshop, the Minister of Home Affairs had made a significant announcement that allows for victims' of trafficking for labour exploitation cases to take up employment in Malaysia once they are released from the shelter homes. However, certain conditions are imposed namely prior consent of the victims are required, approval from their diplomatic missions, confirmation that their safety are not guarantee if return to their country of origin and they have entered the country legally.

Subsequently, the first group of 32 Bangladeshi nationals who were formerly victims of trafficking in persons for labour exploitation cases was released from the shelter home to take up employment with a furniture factory in Klang, Selangor commencing 7 March 2012.

Global Trends and Pulling Factors

The global economic, social and politics trends today have caused increase in demand for trafficked people in Malaysia. The new technologies and large scale industries need for more cheap workers. At the same time global economic crisis and natural disasters has driving more people from their homes and caused displacement and migration. The believes that working abroad such as Malaysia; will provide people with better opportunities has open up chances for transnational organized crime syndicate to operate. Such situation syndicates of organized crime take the advantage to commit the crime due to the factors of:-

- Growing demand for a wide variety of exploitable sex workers.
- Cheap labour has become the primary reason for trafficking.

Characteristic of Human Trafficking

Operations and investigation conducted by the Royal Malaysia Police and other enforcement agencies, has identified certain characteristic and modus operandi on human trafficking by the organised crime syndicates:-

- People are abducted or recruited in the country of origin
- Transferred through transit regions
- Exploited in the country of destination.
- Recruitment Methods through:-
 - Complete coercion through abduction or kidnapping
 - Deception (dishonesty, fraud, cheating, con) by promises of legitimate employment or entry.
 - Deception about working conditions.
 - Deception through half-truths.
 - Abuse of vulnerability (weakness, defenselessness, helplessness)
 - Individual recruiters looking for interested males and females in bars, cafes, and other public places.
 - Recruitment via informal networks of families or friends.
 - Advertisement offering work or study abroad
 - Agencies offering work, study, marriage or travel abroad.
 - False marriages.
 - Purchase of children from their guardians.

Routes

- Depends upon geographical conditions
- By aircraft, boat, rail, ferry and road or on foot in order to reach the country of destination.
- The crossing of borders may be done overtly (visibly) or covertly (secretly), legally or illegally.

Challenges to the Royal Malaysia Police

The Royal Malaysia Police facing challenges to curb crime of human trafficking by the syndicate of the organised crime; such as:-

- Lack of international experience
- Uncooperative witnesses

- o Fear and distrust
- o Language barriers
- o Unreported cases
- o Child victims
- o Single victim testimony
- o Inter-agency cooperation.

Way Forward

The Royal Malaysia Police will continue to conduct training and capacity-building which are crucial and important to enhance knowledge and skill enforcement official in combating trafficking in Persons by the organised crime group. Besides that the Government has intensify co-operation among nations to combat human trafficking. The government has strengthening law enforcement and prosecution efforts and also a need to further develop regional capacity-building programmes to enhance existing capabilities of all countries in the region to monitor, detect, and investigate crime activities. Through intensifying relations with other nations, Malaysia continually seeks to promote co-operation, strengthening its ties to tighten security measures at ports and improving enforcement and intelligence exchange.

There is no country in the world is exempt from the scourge of trafficking. Thus, it is only intensifying regional co-operation in the area of law enforcement and prosecution that we will be successfully liberated from this international scourge. As the famous philosopher Sun Tzu the book 'The Art of War' says;

'If you know the enemy and know yourself, you need not fear the results of a hundred battles.'

Therefore the Government of Malaysia through the Royal Malaysia Polis and other enforcement agencies will improve intelligence gathering, improve skills, improve inter-agency coordination and will continuously review efforts made. Extensive and intensive forging of agreements to strengthen regional and international co-operation and linkages should include mutual legal assistance, extradition, and mutual assistance in criminal matters, sharing of information, law enforcement and prosecutorial co-operation. As in these meeting, we pledge to work hand-in-hand with all Police Organisation and enforcement agencies from other nation to ensure efficient and effective enforcement to curb activity of organised crime in human trafficking and smuggling of migrant in all parts of the world.

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