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HUMAN TRAFFICKING IN MALAYSIA: AN OPPORTUNITY TO RESOLVE PAST FAILURES

Grace H. Lin



Every day, Malaysians face the risk of falling victim to the deceptively enticing world of human trafficking. The fourteenth general election in 2018 resulted in a new coalition, Pakatan Harapan, and brought hope for improved policies, including those concerning human trafficking. This article focuses on the challenges Malaysia faces combating this long-existing issue and provides action steps that, if instated, will greatly improve the well-being of the nation and its people.

Introduction

Marselina Neonbota, 16 years young, opened the door to a stranger named Sarah, who was pedaling the opportunity of a lifetime, the chance to work at a job that would provide her and her family a better future. The stranger presented a chance for Marselina, known as Lina, to leave her poverty-stricken home in Indonesia for Malaysia, where she could earn more in just a few years than she could ever dream to earn in her entire lifetime at home. It seemed like the best option for her, so “She grabbed the opportunity—and disappeared” (Gelineau). This scenario is unfortunately all too common, as enticing offers for better futures trump all fear of potential danger. The isolation of remote areas, such as the village that Lina once called home, limits the ability to fully understand the dangers that exist when it comes to situations like Lina’s. Victims often do not suspect that criminals are out to use and abuse them and can naively enter lives as

trafficked persons. Families of these victims, like Lina’s aunt and uncle, wait every day, hoping their loved ones will return, but their hope is pointless. Their loved ones are now trafficked persons, gone, with slim chances of return. This news story illustrates a harsh reality: every day, people are at risk of falling victim to human trafficking, vanishing forever, just like Lina (Gelineau).

Human trafficking and modern slavery exist globally, affecting millions of individuals annually. Trafficking not only threatens and violates human rights but also undermines government authority. Malaysia’s centrality within South Asia, together with its vast coastline and isolated location, make it a prime country both for transit and as a destination spot for human trafficking and modern slavery. The significant and regular influx and outflow of labor and migrants fuel Malaysia’s popularity with human traffickers. While people from nearby countries, especially Indonesia, China, and Myanmar, often willingly come to Malaysia

looking for greater opportunities, too many naively fall into the system of human trafficking through false promises, while others are threatened or forced into submission. Women and children are mainly victims of sexual exploitation and the child bride industry, while men are trapped into cheap and demanding labor.

This article explores the factors that play a major role in the existence of human trafficking and modern slavery in Malaysia. Despite the evident and overwhelming need to address this problem and the substantial encouragement and involvement from NGOs like Tenaganita and Sisters in Islam, there has long been a lack of action from the Malaysian government. As a result, this inhumane activity continues apace. Why is more not being done? More specifically, why does the government fail to even enforce the limited regulations that do exist? With the new Pakatan Harapan coalition elected into leadership in 2018, the future of human trafficking in Malaysia is unclear. There is some hope that the new government will begin to implement and enforce policies to combat trafficking, without which the problem will continue to fester and very possibly become worse. Whether Pakatan Harapan can rise to the challenge, however, remains an open question.

Human Trafficking: Definitions and Statistics

Human trafficking is defined as the use of threat, force, deception, or coercion to recruit, harbor, or transport persons into situations of exploitation. Recently, the phrase “modern slavery” has become popularized when referring to sex trafficking and compelled labor. Modern slavery thus encompasses a wide range of subcategories, such as sexual exploitation, forced labor, forced and child marriage, child slavery, descent-based slavery passed onto children of slaves, and debt bondage (US Department of State). As a \$7 billion to \$10 billion industry, human trafficking ranks as the third largest global criminal activity, just after illegal arms and drugs (End Child Prostitution...). Every year, about 40 million people become trafficking victims, 79% of whom are sold into sexual exploitation,

including 1.2 million child victims (End Child Prostitution...). Overall, Southeast Asia reports around 225,000 annual victims of transborder trafficking for sexual exploitation alone (Lehti and Aromaa).

Trafficking statistics in Malaysia fluctuate year by year, but levels have remained consistently high. Malaysia’s robust inflow of migrating labor is a mixture of documented and undocumented workers. Undocumented workers in particular face substantially elevated risk as they often willingly come to Malaysia with hopes of achieving a better economic opportunity and future. However, because they lack the right to legally work, they become easy targets for forced cheap and abusive labor. According to the Global Slavery Index (GSI), an estimated 212,000 people (.69% of the total Malaysian population of 31 million) currently live in modern slavery, with a further .39% facing an everyday risk of becoming similar victims (“Country Data: Malaysia”).

Malaysia’s Position within the Global Slavery Index

The GSI rates governments’ responses on a 10-point scale from AAA to D: AAA, AA, A, BBB, BB, B, CCC, CC, C, and D. GSI asserts that the Malaysia government, with a CCC rating, provides minimal responses to modern slavery. This means the government provides little in terms of victims’ support services and that the criminal justice framework criminalizes only some forms of modern slavery and offers limited protection for those vulnerable to becoming victims. A CCC rating does suggest evidence of a national action plan or something similar, but the services provided come mostly from international organizations and NGOs, with insufficient government funding and support (“Country Data: Malaysia”). In a similarly skeptical assessment, the US Department of State reported that although the Malaysian government is making significant efforts, they do not fully comply with the minimum standards for the elimination of trafficking (“Trafficking in Persons Report,” 2015).

To put Malaysia’s CCC rating into perspective, one of the highest-rated countries is the United States, which scored a BBB, with an estimated 1.26 per 1000 persons

living in modern slavery (“Country Data: United States”). This rating means that the US government “implemented key components of a holistic response to some forms of modern slavery,” with a focus on victim support, justice, collaboration, and protection. New Zealand also rates highly, with a BB rating. Their population has an estimated 0.64 per 1000 persons living in modern slavery (“Country Data: New Zealand”). While a CCC rating for Malaysia’s government in regard to action steps taken or not taken against human trafficking shows some signs of progress, the country clearly has a long way to go if it wants to implement effective and comprehensive responses (“Government Response: Malaysia”).

Evaluating Malaysia’s CCC GSI rating prompts the question, Why does Malaysia score so poorly? Simply put, the answer is inaction, as corroborated and detailed in the next section. So, why the lack of government action? Prior to Malaysia’s 2018 election, human trafficking was rarely, if ever, placed at the top of the government’s agenda, giving way to issues considered more pressing. Because the public is not engaged in this issue, the government does not place a high priority on the problem. This leads to the further question: Why is the public not engaged?

The continued prevalence of this issue results from a general lack of direct and active engagement of both the Malaysian government and society more broadly. According to leading social justice activists, human trafficking is mostly concealed from the public due to its illegal nature and the subsequent harsh light that more transparency might cast upon Malaysian society and its government (Sisters in Islam; SUHAKAM). The absence of government action coupled with the opaque nature of the activities and the lack of awareness by the Malaysian public render any real progress difficult at best. Better data and more transparency would push the public to demand more governmental attention.

The new Prime Minister, Mahathir Mohamad, stated that his government is considering amending existing policies on human trafficking and migrant smuggling together with implementing harsher penalties for traffickers. New proposals suggest more

focus on the protection of victims by allowing migrants more freedom in terms of movement and work (Chow). So too, in reaction to the US Department of State’s critical report, Malaysia’s Minister of Home Affairs, Muhyiddin Yassin, promised to enhance anti-trafficking efforts, using the US report as a guide to evaluate ongoing progress. Like Mahathir, Muhyiddin also said that he would consider proposing legislation aimed at protecting victims and reducing trafficking by increasing the severity of penalties (Arukesamy).

Lack of Action under Current Malaysian Policies

Slavery and forced labor are expressly prohibited by the Malaysian Constitution. Although these prohibitions are enshrined in the Constitution as “fundamental liberties,” Malaysia barely takes action against trafficking. Malaysia has two major policies related to human trafficking: the Human Rights Commission of Malaysia Act 1999 (Act 597), its first substantial trafficking-related legislation, and the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM). Unfortunately, both are rarely implemented (SUHAKAM). The Human Rights Commission’s overall goal is to better protect individual human rights and seek justice for individuals whose rights are violated. Its main functions are (Buchanan)

- To promote awareness of and provide education related to human rights
- To advise and assist the government in formulating legislation and procedures and recommending necessary actions
- To make recommendations to the government regarding accession to international human rights instruments
- To inquire into complaints regarding infringements of human rights

In parallel, ATIPSOM, amended in 2010 and again in 2015, aims to “prevent and combat trafficking in persons and smuggling of migrants and to provide for matters connected therewith” (“Laws of Malaysia...”). It does this via punishments that vary by severity and type of the offense. The 2007 Act also established an intergovernmental council for anti-trafficking and identified the labor

department as responsible for enforcement. Unfortunately, a substantive problem is the lack of accountability for results; when nothing happens, nobody is held accountable.

The Act states that trafficking adults for the purpose of exploitation will result in imprisonment up to 15 years plus a fine. Similarly, the offense of profiting from exploitation of a trafficked person merits jail time of a maximum of 15 years and a fine of not less than RM500,000, but not exceeding RM1 million, plus forfeiture of any profits from the offense. Trafficking children is treated somewhat differently: conviction earns a minimum of 3 years in jail up to a maximum of 20 years, together with a fine. Offenses against trafficked persons in transit result in imprisonment up to 7 years and a fine. Presumably, it would be justifiable for these punishments to include paying restitution to the trafficked individuals. However, this is not the case; fines go to the government (“Laws of Malaysia...”).

Clearly, the law is specific in cataloging various offenses and subsequent punishments. Yet in the past, despite these legal proscriptions, when cases of human trafficking have been uncovered, the government has inadequately provided justice and safety for the victims. In February 2015, after an investigatory UN mission to Malaysia, UN Special Rapporteur Maria Grazia Giammarinaro issued preliminary findings on trafficking, especially regarding women and children. She revealed a low rate of prosecution overall and an even lower conviction rate for labor exploitation. Additionally, the report expressed concern about lengthy judicial processes for trafficking cases (Buchanan). Giammarinaro offered suggestions to help Malaysia improve its legal framework: the establishment of a data collection system, training and capacity building, support for victims of trafficking, cooperation with international and regional organizations, prosecution of trafficking cases, and raising public awareness about the issue (Buchanan).

Overall, there have been few cases where the government has both enforced its policy and successfully prosecuted traffickers for their crimes. For example, estimates are that

around 2,000 people are trafficked from East Nusa Tenggara, Indonesia, to Malaysia every year. Yet, only in 2018 did the government successfully find, capture, and prosecute its first human trafficker, Siprianus Kopong, who had been on the run since escaping his initial capture in 2014. According to the *Asia Times*, Kopong worked as an employment agent who falsely promised well-paid jobs overseas in order to smuggle hundreds of victims, mainly girls, from Indonesia to neighboring countries. Like many other victims, these girls mostly ended up as debt-bonded domestic workers or were forced into prostitution. Despite the law suggesting, in particular, punishments of up to 20 years for individual trafficking crimes against children, when first caught in 2014, before his escape, Kopong was sentenced to just 4 years in jail, a seemingly tame punishment given the severity of his crime. This injustice of punishment compared to the crime is a pattern often seen when it comes to the enforcement of government policy on the crimes of human trafficking and quite inconsistent with Malaysia’s ATIPSOM standards (“Indonesian...”).

Reflecting similar inconsistencies between stated policy and practice, another incident occurred in October 2018 in which three Malaysian fish farmers were convicted of forcing 12 Indonesians to work as slaves at an operation in Yong Peng, Johor, Malaysia. They forced their victims (ages 19–46) to work without pay or days off and kept them prisoners on the farm, unable to leave. Sentenced to 5 years in prison, the three fish farmers were each additionally fined RM60,000—about \$14,000, for 12 counts of human trafficking. Although this conviction demonstrated progress by the Malaysian government against human trafficking, the punishment again did not do justice when compared to the severe impacts on these 12 lives. Nor again was it in accordance with Malaysian law. The legal standard of punishment for profiting from exploitation of a trafficked person is a fine of *no less* than RM500,000. Yet, these men were only held responsible for one-eighth of that, a striking difference. While some action was taken here, the courts did not adhere to the legislated minimums (“Malaysian...”).

Capacity Challenges

Although some legislative measures have been taken, it remains difficult to guarantee the prevention of human rights abuses and violations in general. The Human Rights Commission of Malaysia argues that these challenges exist because of the lack of capacity of law enforcement authorities. Poor investigatory procedures and improper documentation of evidence result in ineffective protection of rights. In particular, investigatory procedures are inattentive to victims' needs, and, as a result, do not work in their best interests. In fact, the UN Special Rapporteur concluded that one key challenge was in coordinating work between government bodies due to varying levels of commitment and understanding of the issue. Law enforcement personnel do not receive enough training about how to work with victims. More thorough training would include enhancing understanding of best practice methods of investigating and handling human trafficking cases, gathering evidence, protecting victims, and finding them safe shelter. According to a report by Kelly Buchanan, Chief of the Foreign, Comparative, and International Law Division of the Library of Congress, at the moment, law enforcement authorities receive proper training in only some of those areas (Buchanan).

A lack of effective tools for fostering victims' physical and mental health recoveries coupled with an inability to provide continuous safe shelters for them can inhibit victims from receiving the health care they might need or from developing the initiative to move forward with their lives through education and career opportunities ("Our Work..."). Unfortunately, at the moment, there is no sign that authorities are taking immediate action to substantially improve these practices in Malaysia.

Action Steps and Public Involvement

Another crucial factor in fighting trafficking is public awareness and involvement. There currently exists a limited scope of civil society participation in this regard, and, in order to make progress, it is vital that the scope widens. In an effort to raise awareness and provide a safe space for reporting abuses,

the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Council said the public could contact the 1Malaysia One Call Centre hotline during and after operation hours to report any findings or complaints based on first-hand experience or word of mouth (Kanna).

Only a few NGOs work to raise public awareness about the ongoing issues of trafficking in Malaysia. For example, Sisters in Islam promotes the rights of women with respect to the frameworks of Islam and universal human rights, encouraging a fight for justice, freedom, and equality for all Muslim women in the country. The organization raises awareness and takes the initiative to safeguard trafficked victims through publications, protests, and presentations (Sisters in Islam). Sisters in Islam does considerable research that serves as the basis for their arguments for legal reform on existing laws and new policies for further change as well as for their challenges to statements made in the name of Islam that discriminate against women and those of other religions. After all, many rescued female victims of sex trafficking return to society only to be shunned, due to religious values and beliefs, for situations that took place outside their control. The research reports assist with raising public awareness. For example, Sisters in Islam released a national research report on Malaysia in April 2018, titled "Child Marriage: Its Relationship with Religion, Culture and Patriarchy," that explained the many implications associated with child marriage (Lai et al.).

Another prominent NGO in Malaysia is Tenaganita, a human rights organization dedicated to assisting and advocating for migrants, refugees, women, and children and protecting them from exploitation of all sorts. Tenaganita's Anti-Trafficking in Persons program focuses on prevention, intervention, and recovery. They have come to be recognized as one of Malaysia's leading NGOs in the field, respected for their constant observation and documentation of trafficking statistics and for advocating for equitable and just policy enforcement. Part of Tenaganita's work consists of rescuing victims with the help of enforcement agencies, providing safe and

secure shelter and counseling for those rescued victims, opening and filing legal cases with relevant government agencies, and facilitating education and reintegration of survivors. Above all, Tenaganita believes that public awareness is crucial to the process of combating human trafficking. Increased public knowledge of Malaysia's accessible resources and political action for the betterment of the rights and safety of Malaysians make their efforts all the more effective ("Our Story").

These two prominent organizations act on the tenet that cultural change with regard to human trafficking will only occur pending greater public awareness and subsequent involvement. Along with stricter government enforcement and policies, increasing public awareness and engaged public efforts to combat the issue of human trafficking will foster Malaysia's progress into a safer and more just country. This can be done by developing and publishing more resource materials, additional advocacy in the public sphere, and strengthened recruitment of supporters of the cause. By getting more of the public engaged, Malaysia can combat the lack of public awareness at the root of the dearth of government action.

Best Practices Elsewhere

Countries around the world adopt different approaches when it comes to combating human trafficking. Observing the positive practices of countries successful at addressing the issue allows struggling countries to see what is working. Similarly, it can also be helpful to see what the less successful countries are doing, so countries wanting to make strides can know what not to do. Argentina, Canada, and New Zealand have been successful against human trafficking and share similarities to Malaysia in government and population. As outlined below, all three nations have taken specific steps to raise public awareness.

As mentioned previously, New Zealand has done a good job combating human trafficking, scoring a rating of BB on the GSI. In 2018, New Zealand fully met the GSI's minimum standards for almost total elimination of human trafficking. New Zealand continuously demonstrates serious efforts at enforcing policy

whenever offenses occur. The 2018 "Trafficking in Persons Report" revealed that New Zealand has increased trafficking convictions, improved training for law enforcement, and developed a new written framework to help victims. Even more importantly, they are enforcing new regulations to prevent employers who breach employment laws from recruiting migrant workers. Moving forward, New Zealand plans to increase resources for investigations, prosecutions, and convictions of trafficking offenders. They also aim to formally identify victims of child sex trafficking in an effort to protect them and prevent more cases ("Trafficking in Persons Report," 2018).

Argentina, like the US, received a BBB rating from the GSI, with an estimated 1.26 per 1000 individuals living in modern slavery. The government has made tremendous strides in efforts to protect its citizens and provide help to survivors. The first major step was in the way the government raised awareness of the issue. National campaigns were held frequently and consistently to inform the public how they could identify and report victims. They created reporting mechanisms, such as hotlines, accessible to everybody 24/7 and free of charge. Law enforcement authorities have been well trained to continue to raise public awareness, be familiar with all readily available resources, and be able to identify victims and act as first responders ("Country Data: Argentina").

In 2008, the government created the Programa Nacional de Rescate y Acompañamiento de Víctimas Damnificadas por el Delito de Trata de Personas to provide psychological, social, medical, and legal support to survivors (Pellettieri). Through this program and other government initiatives, Argentina criminalized all areas of modern slavery. While one critique has been that judicial punishments were not proportionate to the severity of the crimes, Argentina's government made it publicly clear that they did not condone human trafficking in any way.

Furthermore, Argentina's government—and businesses too—stopped sourcing goods and services produced by forced labor. They also began publishing annual reports on their efforts so the public could have access to the information, with the aim of enabling

citizens to make conscious efforts to steer clear from these goods and services. Laws were also enacted, making it a criminal offense for businesses to fail to do what they could to prevent modern slavery (“Country Data: Argentina.”). With these positive changes, as revealed by the statistics, Argentina has drastically reduced the risk of modern slavery for its people.

Canada is another country whose efforts demonstrate significant impact. The GSI rates Canada as a BB country, with an estimated 0.48 per 1000 persons living in modern slavery (“Country Data: Canada”). Canada’s government supports a “broad-based prevention strategy focusing on awareness raising and research activities to prevent human trafficking” by funding and publicly promoting its efforts, training law enforcement officials, and updating citizens regularly. They emphasize holistic strategies targeted at reducing levels of victimization and the subsequent harmful consequences. Specifically, Canada promotes training for frontline services and provides assistance to communities in order to identify the people and places most at risk to modern slavery. So too, Canada strengthens child protection systems within their International Development Agency programs that target children and youth (Government of Canada, “National...”).

Substantial effort goes into developing new awareness campaigns and distribution of awareness materials. For example, the “Don’t Become a Victim of the Illegal Trade in People” brochure campaign offers tips and resources for citizens and immigrants to help them avoid becoming victims. The brochure provides examples of common tactics used to entice individuals and highlights the fates of those who fall prey to illegal practices. The brochure also outlines anti-trafficking laws, answers commonly asked questions, and lists resources for those seeking help. Moving forward, Canada plans to develop both national and local diagnostic tools to help identify places and populations who are most at risk of modern slavery (Government of Canada, “Don’t...”).

In sum, Argentina, Canada, and New Zealand have all made considerable efforts and progress in preventing modern

slavery. Additionally, they are collaborating internationally to share and expand communication about effective policies. Malaysia can look to all three for guidance on how to achieve the same improvements. Even so, they are all in the B range, a high rank compared to other countries. So, what does it take to get into the A range? For this to happen, long-term reintegration victim support services need to be put in place in addition to government policies that will ensure that human trafficking is not present in business supply chains and measures to address all forms of vulnerability. On top of this, there must be no evidence of criminalization or deportation of victims (“Government Response: Malaysia”).

Moving Forward

While human trafficking and modern slavery affect the lives of tens of thousands of its residents every day, Malaysia shows hopeful signs of improvement in its fight against this travesty of human rights. The new government has announced plans to strengthen policies and enforce stricter punishments. If Malaysia can successfully create change and enforce new policies, there is hope that the vulnerability will abate, and the alarming statistics will decrease. As Malaysia looks to identify its weaknesses and areas of potential within this issue, it would be helpful to also look to similar countries, such as New Zealand, Canada, and Argentina, as role models. However, Malaysia is unique in its diverse and multicultural population, whose religious beliefs and cultural values encompass a wide array of perspectives on issues related to human trafficking. The diversity can exacerbate the consequences of human trafficking on its victims, which makes it all the more difficult to raise awareness not only for protection against the practice of human trafficking but also about victims’ challenges and needs in its aftermath. Policy design and change must suit local needs, balancing the diverse views of all religions and ethnicities.

Keeping and publicizing detailed statistics, expanding government efforts, and improving public awareness and engagement will all help mitigate the way human trafficking affects Malaysia. Improving public awareness is most important, because everything else

will follow naturally once the public gets past the surface-level knowledge of the issue. By following through on promises for change with a solid plan modeled on best practices effective

elsewhere and by actively searching for new practices, Malaysia will be on the right track toward improving the welfare and safety of its people.

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