MALAYSIA AND THE ISSUE OF HUMAN TRAFFICKING: ROOT CAUSES, SECURITISATION AND RESPONSES

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CHAPTER 1

INTRODUCTION

1.1 Background of Study

Human trafficking is an organised transnational crime that has been significantly on the rise for the past two decades and it is justifiably known as the slavery of the new millennium. In June 2014, when the annual Trafficking in Persons (TIP) report was released to the world, the United States, Department of State unveiled that there are more than 20 million victims of human trafficking in the world and only a fraction of 44,000 survivors have been identified in the past years.[1]

Although this figure slightly differs than the estimation of 27 million in 2012,[2] concurrently, the International Labour Organisation (ILO) reported that about 21 million people were identified as victims of forced labour. From this estimate, 4.5 million were victims of sexual exploitation whereas 14.2 million were trapped into forced labour in various sectors namely agriculture, domestic work, construction and in manufacturing.[3] No matter what the statistics show, the number of vulnerable people falling into the hands of human traffickers are increasing day by day around the world. These vulnerable individuals remained hidden and unidentified or some have even faced death because of the nature of the

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[1] See *Trafficking in Persons Report*, 2014, Washington, DC: United States, Department of State.

[2] Carlo Davis, "Only 46,000 Human Trafficking Victims Identified Worldwide in 2012, State Department Report Finds," *The Huffington Post,* 20 June 2013, available at: <http://www.huffingtonpost.com/2013/06/19/46000-human-trafficking-victims-identified_n_3467978.html.> (accessed 10 October 2013).

[3] See "Trafficking in Human Beings - a Severe Form of Violence against Women and Girls and a Flagrant Violation of Human Rights" in *ILO Presentation at Side Event of the 58th Commission on the Status of Women*, International Labour Organisation, 10 March 2014, available at: <http://www.ilo.org/newyork/speeches-and-statements/WCMS_237574/lang--en/index.htm> (accessed 20 June 2014) and also see, "Facts and Figures: Forced labour, human trafficking, slavery," International Labour Organisation, available at: <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (accessed 20 June 2014).

crime. Human trafficking is operated sophisticatedly with strong chain of criminal networks existing around the globe from the developed to the least developed countries.

These victims of human trafficking are trapped in various forms of exploitation such as in forced and bonded labour, commercial sexual exploitation and debt bondage. Similarly children faced the same fate where they are forced to become child soldiers, forced into begging in the streets, work as hard labour jobs like in brick kilns, construction and domestic households. Some of these children are also forced as sexual entertainments in brothels and for pornography. The ILO reports from 1999 to 2009 that around 1.4 million are trafficked into forced labour and sexual exploitation in the Asia-Pacific alone, while globally it is estimated at 2.4 million.[4]

In 2012, the estimated figure escalated to 21 million victims of forced labour as reported by the ILO. From this report, the Asia Pacific region accounts for the highest number of forced labour with a staggering estimation of 11.7 million people (56 per cent), followed by Africa at 3.7 million (18 per cent) and Latin America with 1.8 million victims (nine per cent).[5]

According to the Global Report on Trafficking in Persons for the year 2012, from August 2010 to August 2012, around 55,000 victims and 50,000 offenders were identified in 132 countries globally.[6] Among the identified victims were children estimated at 27 per cent in 2006 which had increased from 20 per cent in 2003 and the number of trafficked girls

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[4] See *Border Liaison Offices in Southeast Asia 1999-2009: Ten Years of Fighting Transnational Organised Crime*, Bangkok, United Nations Office on Drugs and Crime, 2008, p. 13.

[5] See "21 Million People Are Now Victims of Forced Labour, ILO Says," International Labour Organization, 1 June 2012, available at: <http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang--en/index.htm> (accessed 5 January 2013).

[6] *Global Report on Trafficking in Persons 2012*, New York: United Nations Office on Drugs and Crime (UNODC), December 2012, p. 22.

were more compared to boys.[7] In the region of South Asia, East Asia and the Pacific alone, it was reported that majority of the victims were female where 47 per cent were exploited into forced labour, whereas 44 per cent were engaged into commercial sexual entertainment besides forcing into involuntary domestic servitude.[8]

The human trafficking issue has become a global issue due to the characteristics of offenders targeting vulnerable individuals for the sole purpose of exploiting them for some profits. The act of human trafficking is a crime and a gross violation of human rights. Therefore in the year 2000, the United Nations (UN) signed the Palermo Protocol and defined the problem of human trafficking to the world.

The definition of human trafficking under the relevant Protocol to the United Nations Convention against Transnational Organised Crime (UNTOC) as the "recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."[9]

The Trafficking Victims Protection Acts (TVPA) also defines the severe forms of trafficking in persons as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age".[10] The act stresses that the victim of human trafficking does not necessary need

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[7] Ibid., p. 14.
[8] Ibid., p. 18.
[9] See *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention against Transnational Organised Crime*, New York: United Nations, 2000, p. 2.
[10] *Trafficking in Persons Report*, 2014, p. 9.

to be transported physically from one location to another location for the crime to fall within these definitions.[11]

Apart from human trafficking, the UN has also acknowledged human smuggling or migrant smuggling as a transnational problem which has been rampant over the years. Smugglers have been forceful in attracting vulnerable population especially from the least developing countries stricken amid multiple conflicts namely extreme poverty, unemployment and political turmoil to smuggle into neighbouring countries via illegal routes.

The act of trafficking is distinct from the smuggling of migrants, which is defined in the Palermo Protocol as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".[12] Unlike trafficking, smuggling of migrants does not necessarily entail the violation of such persons' human rights.[13] It is their own willingness to smuggle into a country illegally however, the tendency for them to be exploited by the agents and becoming a victim of human trafficking is high.

The exploitation of human trafficking occurs in various means such as for the purpose of forced labour (labour trafficking) which involves under-aged children although the customary notion of only adults are forced into hard labour clouds the common reality that children are also subjected to this horrendous exploitation including as an object of commercial sexual entertainment. For business profits, women and children are subjected to sex trafficking, bonded labour such as domestic servitude where they are trapped

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[11] Ibid., p. 9.
[12] See definition by the "United Nations Convention Against Transnational Organized Crime And The Protocols Thereto," New York: United Nations, 2004, pp. 54-55.
[13] See "United Nations Convention Against Transnational Organized Crime And The Protocols Thereto," 2004, pp. 53-68.

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deliberately in debt and are forced to serve until the entire debt is paid completely.[14] In many cases, the victims are kept in servitude even though their debts are settled but the employers manipulate them as these victims are their steady cash cows.

The statistics gathered by various international organisations (IOs) differ as it is very difficult to lay an exact figure on the victims of human trafficking. According to the ILO, in 2010 it was estimated that there were 12.3 million adults and children of human trafficking victims worldwide and only 4,166 cases were successfully prosecuted.[15] The majority of these victims were forced into hard labours with a soaring number of 77 per cent in South and Southeast Asia while around 1.39 million were women and children of all ages coerced into commercial sexual and exploitation.[16]

As opposed to human smuggling, where a person is a willing illegal migrant, the UN characterises human trafficking as the use of coercion, force or subterfuge to transport and exploit people for profit and estimates its worth more than US$32 billion annually and the fastest-growing criminal business worldwide[17] second to drug trafficking. According to a 2010 United Nations Children's Fund (UNICEF) report, as many as two million children were forced into prostitution in the global commercial sex trade.[18] One of the major push factors that exacerbate the vulnerable position of these children is poverty.[19]

Human trafficking is a rapidly growing criminal industry in the world due to rapid globalisation hence the total revenue is estimated between US$5 billion to US$9 billion of

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[14] See more information in the United States, Department of State's Annual *Trafficking in Persons Report*, from 2007-2013.

[15] *Trafficking in Persons Report*, 2010, p. 7.

[16] Mark Galeotti, "People Trafficking and Illegal Migration: Not Just Human but International Security Challenges," *Perspectives on Global Issues,* Vol. 4, No. 2, 2010.

[17] Ibid.

[18] *Trafficking in Persons Report*, 2010, p. 12.

[19] See *Unfinished Business: Ending Child Prostitution, Child Pornography and Child Trafficking for Sexual Purposes*, Bangkok: Thailand, Ending Child Prostitution in Asian Tourism (ECPAT), 2014, p. 7.

the total revenue of trafficking in persons. The UN estimates that nearly 2.5 million people are being trafficked annually from 127 different countries all over the world with 137 nations as destination.[20] These victims are tricked, lured and coerced from their home or country and forced to work with no or low payment or on terms which are very exploitative and gross human rights violations. Human trafficking has reached epidemic proportions over the past decade, with a global annual market estimated at US$42.5 billion.[21]

In fact, the operation of human trafficking has no borders and it involves from the least developing nations to the developing as well as the developed countries and this clandestine movement has become an organised trans-national crime. This atrocious crime has become an increasing booming global business and it is also known as the modern day slavery. "Modern slavery appears in numerous forms, namely bonded labour, involuntary servitude, or sexual slavery and it is a crime which cannot be tolerated in any culture, community, or country and it is an affront to the values of human rights."[22]

Human trafficking is also known as trafficking in persons, trafficking in human beings, people trafficking and currently categorised as the modern-day slavery.[23] The act of human trafficking disrupts the societal, economical and political facets of a state because of the nature of the crime as a global organised crime and it strips away the dignity of a person. World leaders state their concerns over the atrocity of human trafficking in numerous international meetings and use their platforms as leaders to highlight the identified threats on vulnerable people around the world. Among the world leaders voicing his deep apprehension

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[20] See "Words Must Be Put into Action to Fight Human Trafficking – Assembly President," United Nations News Centre, 3 June 2008, available at: <http://www.un.org/apps/news/story.asp?NewsID=26900&Cr=trafficking&Cr1=> (accessed 3 June 2011).
[21] See, Indira Rampersad, "Human Trafficking…lucrative underground sex industry," Trinidad and Tobago Guardian Online, 15 March 2009, available at: <http://www.guardian.co.tt/archives/features/life/2009/03/15/human-traffickinglucrative-underground-sex-industry> (accessed at 3 June 2011).
[22] *Trafficking in Persons Report*, 2010, p. 26.
[23] Although numerous terms exist, for the sake of consistency this thesis uses the term human trafficking.

over this problem is the President of the United States of America, Barack Obama, stated that;[24]

> It ought to concern every person, because it's a debasement of our common humanity. It ought to concern every community, because it tears at the social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organised crime. I'm talking about the injustice, the outrage, of human trafficking, which must be called by its true name – modern slavery.

Although slavery has been long abolished some might conclude that human beings generally ought to treat each other in civilised manner. Unfortunately, that is not the actual case in the society as in many parts of the world the practice of slavery remains. Thus, slavery is expressed in the new term of modern day slavery since the practice of slavery is very much alive and exists in the form of human trafficking. The history on slavery is a reminder for many because such an atrocious practice despite the fact that it has long been abolished since the 15th century[25] yet it remains as a tradition and custom in some parts of the world whilst it is against the international laws to enslave people in any means and ways.[26]

Human trafficking is an international organised crime alongside drug cartels, arms smuggling, piracy, and antique trading as well as counterfeit. Actors in the state such as the government officials, political leaders with the help of non-governmental organisations (NGOs) are implementing acts and laws to forbid traffickers and smugglers in their operations. Human trafficking turns out to be a multibillion dollar business and the

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[24] *Trafficking in Persons Report*, 2013, p. 7.

[25] It varies as history of slavery abolishment according to countries and treaties are marked at various period of time. The 15th century is based on American History.

[26] Seymour Drescher, *A History of Slavery and Antislavery,* Cambridge: Cambridge University Press, 2009, pp. 4-5.

traffickers are efficient in their modus operandi by going global frequently targeting pockets of vulnerable populations around the world. The (UN) and European Union (EU) are two international bodies that have been spearheading the initiatives to combat human trafficking and the UN as the global organisation coordinates efforts with countries to circumvent this crime.

Since the crime of human trafficking undermines the rule of law and with the implementation of laws pertaining to Anti-Trafficking in Persons Act (ATIP) allows governments in countries facing such problems of human trafficking would be able to put the perpetrators involved in this crime behind bars. Therefore in 2007, the government of Malaysia implemented the ATIP Act when it was downgraded to Tier 3 of the TVPA.[27] This is a thwarting drop for the government since 2007 as in 2008 the ranking improved by being on Tier 2 watch list. Malaysia recurrence on the blacklist spot has sparked heated debate that it yet to fully tackle the concern of human trafficking. But in 2010, with a report due to efforts taken to prevent human trafficking, Malaysia was on Tier 2 Watch List[28] of the U.S Department of State in Washington.

On the contrary, according to United Nations High Commissioner for Refugees (UNHCR) World Report 2011 on Malaysia, it has stated that the government does not fully comply with the minimum standards to eliminate trafficking, nevertheless reported that the government is making significant efforts to prevent and curtail human trafficking.[29] However, in 2014, the efforts of the Malaysian government was reckoned insufficient in combating the crime therefore the country was automatically downgraded to Tier 3 along

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[27] "Malaysia Listed as Worst Offenders of Human Trafficking," *The Sun*, 13 June 2007.

[28] *Trafficking in Persons Report*, 2010, p. 223.

[29] See Human Rights Watch, "*World Report 2011 - Malaysia*," Refworld, 24 January 2011, available at: <http://www.refworld.org/docid/4d3e80201c.html> (accessed 20 June 2012).

with its neighbouring state Thailand.[30] Prior to submission of this thesis, the latest TIP report for 2015 was released and Malaysia was upgraded to Tier 2 Watch List.[31] However, the details of the report will not be discussed.

According to the 2012 U.S TIP report, apart from being a destination for human traffickers, Malaysia being located strategically in Southeast Asia is also a transit country to the extent that it has even become a source country.[32] With heightened face of globalisation with borders becoming porous and due to Malaysia's highly relaxed visa requirements, it is much easier for migrant communities seeking opportunities to enter into the country.[33] Therefore, it is the destination eyed by many foreign human trafficking syndicates as well as local perpetrators to traffic people in and out of the country. Simultaneously, on the other hand, internal trafficking occurs in Malaysia as well and it is known as domestic trafficking.

Based on the 2013 U.S TIP report, Malaysia has remained on Tier 2 Watch List for the fourth consecutive year since 2010.[34] Malaysia would have been downgraded to Tier 3 in 2013 if not for the government's action plan to combat human trafficking in the country. Known as the *National Action Plan, 2010-2015*, it is a five-year plan aimed at addressing and curbing the heinous crime of human trafficking in Malaysia. However, in spite of the written strategic plan, the pertinent question to implore is if that Action Plan is effective to combat human trafficking problems in Malaysia?'

It was reported that the vast majority of victims of human trafficking comprise of two million documented and 1.9 million undocumented foreign workers in Malaysia.[35] Most of

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[30] *Trafficking in Persons Report*, 2014, p. 58.
[31] *Trafficking in Persons Report*, 2015, p. 54.
[32] *Trafficking in Persons Report*, 2012, p. 243.
[33] V. Shankar Ganesh, Evangeline Majawat and Jassmine Shadiqe, "Signs that Show Malaysia on Human Trafficking Route," *New Straits Times*, 30 April 2009.
[34] *Trafficking in Persons Report*, 2013, p. 56.
[35] "Malaysia Makes Inroads in Battling Human Trafficking," *The Borneo Post,* 31 March 2011.

these victims are vulnerable individuals from the neighbouring countries like Thailand, Vietnam, Myanmar, Cambodia, China, Indonesia, Philippines, Bangladesh, Pakistan, India and Nepal. Running away from extreme poverty, ethnic conflict and massive unemployment are among the variety of reasons that lure these people in the quest for a better life and economic opportunities. Thus, they fall for lies and false promises of jobs with attractive packages or are manipulated with deception and are forced to move across borders from their country of origin into Malaysia.[36] Malaysia is one of the favourite destinations to the traffickers because of the strategic location in Southeast Asia with porous international borders especially along the coastline, similarity in culture and way of life, adaptable to the national language encourage them to convince vulnerable people to condone to their deceitful plans only to be exploited afterwards.

Based on statistics by the enforcement agencies and the Secretariat of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM)[37], from 2008 to 2012, a total of 591 cases had been reported relating to various types of human exploitation, with 797 people arrested for involvement in this crime.[38] During the span of these five years, around 3,363 victims of human trafficking were managed to obtain Interim Protection Order (IPO) while another 1,235 were given Protection Order (PO).[39] These were mainly victims of sexual exploitation, forced labour, debt bondage and involuntary domestic servitude

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[36] "Foreign Workers and Bosses Conned over Permits," *The Star*, 3 June 2014.

[37] In the Malay language, ATIPSOM it is known as 'Majlis Anti Pemerdagangan Orang dan Anti Penyeludupan Migran' (MAPO) under the purview of the Ministry of Home Affairs Malaysia. The Secretariat comprises of 11 ministries, agencies and departments, and five NGOs. The five agencies are the Royal Malaysian Police, Malaysian Immigration Department, Royal Malaysian Customs and Excise, Malaysian Maritime Enforcement Agency (MMEA) and the Labour Department have authority under (Section 27) of the Anti-Trafficking in Persons and Smuggling of Migrants Act.

[38] Interview with Hafiz Halim, Inspector Police of the Anti-Trafficking in Persons Unit, Royal Malaysian Police, Kuala Lumpur, 19 October 2012. Some of the figures can be obtained from the website of Ministry of Home Affairs Malaysia at <www.moha.gov.my>

[39] See "Statistic Cases of Trafficking in Persons 2012 - From 28 February 2008 until 30 November 2012," moha.gov, available at: <http://www.moha.gov.my/index.php/en/sekretariat-statistik> (accessed 12 June 2012).

amongst others and were sheltered by the Malaysian government as well as NGOs run shelter homes.[40]

On numerous instances government officials were allegedly reported for their direct involvement in human trafficking although thus far only one offender was prosecuted in December 2008 under the 2007 ATIP law.[41] In 2009, the U.S. Senate Foreign Relations Committee made a formal report stating that Malaysian immigration officials involved in trafficking and extorting Burmese refugees to the Malaysia-Thai border. Upon arrival at the border, the traffickers take possessions of the migrants and demand ransom on individual basis. Freedom is possible only when the money demands are met. The Royal Malaysian Police investigated the allegations with the assistance of the Immigration Department however no officials were arrested, prosecuted or convicted for the involvement in human trafficking. This indicates that the government did not or yet to develop mechanisms to screen victims of trafficking effectively during that period.

Again in 2010, it was reported that seven immigration department officials were allegedly involved in human trafficking activities in the country. These seven officers accused together alongside two foreigners subsequently were detained under the Internal Security Act (ISA) which allowed for indefinite detention without trial.[42] According to an immigration officer during interview, all the officers were acquitted and released from their work responsibilities at the immigration department and were given professional

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[40] Meena L. Ramadas, "2,000 Human Trafficking Victims 'Saved' since 2008," *The Sun*, 24 August 2011.

[41] More cases have been reported in "Five Immigration Officers Nabbed for Human Trafficking," *The Sun*, 20 July 2009; Azril Annuar, "Nine Arrested under Isa," *The Sun*, 13 October 2010; and "Eight Officers Were Sacked: Immigration DG," *The Sun*, 9 August 2011.

[42] See "Malaysia-accuses-immigration-officials-of-human-trafficking," Inquirer Global Nation, 13 October 2010, available at: <http://globalnation.inquirer.net/news/breakingnews/view/20101013-297563/Malaysia-accuses-immigration-officials-of-human-trafficking> (accessed 12 June 2012).

counselling.[43] What is the significant of the ATIP law if co-conspirators such as the government officials could get away with mere counselling and not charged criminally? Is there a double standard practiced in this context since the involvement of government officials? These are critical questions for the government of Malaysia.

On June 2009, the U.S TIP Report[44] stated that the Government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking as well as not making significant efforts to do so, despite the government's efforts in its initial actions against sex trafficking and enforcing country's new anti-trafficking law. Besides that, due to low conviction rate on the actual offenders of human trafficking crime, the government of Malaysia was criticised in the U.S TIP report for not stepping up the efforts to prosecute the offenders. There were also reports of these offenders continuing their operations while behind the prison bars.[45] Hence, it is pivotal for the government of Malaysia to show its significant efforts are not written on the paper alone but as an action plan initiated to combat this human trafficking crime in Malaysia.

However, the government of Malaysia is stepping up its efforts with programmes and activities along with anti-trafficking law to fight human trafficking in Malaysia. Thus, it is important to highlight the efforts and actions taken as well as the new strategies and plans outlined by the responsible ministry; Ministry of the Home Affairs, Malaysia. The national initiative plan carried out by the ministry is a five-year strategic plan (2010-2015) to combat

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[43] Interview with Shahrul Azlin, Deputy Assistant Director of Immigration with the Malaysian Immigration Department of Malaysia, 22 August 2013.
[44] *Trafficking in Persons Report*, June 2009, pp. 197-200.
[45] Farrah Naz Karim and Alang Bendahara, "Making Millions from Behind Bars," *New Straits Times*, 10 September 2012 and Farrah Naz Karim and Alang Bendahara, "Undeclared Millionaires," *New Straits Times*, 11 September 2012.

human trafficking as well as migrant smuggling in the country.[46] To affirm their commitment, the Council for Anti-Trafficking in Persons along with its 14 members have pledged by signing the National Action Plan against Trafficking in Persons. It is essential to note that the government has also invited relevant local NGOs to be part of the secretariat team to combat human trafficking in Malaysia.

1.2 Research Objectives and Research Questions

Human trafficking issue is an ongoing problem in Malaysia therefore it is imperative to investigate the current trends, developments and root-causes motivating human trafficking and Malaysia serving as a transit point for human traffickers. The questions remain what are the motivating factors for human trafficking to occur in Malaysia and how it impacts the country? Next is to examine the gravity of the problems in Malaysia and the nexus with the non-traditional security challenges faced by the state and non-state actors in the country. Thus, how do the relevant actors in the state respond to the human trafficking issues in the country and the measures taken in preventing and combating human trafficking? Subsequently, by analysing the responses of the Malaysian government and local NGOs in accordance with the international protocols in combating human trafficking in Malaysia would significantly contribute in combating this pertinent issue from all dimensions.

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[46] See Anti Trafficking in Persons under the jurisdiction of Ministry of Home Affairs Malaysia, available at: <http://www.moha.gov.my/images/stories/mapo/NAP_ANTIPEMERDAGANGAN_ORANG_2010_2015.pdf > (accessed 15 August 2010).

1.3 Significance of Study

Research on human trafficking is important in view of the fact that it is an organised crime and the way it operates disrupts the socio-economic of a nation besides reflect badly on the security status of the country. As stated by the U.S Secretary of State, John F. Kerry in the annual U.S TIP report, 'ending modern slavery must remain a foreign policy priority'.[47] Fighting this crime ought to be of national interest of every government as it affects the sovereignty of a nation by seeking opportunity through the loopholes of the laws of the country, encourage bribery among enforcement authorities and rips individuals off dignity and human rights and security.

Human trafficking unlike any other organised crimes like drugs and arms trafficking are relatively profitable because of its reusable products – human beings. Drugs once used cannot be used again but a woman in sex trade can be reused for sexual purposes frequently for profit[48] while in labour trafficking victims are moved around across sectors and industries as cheap and forced labour. For victims who are trapped in the debt bondage are unable to escape from the clutches of their captors even though their debts were settled long ago but they were deceived and manipulated by their scrupulous masters.

For more than a decade the terrifying crime of trafficking a person(s) was relatively unknown to the world what more the relationship of slavery to human trafficking. It has been highlighted by UNTOC since the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2000 in Palermo, Italy which is also known as the Palermo Protocol (PP).

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[47] *Trafficking in Persons Report*, June 2013, p.3.
[48] Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery*, New York: Columbia University Press, 2009, p. Preface.

Slavery is as old as human existence. Efforts to abolish slavery by empires and nations can be traced back since the ancient times around the 3rd century BC to the present time now. Therefore, trading of people has been around since mankind exist and it was known as slavery rather than the hype word of 'trafficking'. The crime has become so outrageous against innocent and vulnerable people that it has pressed the international organisations to take critical action to combat human trafficking. By the end of 2006, it was estimated that there were more than 28.4 million slaves in the world and around 1.2 million from this figure were young women and children who were deceived, manipulated, seduced and abducted or sold by their own families to be prostituted across the globe.[49] The number of people enslaved globally is indeed alarming. In 2014, the Global Slavery Index (GSI) reported a staggering figure of 35.8 million people living in some kind and form of modern slavery around the world.[50]

Human trafficking is a transnational organised crime which has been recognised by the UN as a global phenomenon and has deep and significant impact on humankind and countries. Consequently, it has gained the attention of law enforcement agencies, human rights advocates and policymakers around the world. Most research on human trafficking applies the framework of criminology since the act involves the crossing of international borders with the intention to exploit vulnerable people and some have even faced death.

Research in this field in Malaysia is still considered at infant stage and mostly focused on the implementation of the Anti-trafficking in Persons' Act 2007 and the extremely vague modus operandi of human trafficking. Although Malaysia is part of the global human trafficking problem, however, there is a serious dearth of scholarly works on the said area. Some major works on the issue by local scholars are those by Zarina Othman,

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[49] Ibid.
[50] See *The Global Slavery Index 2014*, The Walk Free Foundation, Australia, 2014, p.5.

Kamarulnizam Abdullah, Gusni Saat and Norlaily Osman, to name a few. Most the works mentioned are in the form of cases studies and are far from holistic. Therefore, this research attempts to provide a comprehensive and holistic view of human trafficking concerns in Malaysia simultaneously exhibit human trafficking activities at global level.

In addition, this research attempts to tap deeper into the nature of the crime and to explore the events of human trafficking in Malaysia as well as to identify and analyse the Malaysian government's responses towards this crime. This research applies the security framework of the Copenhagen School highlighting the non-traditional security (NTS) concept which will be discussed in detail in chapter two of this thesis. The NTS theory enables the research to analyse and integrate the position of state and non-state actors in combating human trafficking activities in Malaysia.

Subsequently, by addressing and analysing the root causes motivating human trafficking, explore various challenges faced by the government and local NGOs and the differences in opinions, this research will underline the importance of securitising human trafficking in the country. The response of the Malaysian government is essential and their partnering with NGOs for the purpose of fighting this atrocious crime will exhibit the critical efforts to combat human trafficking.

However, a note to point out that since human trafficking is a transnational organised crime against vulnerable groups hence most of the current sources were cited from stories and reports from the local dailies and international newspapers and on-line news wires. The limitations are discussed in later part of this chapter.

1.4 Literature Review

The literature review is organised into three parts, namely the review of works pertaining to the debate on security, on human trafficking at global level and lastly works related to the problem of human trafficking in Malaysia.

Human trafficking is a transnational organised crime and it gravely concerns the security of the states and its people, consequently this act of crime falls under the non-traditional security concept. Scholars and social scientists have written copious articles on security theories and the challenges across regions as well as the impact of globalisation on security itself. In this research on human trafficking in Malaysia which is identified as a threat against the security of people of all walks of life, it clearly incriminates the limitations of human security globally thus impose security challenges to the states.

After the end of Cold War for more than two decades ago, the constant debate over the nature of security and threats and the challenges embedded were changing and the security agenda has expanded beyond the state and military power. This transformation indicates the shift in the study and analysis of security and world order from traditional framework to non-traditional and alternative approaches.[51] The term 'security' has been questioned for its conventional definition and it has been subjected to multiple interpretations.[52]

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[51] Barry Buzan, Jaap de Wilde and Ole Weaver, *Security: A New Framework for Analysis*, Boulder, CO: Lynne Rienner, 1998; Muthiah Alagappa (ed.), *Asian Security Practice: Material and Ideational Influences,* Stanford: Stanford University Press, 1998; Alan Collins, *Security and Southeast Asia: Domestic, Regional and Global Issues*, Boulder, CO: Lynne Rienner, 2003; Alan Collins, *The Security Dilemmas of Southeast Asia*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2000; Saurabh Chauduri, "Defining Non-Traditional Security Threats," Global Indian Foundation, Kolkata: India, 2011, available at: <www.globalindianfoundation.org> (accessed 22 June 2012).

[52] Mely Caballero-Anthony and Ralf Emmers (eds.), *Understanding the Dynamics of Securitizing Non-Traditional Security in Asia: Dilemmas in Securitisation*, Hampshire: Ashgate, 2006; Andrew T. H. Tan and J. D. Kenneth Boutin (eds.), *Non-Traditional Security Issues in Southeast Asia*, Singapore: Institute of Defence and Strategic Studies (IDSS), 2001; Ken Booth, *Critical Security Studies and World Politics*, Boulder, CO:

Identifying security issues is simple for tradionalists as they equate security with military issues and the use of force meanwhile wideners accept it more than military power. However, the security paradigm shifts when it is moved out of the military sector[53] and alternative approaches are utilised to tackle the NTS issues. As it is clearly defined that the traditional security encompasses aspects like deterrence, power balancing and military strategy, it obviously indicates that its concern is to defend its state from external military attacks or threats. However, the traditional concept is limited to inter-state military relations while it disregards the economic, societal, political and environmental matters. Thus, the security agenda cannot just be associated with military force as it also relates on non-military factors which means embracing wider agenda on the security sectors.

In *Security: A New Framework for Analysis* by Buzan, Weaver and de Wilde[54] explains, one way of looking at sectors is to see them as identifying specific types of interaction. It further describes, that 'the military sector is about relationships of forceful coercion; the political sector is about relationships of authority, governing status and recognition; the economic sector is about relationships of trade, production and finance; the societal sector is about relationships of collective identity; and the environmental sector is about relationship between human activity and the planetary biosphere'.[55]

However, *in People, States and Fear: An Agenda for International Security studies in the post-Cold War Era*, Buzan points out that when the states and societies are pursuing freedom from threat in a competitive environment where conflicts arise from political,

Lynne Rienner, 2005; Ronaldo Munck, "Globalisation and the Limits of Current Security Paradigms," in Damian Grenfell and Paul James (eds.), *Rethinking Insecurity, War and Violence*, London: Routledge, 2009; and Annick T. R. Wibben, *Feminist Security Studies: A Narrative Approach,* London: Routledge, 2011.
[53] Buzan, de Wilde and Weaver, *Security: A New Framework for Analysis*, p. 1.
[54] Ibid.
[55] Ibid., p. 7.

economic and environmental aspects; the concept of security becomes versatile and acute.[56] Traditionally the state has been the unit of analysis to be secured as the referent object of security however, since the new millennium scholars agreed that state is not the only referent object.[57] With this approach, the significant questions of what to secure and whom to secure have led to what entails a threat?

A number of theoretical and empirical insights surfaced from this study. Human trafficking is accepted as a non-traditional security issue thus the approach taken for this research is on the security theoretical framework of the Copenhagen School. This institute's concept on societal security will be utilised to analyse the response of the Malaysian government in curbing human trafficking. It further explains the societal threats which incriminate humans to be trafficked in and out of a country effortlessly by the perpetrators and their strong chain of syndicates. The Copenhagen School which was developed after the end of the Cold War has its own conventional definition which the term has been debated hence resulted in multiple interpretations over the years.

The Copenhagen School presents a framework to define security and determine how a specific matter becomes securitised or de-securitised. The school of thought emerged at the Conflict and Peace Research Institute (COPRI) of Copenhagen and is represented by the works of Buzan, Waever and others.[58] The institute's goal is to support and reinforce multidisciplinary research in the areas of peace and security.

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[56] Barry Buzan, *People, States, and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, New York: Harvester Wheatsheaf, 1991, pp. 43-49.
[57] Collins, *Security and Southeast Asia*, 2003, p. 1.
[58] Buzan, *Security: A New Framework for Analysis*, 1998; Ole Waever, "Securitisation and Desecuritization," in Ronnie D. Lipschutz (ed.), *On Security,* New York: Columbia University Press, 1995; Ralf Emmers, *Non-Traditional Security in the Asia-Pacific: The Dynamics of Securitisation*, Singapore: Marshall Cavendish, 2004.

Among the limitations listed one of them is that the Copenhagen School approach is very much Euro-centric where it is based on European history and culture.[59] In any case, to discuss an issue such as human trafficking which is an organised crime requires an established framework with proper structure to address, manage and tackling the problem mainly when it is a global matter involving human beings.

In brief, traditionally the security concept equates with military issues and the use of force and power whereby the state is and has been the unit of analysis to be secured as the referent object of national security.[60] The traditional concept of security with the state as the main referent object has become a constant debate and critique among scholars. It is because, the term security is not pre-defined in an exclusive state agenda whilst the theory engages for more inclusive and complete analyses encompassing both the traditional and NTS concerns.[61] Challenges to traditional concept of security have come from scholars like Barry Buzan where he expands the concept of security.

Buzan in *People, States and Fear* points out the realist view as on security as a "derivative of power" reduces the complex of security to a mere "synonym of power."[62] Anyhow, this view was relevant during the era of World Wars where the states were constantly in struggle for power. After the end of Cold War, security has been conceptualised to a broader framework incorporating concepts that were not considered to be part of the security dialogue such as regional security, or the societal and environmental sectors of the security.

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[59] Caballero-Anthony and Emmers (eds.), *Understanding the Dynamics of Securitizing Non-Traditional Security*, p. 5.
[60] Buzan, *Security: A New Framework for Analysis*, 1998, p. 21.
[61] Buzan at al., *Security, A New Framework for Analysis*, 1998 and Weaver, "Securitisation and Desecuritization," in Ronnie D. Lipschutz (ed.), *On Security*, 1995, pp. 46-86.
[62] Buzan, *People, States and Fear*, 1991, p. 2.

Scholars like Acharya,[63] Emmers,[64] Callabero-Anthony[65] and Hough[66] have reflected on what field of security studies should be and the direction it should take with regards to alternative approach without military dimension. The alternative approach concentrates on non-traditional security matters which include ecological degradation, HIV/AIDS, drug trafficking, human trafficking, ethnic conflicts, illegal migration, amongst many other humane issues. These non-traditionalists point out that, other concerns are equally important such as economic, environmental and societal threats endangering the lives of individuals, rather than solely enforcing on the survival of states. [67]

One such scholar is Hough in his book, *Understanding Global Security*, describes that states are not the only important actors nor are they the only referent objects for security. Hough further elaborates wider interpretation of security that incorporates non-military issues as such the trend on human security as crucial to understanding contemporary threats and the means of fighting them.[68] However, Hough's textbook explains 'hard' security since the Cold War period along with international political agenda whilst including 'soft' security from societal problems to environmental and health issues as well as terrorism. Threat from transnational organised crime such as human trafficking was not discussed in his book nonetheless the theory of security is significant to identify with human trafficking issue.

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[63] Amitav Acharya, "Human Security: East Versus West," *International Journal*, Vol. 56, No. 3, 2001, pp. 442-460; Caballero-Anthony and Emmers, *Non-traditional Security in Asia: Dilemmas in Securitization*, 2006.

[64] Ralf Emmers, "Asean and the Securitization of Transnational Crime in Southeast Asia," *The Pacific Review,* Vol. 16, No. 3, 2003, pp. 419-438; Ralf Emmers, *Non-Traditional Security in the Asia-Pacific, The Dynamics of Securitization*: Singapore: Marshall Cavendish, 2004.

[65] Mely Caballero-Anthony and Amitav Acharya, *Studying Non-Traditional Security in Asia: Trends and Issues,* Singapore: Marshall Cavendish 2006; Mely Caballero-Anthony, Ralf Emmers, and Amitav Acharya, *Non-Traditional Security in Asia: Dilemmas in Securitization,* London: Ashgate, 2006.

[66] Peter Hough, *Understanding Global Security*, London: Routledge, 2004.

[67] Sarah Tarry, "'Deepening' and 'Widening': An Analysis of Security Definitions in the 1990s," *Journal of Military and Strategic Studies*, Vol. 2, No. 1, 1999.

[68] Hough, *Understanding Global Security*, 2004, p. 7.

Although the Copenhagen School's security framework is very much Euro-centric and it limits its approach to Asian context nonetheless academicians have researched and written vastly from the Asian perspectives on issues and measures pertaining to security when it concerns globalisation. Globalisation is dynamic and it creates immense economic, social and cultural interactions around the world subsequently encourages the variety of transnational threats.[69] The theory is adaptable to certain extent to respond effectively in addressing NTS issues such as cross-border crimes yet it is stretched out to address issues in Southeast Asia and beyond.

Tan and Boutin, in *Non-Traditional Security Issues in Southeast Asia*[70] highlighted that the NTS concerns since the end of the Cold War especially regional economic crisis, recessions and currencies plunging; globalisation and its impact on security; regional governance to manage regional problems; environment crisis; fishery disputes among neighboring states and maritime conflicts over lucrative resources in South China Sea. In Southeast Asia, the non-traditional security agenda have been driven by the NGOs especially in Indonesia, Malaysia, Philippines and Thailand where NTS issues were campaigned from the environment issues to human rights, terrorism and organised crimes. In this volume, the authors have covered the concept of security within a wide range of issues from global to regional.

With the emergence of human security[71] as a competing approach to traditional security studies and a component of non-traditional security the focus is broader from the

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[69] Munck, "Globalisation and the Limits of Current Security Paradigms," and also see, Lynn E. Davis, "Globalization's Security Implications," RAND Issue Paper No. IP-245-RC, Santa Monica, CA: RAND Corporation, 2003.

[70] Tan and Boutin (eds.), *Non-Traditional Security Issues in Southeast Asia*, 2001, pp. 1-22.

[71] See Acharya, "Human Security: East Versus West," 2001, pp. 442-460; Sabina Alkire, "A Conceptual Framework for Human Security," CRISE Working Paper No. 2, Oxford, UK: Centre for Research on Inequality, Human Security and Ethnicity, 2003, pp. 2-50; Michele Anne Clark, "Trafficking in Persons: An Issue of Human Security," *Journal of Human Development*, Vol. 4, No. 2, 2003, pp. 247-263; Dewi Fortuna

state to the security of the people. Without a doubt human security and human rights are two sides of the same coin as Anwar[72] emphasised and fervently written that human security of a person is only assured when human rights are guaranteed.[73] The term human security was introduced in the international security discipline following a 1994 Human Development Report published by the United Nations Development Programme (UNDP).

This report entails "first, safety from such chronic threats as hunger, disease and repression. And second is protection from sudden and harmful disruptions in the pattern of daily life – whether in homes, jobs or in communities."[74] The second component reflects on discomfort in a person's life whereas the first emphasises the emancipation. Emancipation means security. [75]

Booth in *Security and Emancipation* debates that 'emancipation and security' is two sides of the same coin[76] and Collins states that emancipation means security.[77] Emancipation is not power or order but produces true security and it comes from the freeing of people from constraints.[78] Booth also stressed that the challenge posed on the traditional security term since the emergence of critical security studies (CSS) is crucial and timely as it has significant implications on the lives of real people in real places. There are two aspects to the

Anwar, "Human Security: An Intractable Problem in Asia," in Muthiah Alagappa (ed.), *Asian Security Order: Instrumental and Normative Features*, Stanford: Stanford University Press, 2003; William Bain, "Introduction," in William Bain (ed.), *The Empire of Security and the Safety of the People*, London: Routledge, 2006, pp. 1-14; Shahrbanou Tadjbakhsh and Anuradha M. Chenoy, *Human Security*, Concepts and Implications, London: Routledge, 2007; Sorpong Peou, "Introduction: Collaborative Action Problems in Human Security," in Sorpong Peou (ed.), *Human Security in East Asia: Challenges for Collaborative Action*, London: Routledge, 2009, pp. 1-10; Sagarika Dutt, "Human Security in South Asia and the Role of the UN and Its Agencies," in Sagarika Dutt and Alok Bansal (eds.), *South Asian Security 21st Century Discourses*, London: Routledge, 2012, p. 195.
[72] Anwar, *Human Security: An Intractable Problem in Asia*, 2003, p. 537.
[73] Ibid.
[74] *Human Development Report*, United Nations Development Programme, New York: Oxford University Press, 1994, p. 23.
[75] Collins, *Security and Southeast Asia*, 2003, p. 4.
[76] Ken Booth, "Security and Emancipation," *Review of International Studies*, Vol. 17, No. 4, 1991, pp. 313-326.
[77] Collins, *Security and Southeast Asia*, 2003, p. 4.
[78] Ken Booth, "Security and Emancipation," 1991, p. 319.

seven areas of human security namely 'freedom from want' and 'freedom from fear'[79] in tackling global insecurity. In essence, the Commission of Human Security defines human security as:[80]

> [T]he vital core of all human lives in ways that enhance human freedoms and human fulfilment. Human security means protecting fundamental freedoms – freedom that are essence of life... it means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, dignity and livelihood.

The UNDP report outlines seven areas of human security; economic security, food security, health security, environmental security, personal security, community security and political security. It also identifies six focal threats to human security; namely unchecked population growth, disparities in economic opportunities, migration pressures, environmental degradation, drug trafficking and international terrorism.[81]

Consequently, human security complements state security and enhances human development and human rights. Apart from that, it addresses insecurities that have never been considered as state security threats such as transnational organised crime. Hence, it complements state security by being people-centred and addressing insecurities that have not been considered as state security threats. By looking at the "downside risks", it widens the human development focus beyond "growth with equity". Respecting human rights are at the core of protecting human security.[82]

Transnational crime has been discussed as an international security issue in the academic arena by Emmers quoting McFarlane and McLellan where in 1996 they stated that

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[79] Amitav Acharya, "Human Security: East versus West," 2001, pp. 442-460.
[80] Sadako Ogata and Amartya Sen, "Human Security Now, Commission of Human Security", *Commission on Human Security,* New York, 2003, pp. 1-19.
[81] *Human Development Report*, United Nations Development Programme, 1994.
[82] Ibid., and see Alkire, "A Conceptual Framework for Human Security," 2003.

"transnational crime is now emerging as a serious threat in its own right to national and international security and stability."[83] Thus, it is essential to highlight the threats posed by transnational crime to states, national economies and civil societies.

Human trafficking is a transnational organised crime to states and a critical threat confronting Southeast Asia. It is a serious threat in its own right to national and international security and stability[84] and greater threat to the insecurity of human being. The UN Protocol explains that, human trafficking is an illicit and a clandestine movement of persons across national and international borders, mainly from developing countries and some countries with economic transition, with the end goal of forcing women and under-aged children especially girls into sexually or economically oppressive and exploitative situations for the traffickers such as forced labour, false marriages, surreptitious employment as well as false adoption.[85]

Exploitation in this context means, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Victims are tricked and lured by false promises or are physically forced to move. Some traffickers coerced or manipulate the victims and use deception, intimidation, feigned love, isolation, debt bondage and threats implying towards family members.

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[83] John McFarlane and Karen McLellan, *Transnational Crime, The New Security Paradigm,* Working Paper No. 294, Canberra: Australian National University, Strategic and Defence Studies Centre, 1996, p. 2; Ralf Emmers, *The Threat from Transnational Crime in Southeast Asia: Drug Trafficking, Human Smuggling and Trafficking and Sea Piracy,*" UNISCI Discussion Papers, No. 2, Zurich, Unit on International Security and Cooperation (UNISCI), 2003, pp. 5-11.
[84] Ibid., p. 2.
[85] Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, signed in December 2000 in Palermo City states that human trafficking is recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having a control over another person for the purpose of exploitation.

Authors like Skeldon,[86] Salt,[87] Belser,[88] Mijalkovic,[89] Obokata,[90] Cameron and Newman,[91] Kara,[92] Shelly,[93] Doezema,[94] Naro,[95] Winterdyke[96] and many more have written on the heinous crime of human trafficking and the various perspective of this issue namely feminine, criminology, human rights, security and social aspects.

Cameron and Newman in *Trafficking in Humans: Social, Cultural and Political Dimensions*, explains that trafficking not necessarily occurs in the poorest regions or communities as it may look most vulnerable to trafficking, however, it has become a trend that the modus operandi has been identified from richest and developed nations as well. The authors further explore at how modern forms of transportation and communication have aided the movement of people and enabled transnational organised crime groups and trafficking rings to exploit vulnerable people for profit.[97] They also explained that the vulnerable groups are easily exploited by traffickers since the motivating factor is the enormous profit garnered from trafficking human beings regardless of gender, age, religion, ethnicity, social background and status. In this context, status refers to refugee, migrant, stateless but did not mention the lesbian gay bi-sexual and transgender (LGBT) group. It is

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[86] Ronald Skeldon, "Trafficking: A Perspective from Asia," *International Migration,* Vol. 38, No. 1, 2000, p. 13.

[87] John Salt, "Trafficking and Human Smuggling: A European Perspective," *International Migration,* Vol. 38, No. 3, 2000, pp. 31-56.

[88] Patrick Belser, *Forced Labor and Human Trafficking: Estimating the Profits*, ILO Working Paper No. 42/2005, Geneva, International Labour Organization (ILO), 2005, p. 17.

[89] Saša Mijalković, "The Forms Trafficking in Human Beings," *Temida,* Vol. 8, No. 1, 2005, pp. 33-42.

[90] Tom Obokata, "Trafficking of Human Beings from a Human Rights Perspective: Towards a More Holistic Approach," Netherlands: Martinus Nijhoff Publishers, 2006.

[91] Edward Newman and Sally Cameron (eds.), "Introduction: Understanding Human Trafficking," in *Trafficking in Humans: Social, Cultural and Political Dimensions*, New York: United Nations University Press, 2008.

[92] Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery*, New York: Columbia University Press, 2009.

[93] Louise Shelley, *Human Trafficking: A Global Perspective*, Cambridge: Cambridge University Press, 2010.

[94] Jo Doezema, *Sex Slaves and Discourse Masters: The Construction of Trafficking*, London: Zed Books, 2010.

[95] Neth Naro, *Human Trafficking in Cambodia: Reintegration of Cambodia: Reintegration of the Cambodian Illegal Migrants from Vietnam and Thailand*. Singapore: S. Rajaratnam School of International Studies, 2009.

[96] John Winterdyk, Benjamin Perrin and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, New York: CRC Press, 2012.

[97] Cameron and Newman (eds.), *Trafficking in Humans: Social, Cultural and Political Dimensions*.

important to identify the victims of human trafficking because the LGBT community is also easily preyed upon by the trafficking syndicates.[98]

Kara in *Sex Trafficking inside the Business of Modern Slavery* explains vehemently that "drug trafficking generates great dollar revenues, but trafficked women are far more profitable." He also added "that unlike drugs, a human female does not have to be grown, cultivated, distilled or packaged. Unlike a drug, a human female can be used by the customer again and again."[99] Because of the reusable idea, human traffickers are clandestine in their movements and target the vulnerable populations from the poor countries especially the least developed nations. Kara argues that in order to eradicate sex trafficking industry is to attack on the demand for sex slaves by slave owners and consumers who are motivated by the vast profits. Although he explains the components of slavery and notorious ways the victims were recruited and the way they were badly treated to force them into prostitution and commercial sex yet the vital concern is over countries which have legalised prostitution. Kara could have compared how to combat sex trafficking in the states that prohibit prostitution and those permitting it as a profession.

Shelly's *Human Trafficking: A Global Perspectives* examines the different forms of human trafficking globally with interviews and case studies from a wide range of regions in Asia, Africa, Europe, Latin America and former socialist states.[100] This book methodologically covers the operations of the human trafficking business and the background of the perpetrators. Shelley uses a historical and comparative perspective and discusses the various business model and characteristics of human trafficking in different countries and places around the world. In this volume, Shelley comes to a conclusion that the

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[98] *Trafficking in Person Report*, June 2014, p. 10.
[99] Kara, *Sex Trafficking*.
[100] Shelley, *Human Trafficking*.

crime of human trafficking will expand due to global economic and demographic instability, possible climate change and the rise of conflicts. Therefore, governments' efforts, international bodies, civil society and the media have to play vital role to combat and stem the escalation of human trafficking.

In *Human Trafficking: Interdisciplinary Perspectives*, Burke contributes to the literature on contemporary human trafficking and abolition.[101] Burke introduces the human trafficking subject from historical perspectives covering slavery from ancient world to present day's modern-day slavery. She describes human trafficking through arrays of essays collated around the world with myriad forms of human trafficking, the repercussions on the victims as well as on global public health and describes the responses and coordination practices in the U.S. Even though the book is for beginners nonetheless it covers the subject matter methodically yet there is no mention of the implication or threat of human trafficking on the state.

Doezema's feminine view of her book, *Sex Slaves and Discourse Masters: The Construction of Trafficking*, is written on the expression of the myth of white slavery.[102] She engages the work of prostitution, sex works and trafficking in women for sexual purposes as a social issue. Doezema's work with numerous sex workers and victims of sex trafficking whom she recognize as 'white slaves' is narrated with case studies and actual happenings from interviews in this volume. Her concern over quantifying trafficking due to lack of statistical evidence, the uncertainty over illegal migration versus trafficking and lack significance efforts to combat trafficking. The book structured with two key concepts; myth and consent and her approach on trafficking as a discourse. Therefore, she discusses the concepts of myth and ideology relating to white slavery and trafficking in women for

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[101] Mary C. Burke, *Human Trafficking: Interdisciplinary Perspectives*, New York: Routledge, 2013.
[102] Doezema, *Sex Slaves and Discourse Masters*.

prostitution and other sexual exploitations. Doezema's narration throughout this book was to

debunk the myth of sex workers where for some were their profession and for many were

exploited.

Winterdyk, Perrin, and Reichel's *Human Trafficking; Exploring the International*

Nature, Concerns and Complexities, was written with diversified group of international

authors[103] to highlight that trafficking is addressed globally with international perspective

featuring eminent scholars in the field of organised crime. These authors have highlighted

the criminology and human rights aspects of human trafficking with cases from around the

world, the movement of perpetrators with their victims across borders, the collation of data

and the validity of those data derived from various international, regional and local

organisations and states, the exploration on "3P' namely the prevention, protection and

prosecution on a range of case studies, the responses of international governing bodies and

law enforcements and also on victims' stories, rescues and their needs after rescue

operations. Though there are many cases highlighted on the U.S and Europe but very few on

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[103] Cindy J. Smith and Kristiina Kangaspunta, *Defining Human Trafficking and Its Nuances in a Cultural Context*, p. 19; Jo Goodey, *Data on Human Trafficking: Challenges and Policy Context*, p. 39; Julie Kaye and John Winterdyke, "Explaining Human Trafficking," in John Winterdyk, Benjamin Perrin and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities,* New York: CRC Press, 2012, p. 57; Claude D'estree, "Voices from Victims and Survivors of Human Trafficking," in John Winterdyk, Benjamin Perrin and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, p. 79; Karin Bruckmuller and Stefan Schumann, "Crime Control versus Social Work Approaches in the Context of the "3P" Paradigm: Prevention, Protection, Prosecution," in John Winterdyk, Benjamin Perrin and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, p. 103; Annette Herz, "Human Trafficking and Police Investigations," in John Winterdyk, Benjamin Perrin and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, p. 129; Marianne Wade, "Prosecution of Trafficking in Human Beings Cases," in John Winterdyk, Benjamin Perrin and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, p. 153; Amy Farrell, "Improving Law Enforcement Identification and Response to Human Trafficking," in John Winterdyk, Benjamin Perrin and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, p. 181; Yvon Dandurand, "International Cooperation," in John Winterdyk, Benjamin Perrin and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, p. 207; Sanja Milivojevic and Marie Segrave, "Evaluating Responses to Human Trafficking: A Review of International, Regional and National Counter-Trafficking Mechanism," in John Winterdyk, Benjamin Perrin and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, p. 233; Sanja Copic and Biljana Simeunovic-Patic, "Victims of Human Trafficking: Meeting Victims' Needs?," in John Winterdyk, Benjamin Perrin and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, p. 265.

Asia especially on Southeast Asia and Asia Pacific, nevertheless it explored multiple outlooks and aspects of human trafficking.

Ford, Lyons and van Schendel in *Labour Migration and Human Trafficking in Southeast Asia: Critical Perspectives*, critically mentioned the gap in the anti-trafficking initiatives in the Southeast Asia region.[104] Therefore, the authors in this volume show case various anti-trafficking programmes for the victims, underline education and awareness on human trafficking issues, share development programmes to improve economic livelihoods in 'hotspot' areas and describe efforts in securing borders and arresting the perpetrators.

Whereas Yea in her volume *Human Trafficking in Asia: Forcing Issues*, gathers critical perspectives in forcing out issues on human trafficking from in Asia and Southeast Asia.[105] This book covers from anti-trafficking in persons' research, the methodologies, policies, legal frameworks including the anti-trafficking in persons (ATIP) act and victims' protection act. Yea and her authors further question if the ATIP act is actually effective especially in protecting the trafficked victims and vulnerable people whilst abuse the human rights of these victims especially in the sex industry. This book also covers a topic on Malaysia's ATIP act authored by Lyons and Ford.[106] This topic discusses the rising conflation between trafficking and smuggling simultaneously criticize that the act does not resolve the labour trafficking issues in the country when the migrants flow into the country is rapid due to labour demand.

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[104] Michele Ford, Lenore Lyon and Willem van Schendel (eds.), *Labour Migration and Human Trafficking in Southeast Asia: Critical Perspectives*, London: Routledge, 2012.

[105] Sallie Yea (ed.), *Human Trafficking in Asia: Forcing Issues*, Abingdon & New York: Routledge, 2014.

[106] Lenore Lyon and Michelle Ford, *Trafficking versus Smuggling: Malaysia's Anti-Trafficking in Persons Act* in Sallie Yea (ed.), *Human Trafficking in Asia: Forcing Issues*, Abingdon & New York: Routledge, 2014, pp. 35-48.

On the local front from the academia and NGOs, authors like Othman,[107] Abdullah,[108] Lo,[109] Saat,[110] Osman[111] as well as Rahim and Bakar[112] have written on human trafficking from the Malaysian and Southeast Asian perspective and also on the Anti-Trafficking in Persons Act 2007 as well as the implementation.

Zarina Othman as her doctoral candidature research on *Human (In)security, Human Trafficking and Security in Malaysia*[113] discusses how human insecurity has resulted to the occurrence of human trafficking which led to a threat to every state's national security. She discusses the concept of human security by describing the magnitude of the trafficking challenges and its implications on Malaysia and the security in general. Her article also explains the pull and push factors of human trafficking. However, it does not cover the human trafficking statistics in each state in Malaysia as well as the government's and local NGO's response in fighting this crime.

Kamarulnizam Abdullah's article on *Emerging Threats to Malaysia's National Security* is on the emerging new security threats that could risk the survival of the country. Though domestic sources are seen as a threat in nation building he also highlighted the NTS threats such as illegal economic migrants, environmental degradation and transnational organised crime which equally contribute to security threats of a nation.

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[107] Zarina Othman, *Human (In)security, Human Trafficking and Security in Malaysia*. Paper presented at the 4th International Malaysian Studies Conference (MSC 4), Bangi, Universiti Kebangsaan Malaysia, 5 August 2004.
[108] Kamarulnizam Abdullah, "Emerging Threats to Malaysia's National Security," *Journal of Policing, Intelligence and Counter Terrorism,* Vol. 5, No. 2, 2010, pp. 55-70.
[109] Daniel Lo, "Investigations: What Are the Key Elements in a Trafficking in Persons Case?," in *The 15th Malaysian Law Conference*. Kuala Lumpur Convention Centre: The Law Review: iMalaysiana 2010, 29 – 31 July 2010.
[110] Gusni Saat, "Human Trafficking from the Philippines to Malaysia the Impact of Urbanism," *South Asian Survey,* Vol. 16, No. 1, 2009, pp. 137-48.; Gusni Saat, "Implementation Issues of the Malaysian Anti-Human Trafficking Act 2007: A Sociological Reading," *Akademika,* Vol. 82, No. 1, 2012, pp. 49-55.
[111] Norlaily Osman, "Protection of Human Trafficking Victims: An Insight into the Anti-Trafficking in Persons Act 2007," in *5th Asian Law Institute Conference,* Singapore: Asian Law Institute Conference, 2008.
[112] Rohani Abd Rahim and Junaidi Abu Bakar, "Trafficking of Indonesian Women to Malaysia," in *Seri Kompilasi Kertas Kerja Migrasi Pekerja Indonesia ke Malaysia: Isu dan Implikasi Perundangan,* Bangi*:* Law Faculty, University Kebangsaan Malaysia, 2010.
[113] Othman, *Human In(Security) Human Trafficking and Security in Malaysia.*

Gusni Saat's *Human Trafficking from the Philippines to Malaysia: The Impact of Urbanism* explains the model for human trafficking through urbanism which explores the underlying forces responsible for human trafficking from the Philippines to Malaysia. The model presents an explanatory model for sustainability of human trafficking. Saat stating that urbanism is a root cause of human trafficking and vulnerable victims from the rural areas fall easily as preys into the hands of traffickers from the city and across international borders.

Thus far, there are limited academic journals and articles written and published on human trafficking in Malaysia compare to other Asian countries. Most write-ups are in news papers[114] or on websites of respective government agencies and non-government organisations. Besides that, most academic journals and articles[115] are on migration, illegal migration and transnational organised crimes which cover from drug trafficking to human smuggling and trafficking as well as sea piracy.[116] Although local academicians have contributed in highlighting the severity of human trafficking crime in the country, simultaneously they have guided young researchers to continue their efforts in addressing human trafficking and the impacts.

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[114] V. Vasudevan, Sajahan Waheed and Lydia Gomez, "Malaysia Probes Human Trafficking Ring," *New Straits Times,* 1 December 2009.; Farrah Naz Karim and Alang Bendahara, "Making Millions from Behind Bars," *New Straits Times*, 10 September, 2012.; Farrah Naz Karim and Alang Bendahara, "Undeclared Millionaires," *New Straits Times*, 11 September 2012.; "Malaysian 'Sex Slaves' Trial Opens in Sydney," *The Sun*, 5 February 2013; "694 Human Trafficking Arrests since 2008," *The Sun*, 18 September 2012.
[115] Othman, "Human In(Security)"; Maruja M. B. Asis, "Human Trafficking in East and South-East Asia: Searching for Structural Factors," in Edward Newman and Sally Cameron (eds.), *Trafficking in Humans: Social, Cultural and Political Dimensions*, New York: United Nations University Press, 2008; Abdullah, "Emerging Threats to Malaysia's National Security," *Journal of Policing, Intelligence and Counter Terrorism*, Vol. 5, No. 2, 2010, pp. 55-70; Amarjit Kaur, "Labour Migration in Southeast Asia: Migration Policies, Labour Exploitation and Regulation," *Journal of the Asia Pacific Economy*, Vol. 15, No. 1, 2010, pp. 6-19; Lois Cheng, *Trafficking in Women* in Kelly Askin and Doreen Koenig (eds.), Women & International Human Rights Law, Vol. 1, 1999, pp. 321- 326; Kevin McGahan, "Managing Migration: The Politics of Immigration Enforcement and Border Controls in Malaysia," Masters Dissertation, University of Wisconsin-Madison, 2008.
[116] For example see, Emmers, *The Threat of Transnational Crime in Southeast Asia*.

However, most works are written based on other Southeast Asian countries like Thailand, Cambodia, Myanmar, and rest of the neighbouring states.[117] Therefore, this research on human trafficking with a focus on Malaysia explores the relationship between security concept and human trafficking in Malaysia in the period from 2000 to 2015. This exploratory, descriptive study analyses data from a variety of international organisations, such as the UN, the ILO as well as the International Organisation for Migration (IOM).

Therefore, it is imperative to conduct more research on transnational organised crime such as human trafficking in Malaysia with comparative studies among other countries to exchange and share knowledge and to have a sound action plan to combat this crime.

This research identifies and describes the characteristics of human trafficking in Malaysia and explores the current trend, patterns and challenges. It also explains the responses of the Malaysian government, enforcement communities at local and international level as well as actions taken to curb this transnational organised crime.

1.5 Theoretical Framework

A number of theoretical and empirical insights surface from this study. Human trafficking is accepted as a non-traditional security issue thus the approach taken for this research is on the security theoretical framework of the Copenhagen School. The concept of COPRI School on societal security will be applied to analyse the response of the Malaysian government in curbing human trafficking. It further explains the societal threats which incriminate humans to be trafficked in and out of a country effortlessly. The Copenhagen

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[117] For example see, Neth Naro, *Human Trafficking in Cambodia: Reintegration of Cambodia: Reintegration of the Cambodian illegal migrants from Vietnam and Thailand,* Singapore: S. Rajaratnam School of International Studies, 2009.

School was developed after the end of the Cold War and its conventional definition has been questioned and the term has become the object of multiple interpretations.

The post era of Cold War has allowed thinkers to go beyond the traditional definition on security and the threats evolve from insecurity. Therefore, the non-traditional security (NTS) issues were given comparable importance in the policy-making and research agendas of governments, non-government organisations (NGOs) and international organisations. Non-military issues like international migration, transnational organised crimes such as human trafficking, human smuggling, drug trafficking; health issues along with infectious diseases and epidemics; environmental distress, and migration crises were identified as a series of NTS. These security challenges have become the new security agenda as it moves beyond the traditional concept of security.

The concept of theoretical framework is discussed in detail in Chapter 2.

1.6 Research Methodology

This research is qualitative in nature with descriptive and analytical method used to conduct this research with two major approaches. The first comprises library research by referring primary and secondary sources. Primary sources are gathered at various points especially from library research in universities and through primary data collection from government agencies and non-government organisations. As this research is of national interest thus information might be sensitive hence the subject is tackled ethically and carefully. Data namely reports gathered from relevant government enforcement agencies under the purview of Ministry of Home Affairs Malaysia such as the Royal Malaysian Police, Attorney General's Chambers and Malaysian Anti Trafficking in Persons and

Migrant Smuggling Secretariat (ATIPSOM) and relevant resources. For the purpose of data verification, data was also acquired from international organisations such as the U.S States Department's Trafficking in Persons Report, ILO, United Nations High Commissioner for Refugees Malaysia (UNHCR), International Organisation for Migration (IOM), United Nations Development Programme (UNDP). Secondary data were mainly from books, scholarly journals, theses and dissertations, seminar papers and conferences.

The second method applied is by conducting open ended and semi-structured interviews namely on Malaysian law enforcement officers, government and NGO official staff. Four local NGOs (some of these NGOs are in the ATIPSOM council) and seven government agencies from the ATIPSOM council including the secretary of ATIPSOM, a secretariat member, three International Organisations were interviewed and in some organisations more than a person were interviewed on human trafficking happenings in Malaysia and on security challenges. Apart from cross verification data, the interviews provide in-depth insights into the subject matter.

Some of the interviewees requested to be remained anonymity due to the nature of their job. These were mainly government officials. Given the sensitive nature of the subject matter where data is of reputational to the country hence, some of the interviews were off the record. The interviews were extremely insightful to the human trafficking crimes occurred in Malaysia and how the government has responded with the aid of its agencies and enforcement authorities. Besides face to face interviews, some interviews were conducted over the telephone and through emails.

In addition to both methods, data was collected from numerous conferences and seminars conducted by both NGOs and government agencies as well as ATIPSOM. By attending

seminars and conferences organised by local NGO proved to be resourceful. During social networking, some of the local officials and staff were more than helpful in sharing issues concerning human rights and human trafficking.

1.7 Limitations of Study

The issue of human trafficking in Malaysia is highly sensitive. Therefore, in the beginning there were mixed responses and feedback among enforcement agencies, local NGOs and IOs as they were reluctant to be interviewed. However, after much persuasion and stating that the significance of the research is for academic purpose they were forthcoming. Besides, the concern over the human trafficking issue is a sensitive matter to any government agencies therefore; it needs to be tackled discreetly during research.

Some of the interviews were very insightful and some were not so informative. The local NGOs were very cooperative and they were very critique over government's efforts in managing human trafficking problems in the country. In brief, the NGOs collectively agreed that the involved government agencies especially the enforcement team could step up their efforts in the areas of prosecution and prevention.

Secondly, the inconsistent data as from various international organisations, regional bodies and local government agencies and NGOs on human trafficking from victims rescued to profits earned from this crime and conviction rates often pose a problem due to inconsistency and the probability of biasness cannot be ruled out. However, these data and statistics are essential to monitor the expansion of human trafficking from regional to international level as it is imperative to tackle, manage and combat this atrocious crime.

The tier system was introduced during the Palermo Protocol with agreement from nations around the world and the tier system is applied to evaluate the efforts of the governments in combating human trafficking. Hence, most of the data, statistics, and reports on human trafficking are adapted and applied from this TIP report for validation.

1.8 Organisation of Study

The thesis is organised into six chapters and conclusion thus, divided into conceptual theoretical framework, historical, case studies and ends with conclusion and discussion. Chapter two enfolds the theoretical and conceptualisation framework of the Copenhagen School and it discusses the non-traditional security concept. This is because of the nature and characteristics of human trafficking as an organised crime falls under the category of non-military concept. As the non-traditional security concept moves away from the traditional concept of power and military authority, it emphasises on the security of human beings, human rights, environmental hazards, the wide spread of transmitted diseases and virus epidemic.

Chapter three is on the historical background of human trafficking exploring the history of slavery from trading to trafficking in persons. The nature, characteristics and myriad forms of human trafficking are discussed in this chapter with global and regional dimensions with Malaysia as the case study including comparative analysis with neighbouring countries in the region and at global level. The motivation behind the movement of human trafficking and the reasons for exploiting vulnerable population are also tapped into and discussed in-depth in this part of the chapter.

Then in chapter four the root-causes of human trafficking, characteristics and impacts are discussed in detail from global perspective to regional and then to Malaysia.

The myriad forms of human trafficking are described and the impacts are examined in the context of political, societal and economic as well as on the victims. It is essential to highlight the challenges faced by many quarters in combating human trafficking issues especially the impact this crime inflicts upon the vulnerable individuals who are seeking for decent employment and rightful living. Leaving their countries for job opportunities is the last and only option to get away from their poverty stricken countries and their susceptible situations are taken as an advantage by syndicates, agents and individuals who are driven by financial profits.

Chapter five is on securitisation and response. This chapter analyses the responses to combat human trafficking from global to local initiatives. It further explains the five-year National Action Plan of the Malaysian government to combat human trafficking and the institution of Anti-Trafficking in Persons and Anti-Migrant Smuggling Secretariat (ATIPSOM) under the jurisdiction of Ministry of Home Affairs. Besides that, it is imperative to include the response of the government and how it partners with local NGOs and IOs. Segment on securitisation provides a descriptive analysis of the act of securitisation theory and how the framework of securitisation is employed in Malaysia context as well as the limitation of the theory. Human trafficking is a crime hence, the act of securitisation framework is designed to combat such an issue.

Finally, Conclusion concludes with summary of main theoretical and empirical points of the thesis as well as the rundown of the research findings and challenges.

CHAPTER 2

THEORETICAL AND CONCEPTUAL FRAMEWORK:
THE NON-TRADITIONAL SECURITY DIMENSION AND THE
PROCESS OF SECURITISATION

2.1 Introduction

Since the early 1990s, scholars of security studies have redefined and conceptualised security studies, and the term 'security' has become a contested concept till now. Traditionally security has been defined and associated with a military cum power dimension of a state. States are a prominent subject and positioned as the highest form of political order within the traditional security framework.[1] The concept of security is also often associated with a particular group of actors with a significant emphasis on military authority. Moreover, some states lack peaceful relations with neighbouring countries and feel threatened by the existence of powerful states. Such a situation occurs especially when these countries are equipped with military weapons and technology presumably to protect their national security.

War has been a frequent answer for most states to uphold and safeguard their sovereignty from external threats. Pioneers of traditionalist realism like E.H. Carr and Hans Morgenthau clearly favoured the approach of power to eliminate threats to the state.[2] The idealists acquired a different approach to peace by looking at the problem holistically with a focus on the issue of war as a response to national security issues.

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[1] Barry Buzan, *People, States, and Fear the National Security Problem in International Relations*, Brighton: Wheatsheaf Books, 1983, p. 1.

[2] Buzan has explained in detail on traditionalist thinking approaches by Carr (1946) and Morgenthau (1973). More details can be seen in Barry Buzan, *People, States, and Fear the National Security Problem in International Relations*, Brighton: Wheatsheaf Books, 1983, p. 2.

Both concepts of security have different approaches. One uses power and force and the other peaceful solutions. According to Buzan, a more fully developed concept of security lies between the extremes of power and peace. He argues that security should be viewed as a companion and in need of further development.[3] This is because the concept of security is underdeveloped and has never functioned properly.[4]

Buzan reiterates the underdevelopment of security with evidence showcasing that the vast majority of literature is in power for which an elaborate framework has developed while the security framework, in contrast, requires further development. Although the term security is widely used it seems unbalanced as most of the literature discuss the practical aspects of contemporary security problems.[5] Discussions of security are often limited to the concepts of 'dominance' and 'stability' meaning that more work needs to be invested into defining the conceptual framework of security.[6]

Wolfers characterised security as an 'ambiguous symbol' which he argues may not have any precise meaning.[7] Such characterisation risks obscuring policies with deceptive names.[8] Macdonald gave up debating security after being defeated by his attempts to categorise it leading him to conclude that security is an 'inadequate' concept.[9] Security is also perceived as a difficult concept similar to power, justice, peace, equality and freedom

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[3] Barry Buzan, *People, States, and Fear the National Security Problem in International Relations*, p. 2.
[4] Ibid., p. 2.
[5] Ibid., p. 3.
[6] Ibid., p. 3.
[7] Buzan further analysed the concept of security as proposed by Wolfers (1962). See Buzan, *People, States, and Fear the National Security Problem in International Relations*, p. 4.
[8] Ibid., p. 5.
[9] Buzan also explained Macdonald's (1981) theory on security. See Buzan, *People, States, and Fear the National Security Problem in International Relations*, p. 4.

hence it was termed as an 'essentially contested concept'.[10] Herz first introduced the security dilemma in the early 1950s stating that the states tendency to look after their security needs would lead to insecurity for others as the measures could be interpreted wrongly such as being defensive and potentially threatening.[11] There has been no additional development on the security dilemma by any other scholars except for Jervis, who introduces the notion of security regimes which concentrates on the system level of analysis rather than the state.[12]

To grasp the concept of security, Buzan explains that for security to exist, there has to be a threat upon a referent object which is in need of protection. Hence, the realist view that the state is threatened when it faces warfare renders the state as the referent object. When the state is under siege from external powers, thus the threat is imposed on the state's national security.

Although the term security is defined dubiously, politically powerful concepts such as national security was regarded to be of utmost importance and hence has not gone unnoticed by critics.[13] Authors have criticised for the narrow, hollow and militarised analysis of the security concept which has dominated the notion of national security.[14] The need to expand the concept of security from the narrow-minded national security is to include a series of various situations and objects.[15] Moreover, it is essential not only to consider

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[10] W.B. Gallie, *Essentially Contested Concepts* in Max Black (ed.), *The Importance of Language*, New Jersey: Prentice-Hall, 1962, pp. 121-146.

[11] Buzan included Herz (1950 & 1951) idealism on security dilemma. See Buzan, *People, States, and Fear the National Security Problem in International Relations*, p. 3.

[12] Robert Jervis, "Security Regimes," *International Organisation*, Vol. 36, No. 2, 1982; Robert Jervis, "Cooperation under the Security Dilemma," *World Politics*, Vol. 30, No. 2, 1978, pp. 167-214.

[13] Buzan, *People, States, and Fear the National Security Problem in International Relations*, p. 4.

[14] Ibid. Also see Ken Booth, *Strategy and Ethnocentrism*, London: Croom Helm, in Buzan, *People, States, and Fear the National Security Problem in International Relations*, 1979, p. 5.

[15] Buzan further described the need to think security beyond military power as suggested by Beaton (1972). See Buzan, *People, States, and Fear the National Security Problem in International Relations*, p. 5.

security beyond military and power but also from a different viewpoint as Hoffmann suggests turning national security into an aspect of world order policy.[16]

Bull argued that national security necessitated a broader outlook whereas L.B. Krausse and Joseph Nye criticised that neither economists nor political scientists have given due considerations to the complexity of the concept of security as well as its *instrumental role* in the enhancement of other values[17] particularly concerning humanities and the happenings around the world.

Therefore, the definition of security is no longer confined to the state and its external military threats but encompasses society as a whole, environmental aspects and humanity issues. The modern threats to security include issues like organised crimes at the national and international level, weak and failing states, the impact of globalisation, environmentally related problems, epidemic diseases, extreme poverty, as well as exposed information flows and security systems alongside with corruption.

Buzan, Weaver and de Wilde explain that security as the pursuit of freedom from threat and the ability of states and societies to maintain the identity of independence and their functional integrity against forces of change, which is seen as hostile.[18] However, such threats do not necessarily impose the state by incorporating the government, territory and

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[16] Buzan also touched on Hoffman's (1978) proposal on turning security as a world order. See Buzan, *People, States, and Fear the National Security Problem in International Relations*, p. 5.

[17] Hedley Bull, *The Control of the Arms Race*, London: Weidenfeld & Nicolson, 1961, pp. 25-29; L.B. Krause and J.S. Nye, *Reflections on the Economics and Politics of International Economic Organisations* in C.F. Bergsten and L.B. Krause (eds.), *World Politics and International Economics*, Washington DC: Brookings Institutions, 1975, p. 329.

[18] Barry Buzan, "New Patterns of Global Security in the Twenty-First Century," *International Affairs,* Vol. 67, No. 3, 1991, pp. 432-433; Barry Buzan, Jaap deWilde, and Ole Weaver. *Security: A New Framework for Analysis*, Boulder, CO: Lynne Rienner, 1998.

society.[19] Survival is of paramount importance in security and when there is a significant threat to an individual, society or state, security becomes indispensable.[20]

The Copenhagen Peace Research Institute (COPRI) shifts the security paradigm from the traditional spectrum to non-traditional issues which over the decades have become a significant discourse. The securitisation theory was established to emphasise the gravity of these non-military issues and inject urgency to step up the states' efforts to address them. However, the theory has its critics as scholars have identified the weaknesses of the theory.

The Copenhagen School has outlined five categories of security namely military, environmental, economic, societal and political. Each category is determined by securitising actors and referent objects. Securitising actors are defined as "actors who securitise issues by declaring something, a referent object, existentially threatened"[21] and they range from 'political leaders, bureaucracies, governments, lobbyists and pressure groups'.[22] Referent objects are termed as things that are seen to be existentially threatened and have a legitimate claim to survival.[23] They are states (military security), national sovereignty or ideology (political security), national economies (economic security), collective identities (societal security), species or habitants (environmental security).[24]

These referent objects include tangible and non-tangible facets such as the safety and security of human beings, the impacts of the greenhouse effect on climate and the

[19] Barry Buzan, Jaap deWilde, and Ole Weaver, *Security: A New Framework for Analysis*, Boulder, CO: Lynne Rienner, 1998, p. 21.
[20] Ibid.
[21] Mely Caballero-Anthony and Ralf Emmers (eds.), *Understanding the Dynamics of Securitizing Non-Traditional Security in Asia: Dilemmas in Securitisation*, Hampshire: Ashgate, 2006, p. 8; Buzan, de Wilde and Weaver, *Security: A New Framework for Analysis,* p. 36.
[22] Ibid., p. 40.
[23] Ibid., p. 36.
[24] Ibid.

environment, food insecurity and war-torn nations, political insecurity and abject poverty, insufficiency of clean water resources, social instability and internal security flux due to illegal, unregulated migration.

By shifting away from the emphasis on military authority and power, the focus on human rights violations, environmental pollution and degradation, war, poverty and socioeconomic imbalance, political conflict and corruption, various organised crimes and piracy, globalism, globalisation, the spread of dangerous pandemic and infectious diseases have been introduced within the non-traditional security (NTS) concept. The illegal movement of people across borders is also subjected to an NTS security threat.

People are very much attracted to the flow of globalism where according to American scholars Robert Keohane and Joseph Nye, globalism is "a state of the world involves networks of interdependence at multi-continental distances, linked via flows and influences of capital and goods, information and ideas, people and force as well as environmentally and biologically relevant substances".[25] At the same time, globalism exposes challenges as well as threats in the form of human security.[26] Although globalism is a gateway for states to create economic opportunities, concurrently it escalates as a threat when globalism paves the way to criminal activities.

All these threats inevitably involve vulnerable people from numerous and various circumstances which eventually led them to dangerous, risky situations and even death. Vulnerable people including refugees, asylum seekers, victims of human trafficking and human smuggling are forced to face challenging events and threats.

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[25] Sorpong Peou (ed.), "Critical Challenges for Globalism in Human Security Studies," in *Human Security in East Asia*, London: Routledge, 2009, p. 13.
[26] Ibid., pp. 13-15.

The security of these vulnerable people evolves the notion of human security, especially since the post-Cold War era. It is a shift from state-based to individual-based security[27] which has developed into a paramount global concern. These susceptible people become victims of dreadful situations like genocide, war, unemployment, extreme poverty and natural disasters. The theoretical and conceptualisation framework of this thesis can be explained explicitly with the below diagram.

Figure 2.1: Theoretical and Conceptualisation Framework
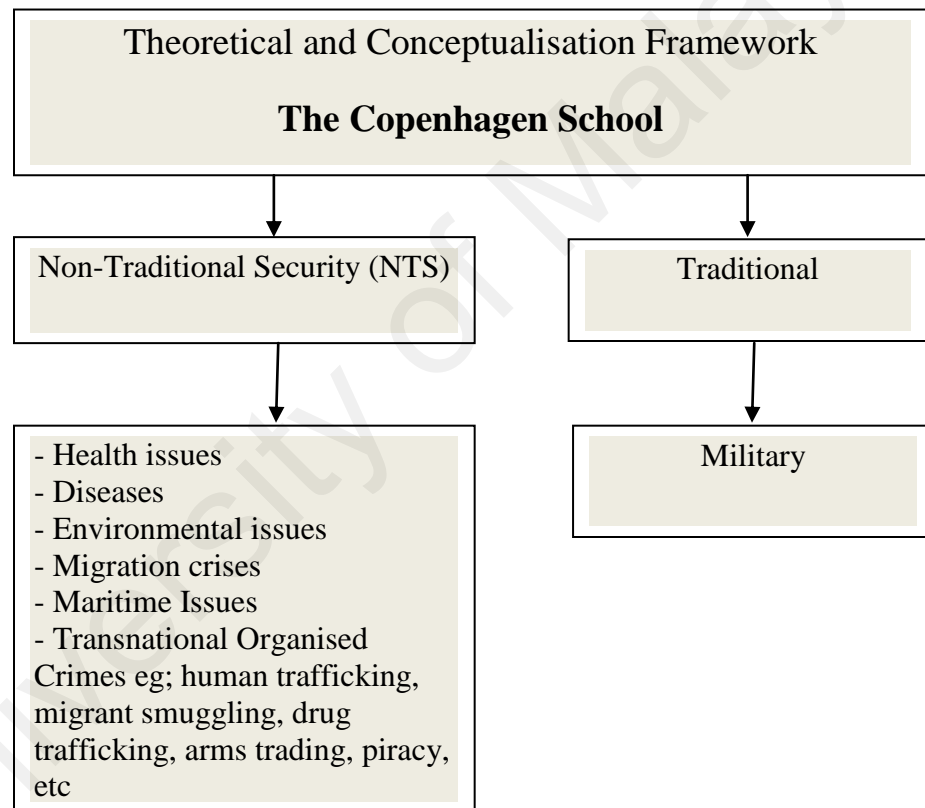
Since the early 1990s, human security has been an additional facet of the foreign policies of many countries. The term human security was first introduced in 1994 by the

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[27] Shahrbanou Tadjbakhsh and Anuradha M. Chenoy, *Human Security, Concepts and Implications*, London: Routledge, 2007 & 2009, p. 13.

United Nations Development Program (UNDP) and the preamble of the *Human Development Report* as a 'way to go from here'.[28] The report has widened the traditional concept of the safety of the states from military threats to significant concentration on the safety of people and communities. The referent object is no longer the state but on individuals 'safety'.[29] The safety of human beings is equally important to the security of a state if not its top priority.

The concept of human security emphasises security in seven core areas namely political security, economic security, food security, health security, environmental security, personal security and community security as well as protection from persistent threats like hunger, diseases, repression and sudden disruptions of daily life.

Research on human trafficking, which is a known global organised crime often targeting the vulnerable populations, explores the theoretical framework of NTS since the crime of human trafficking is an established NTS issue. Thus, there is a co-relation between NTS and the concept of human security. In line with above, human trafficking issue falls under the NTS category.

2.2 The Non-Traditional Security (NTS) Concept

After the end of the Cold War, NTS issues were given significant importance in policy-making and research agendas of government agencies, non-government organisations

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[28] Ibid., p. 1. Also see various programmes run by the United Nations Development Programme at <http://www.undp.org/content/undp/en/home/librarypage.html>

[29] Tadjbakhsh and M. Chenoy, *Human Security, Concepts and Implications*, London: Routledge, 2007 & 2009, p. 13.

(NGOs) and international organisations (IOs) as well as civil and human rights groups.[30] Non-military issues such as transnational organised crime, like human trafficking and human smuggling, drug trafficking, health related problems, environmental distress, and migration crises and terrorism ever since 9/11[31] have been categorised as a series of NTS challenges.[32] These security challenges have become the discourses of the new security agenda as these identified and acceptable issues move beyond the traditional concept of security.

It is indeed a paradigm shift from interstate and geopolitical conflicts to non-military security issues that integrate state and non-state actors.[33] With the new agenda, a reformed security framework was designed to express the need of individuals' safety and necessities, a cleaner environment and energy security, freedom from economic exploitation, protection from violence by the police, domestic partners, and other forces. However, it is also argued that this alternative to traditional conceptions of security is not appealing.[34] Whereas the introduction of the securitisation theory as a tool and framework to understand NTS issues particularly in Europe yet adopted globally by critics and scholars according to their settings by eminent scholars.[35]

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[30] Andrew T.H.Tan and J.D. Kenneth Boutin (eds.), *Non-Traditional Security Issues in Southeast Asia*: Institute of Defence and Strategic Studies, 2001, p.1; Barry Buzan, Jaap deWilde, and Ole Weaver, *Security: A New Framework for Analysis*, Boulder, CO: Lynne Rienner Inc, 1998; Jessica Tuchman Mathews, "Redefining Security," *Foreign Affairs*, Vol. 68, No. 2, 1989, pp. 162-177.

[31] Sudhir Devare, "Southeast Asian Security: The Challenges and Regional Stakes," in N.S. Sisodia and Sreeradha Datta (eds.), *Changing Security Dynamics in Southeast Asia*, New Delhi: Magnum Books Pvt Ltd, 2008, p. 43.

[32] Mely Caballero-Anthony and Ralf Emmers (eds.), "Understanding the Dynamics of Securitizing Non-Traditional Security," in *Non-Traditional Security in Asia: Dilemmas in Securitization*, Singapore: Ashgate, 2006, p. 2.

[33] Ralf Emmers, *Non-Traditional Security In The Asia-Pacific, The Dynamics of Securitization*, 2004, p. 1.

[34] Stephen E.Sachs, "The Changing Definition of Security," *International Relations*, No. 5, 2003.

[35] Ole Weaver is a renowned scholar whose work is mostly influenced by thinkers like Karl Marx, Das Kapital (1867-1894); Friedrich Nietzsche, Zur Genealogie der Moral (1887); Ole Karup Pedersen, Udenrigsminister P. Munchs opfattelse af Danmark stilling i international politik (1970); Henry A. Kissinger, A World Restored: Metternich, Castlereagh and the Problem of Peace, 1812-22 (1957); Hannah Arendt, Men in Dark Times (1968); Ernesto Laclau and Chantal Mouffe, Hegemony and Socialist Strategy: Towards a Democratic Politics,

The Copenhagen School has defined security by positioning its significance in NTS issues. The threats against vulnerable populations such as poverty, overpopulation, economic discrepancies and environmental degradation over the past decades have been on the rise and intolerable thus the alternative plan was to include 'human security'.[36] Human security is an auxiliary step to the traditional concept of security as some scholars debated that rethinking of security has to go deeper and further including the means to achieve security.[37] The insecurity factors in the non-traditional components facing humanity urged the development of human security framework of NTS and securitising a non-state actor.

Many discourses on NTS issues have been debated by scholars, activists, NGOs, IOs and government agencies. Environmental issues have been the main concern ever since scientists discovered that the thinning of the ozone layer brought about climate change which affects the weather temperature and sea level of many continents. Such imbalance due to massive deforestation, open forest burning, the unlimited usage of environmental hazard chemicals in daily lives such as chlorofluorocarbon (CFC) and other unwarranted chemical usage contributes greatly to the worsening situations. Such unsustainable global economic acts have resulted in grave depletion of natural resources like fresh water, soils, forests, fishery resources and biological diversity and essential earth life-support systems such as the ozone layer, climatic system, oceans and atmosphere thus resulting in melting of glaciers.[38]

(1985); Jacques Derrida, Writing and Difference (1967); Robert O. Keohane (ed.), Neorealism and its Critics (1986) as a way to include Waltz, Ashley and Ruggie; Barry Buzan, *People, States and Fear: The National Security Problem in International Relations*, 1983; Czeslaw Milosz, New and Collected Poems: 1931-2001 (2003) extracted from Rita Taureck, *Securitisation Theory – The Story so far: Theoretical Inheritance and what it means to be a post-structural realist,* Paper presented at the 4th annual CEEISA convention University of Tartu, June 2006.

[36] Stephen E.Sachs, "The Changing Definition of Security," *International Relations*, No. 5, 2003.
[37] Ibid.
[38] Andrew T.H. Tan and J.D. Kenneth Boutin, (eds.), *Non-Traditional Security Issues in Southeast Asia*, p. 18; Alok Bansal and Sreeradha Datta, "The Impact of Climate Change in South Asia," in Sagarika Dutt and Alok Bansal (eds.), *South Asian Security: 21st Century Discourses*, New York: Routledge, 2012, pp. 218-220.

The growing acceptance of declining environmental security and the implying threats to all lives has become a grave concern to the security of the global community.[39]

Moreover, when the environment is at risk, everything that evolves from an imperilled system is also at risk. Food and water sources have become an NTS issue as it is not only about food allocation but the concern is more towards the accessibility and cleanliness of water as well as the quality of produced foods.[40] Social scientists are bound to agree that without proper adaptation to climate change the world foresees food insecurity and water scarcity to a large human population globally.

There are diverse discourses of NTS issues including energy and nuclear security,[41] illegal arms and weapon trading,[42] ethnic conflicts and terrorism,[43] corruption and political

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[39] Lorraine Elliott, "Regional Environmental Security: Pursuing a Non-Traditional Approach," in Andrew T.H. Tan and J.D. Kenneth Boutin (eds.), *Non-Traditional Security Issues in Southeast Asia,* Singapore: Institute of Defence and Strategic Studies, 2001, pp. 438-459; Also see Evelyn Goh, "The Hydro-Politics of the Mekong River Basin: Regional Cooperation and Environmental Security," in Andrew T.H. Tan and J.D. Kenneth Boutin (eds.), *Non-Traditional Security Issues in Southeast Asia*, *Non-Traditional Security Issues in Southeast Asia*, 2001, pp. 468-496; Clevo Wilson and Clem Tisdell, "Conflicts over Natural Resources and the Environment," in Stephen Hoadley and Jurgen Ruland (eds.), *Asian Security Reassessed*, Singapore: Institute of Southeast Asian Studies, 2006, pp. 187-205.

[40] Per Pinstrup-Andersen, "Food Security: Definition and Measurement," *Food Security*, Vol. 1, No. 1, 2009, pp. 5-7; David B. Lobell, Marshall B Burke, Claudia Tebaldi, Michael D Mastrandrea, Walter P Falcon, and Rosamond L Naylor, "Prioritizing Climate Change Adaptation Needs for Food Security in 2030," *Science*, Vol. 319, No. 5863, 2008, pp. 607-610; Henrique B. Cavalcanti, "Food Security," in Felix Dodds and Tim Pippard (eds.), *Earthscan, Human and Environmental Security: An Agenda for Change*, 2007, pp. 152-164; Mary Young, "Food Production and Environmental Security in Indonesia," in David B. Dewitt and Carolina G. Hernandez (eds.), *Development and Security in Asia: Volume I: The Environment*, New York: Ashgate, 2003, pp. 137-158; Simon Maxwell, "Food Security: A Post-Modern Perspective," *Food Policy*, Vol. 21, No. 2, 1996, pp. 155-170.

[41] Shebonti Ray Dadwal, "The Politics of Energy Pipelines in South Asia," in Sagarika Dutt and Alok Bansal (eds.), *South Asian Security: 21st Century Discourses*, London: Routledge, 2012, pp. 235-242; C. Raja Mohan, "Energy Security and Southeast Asia: India's Perspective," in N.S. Sisodia and Sreeradha Datta (eds.), *Changing Security Dynamics in Southeast Asia*, New Delhi: Magnum Pvt Ltd, 2008, pp. 111-123.

[42] Nicolas Barrel, "Nuclear Weapons in South Asia: Theoretical Implications," in Sagarika Dutt and Alok Bansal (eds.), *South Asian Security: 21st Century Discourses*, 2012, pp. 47-60; Marian Hobbs, "Achieving Nuclear Non-Proliferation: A New Zealand Perspective," in Felix Dodds and Tim Pippard (eds.), *Earthscan Human and Environmental Security: An Agenda for Change*, 2007, pp. 38-49; Rod Lyon, "Weapons Proliferation in Asia," in Stephen Hoadley and Jurgen Ruland (eds.), *Asian Security Reassessed*, 2006, pp. 171-184.

[43] Jurgen Ruland, "Ethnic Conflict, Separatism and Terrorism," in Stephen Hoadley and Jurgen Ruland (eds.), *Asian Security Reassessed*, 2006, pp. 211-245; Alan Collins, "The Ethnic Security Dilemma: Evidence from

struggle,[44] cyber security as well as information flows[45] which are propagated threats on nations and its people hence identified as NTS concerns. The research on NTS does not stop there as day-by-day there are essential matters that concern vulnerable people and in need of viable solutions.

The changing dynamics of security is due to the emergence of NTS security challenges in states. Prior to this concept, national unity, political independence and stability, territorial integrity, social harmony, economic security and energy security have been the core values of the main security concept which is national security.[46] Beyond these issues, security pressure becomes more complex due to rapid globalisation and illegal movement of people across borders which inevitably impose cross-border security threats.

In Southeast Asia, the NGOs actively spearhead the non-traditional agenda ranging from environmental issues to human rights which significantly ensued in Indonesia,

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Malaysia," *Contemporary Southeast Asia*, Vol. 20, No.3, 1998, pp. 261-278; Barry R. Posen, "The Security Dilemma and Ethnic Conflict," *Survival*, Vol. 35, No. 1, 1993, pp. 27-47; Michael E. Brown, *Ethnic Conflict and International Security*, New Jersey: Princeton University Press, 1993, p. 4.

[44] Daniel Kaufmann, "Corruption, Governance and Security: Challenges for the Rich Countries and the World," 2004; Hongying Wang and James N Rosenau, "Transparency International and Corruption as an Issue of Global Governance," *Global Governance*, Vol. 7, No.1, 2001, pp. 25 - 49; Jean Cartier–Bresson, "Corruption Networks, Transaction Security and Illegal Social Exchange," *Political Studies*, Vol. 45, No. 3, 1997, pp. 463-476.

[45] Amanda Nosko, Eileen Wood, and Seija Molema, "All About Me: Disclosure in Online Social Networking Profiles: The Case of Facebook," in *Computers in Human Behavior*, Vol. 26, No. 3, 2010, pp. 406-418; Steve Ressler, "Social Network Analysis as an Approach to Combat Terrorism: Past, Present, and Future Research," *Homeland Security Affairs*, Vol. 2, No. 2, 2006, pp. 1-10; Charlie Kaufman, Radia Perlman, and Mike Speciner, *Network Security: Private Communication in a Public World*, New Jersey: Prentice Hall Press, 2002; Jonathan Ralph Woodier, "International Information Flows, the Media and Security in Southeast Asia," in Andrew T.H. Tan and J.D. Kenneth Boutin (eds.), *Non-Traditional Security Issues in Southeast Asia*, 2001. pp. 87-113.

[46] Muthiah Alagappa, *Asian Security Practice: Material and Ideational Influences*: Stanford: University Press Stanford, 1998; Rizal Sukma, "Southeast Asian Security: An Overview," in N.S. Sisodia and Sreeradha Datta (eds.), *Changing Security Dynamics in Southeast Asia*, 2008, pp. 16-17; Sudhir Devare, "Southeast Asian Security: The Challenges and Regional Stakes," in N.S. Sisodia and Sreeradha Datta (eds.), *Changing Security Dynamics in Southeast Asia*, pp. 43-44.

Malaysia, Philippines and Thailand.[47] Issues such as the regional economic crisis in 1997 had an in-depth effect on these countries due to the recession period and depreciation currencies. In countries like Indonesia where the Asian financial crisis had a profound impact, concern over environmental degradation, scarcity of resources such as fisheries, disputes among neighbouring countries, problems revolving Mekong River developments as well as control over maritime resources of the South China Sea[48] are global non-traditional security issues.

Among these, human rights issues pertaining to trafficking in persons or human smuggling have become a critical discourse of NTS for the past couple of decades among scholars and activists. Human trafficking is an illicit trade of human beings and the United Nations (UN) has defined it as part of transnational organised crime and the severity is immense and debated at international level.

In Southeast Asia, human trafficking for commercial sexual exploitation and forced labour has been reported to be high in demand when compared to the myriad approached to human trading. Human trafficking is an NTS issue to human security as it does not only violate human rights but is more complex due to growing salience of trans-boundary security threats which have become a concern to national security. It is a phenomenon that exposes the worst side of the human condition.[49]

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[47] Andrew T.H. Tan and J.D. Kenneth Boutin (eds.), *Non-Traditional Security Issues in Southeast Asia*: Institute of Defence and Strategic Studies, 2001, p. 3.
[48] Ibid.
[49] Kevin Bales, *Understanding Global Slavery*, Berkley: University of California Press, 2005, p. 27. Bales is also the founder of www.freetheslaves.net. It advocates anti-slavery at global level and actively runs awareness campaigns to combat modern-day slavery.

Transnational crime can be discussed both in the terms of crime and as a security concern.[50] The UN elaborates the term transnational organised crime as the offences that cover more than one state as well as the crime that is planned and controlled in another state.[51] However, for a crime to be considered transnational, it has to move across borders and jurisdictions. In such cases, the modus operandi of human trafficking comprises the act of recruitment, transportation, transfer, harbouring or receipt of persons not only across the border but even within a state is alleged as a transnational crime.[52] Concurrently, human trafficking does not necessarily require movement from one place to another.

This is because of the ill intention of trafficking vulnerable people for the purpose of exploiting them namely sexual exploitation for commercial as well as for forced prostitution, forced labour, debt bondage, forced marriages, slavery or similar practices and the removal of human organs.[53] There are also reported instances for the purpose of surrogacy and ova trade (human eggs) for reproduction. Financial gains motivate all these exploitations.

Apart from that, globalisation and the expansion of economic markets continue playing its role in creating opportunities for criminal activities to operate at a larger scale such as cybercrimes, information and identity theft and maritime piracy.[54] As stated by the former Malaysian Home Minister Datuk Seri Hishammuddin Hussein that the developments

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[50] Ibid.

[51] See *United Nations Convention Against Transnational Organised Crime and The Protocols Thereto*, Vienna: Austria, United Nations Office on Drugs and Crime, 2004; Also see *Organised Crime*, New York: United Nations, available at <https://www.unodc.org/unodc/en/organised-crime/index.html#what_organised_crime> (accessed 10 March 2013).

[52] The Act (What is done) is one of the Elements of Human Trafficking. See Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons

[53] Ibid. The Purpose - (Why it is done) is another Elements of Human Trafficking.

[54] "The Dark Side of Globalisation," *The Star*, 30 June 2011.

in a country are a contributing factor to transnational crime thus calls for major concern over security agenda as a whole.[55]

In recent decades, even international migration has become an NTS issue mainly due to the unprecedented scale of the movements of humans.[56] The characteristic of the migratory movement at a global scale and the patterns and flows regardless of the variation across continents raise numerous questions on the level of threats to the international community and a state. A combination of multiple factors compels vulnerable people to risk their lives and exhaust their resources and funds to take the big step by moving out from their countries to foreign places.[57] These are the groups targeted by the traffickers and their syndicates.

Human trafficking which is also known widely as trafficking in persons involves international movement along with people smuggling (illegal immigrant), drugs and arms trading which are recognised as transnational organised crimes ratified by numerous international organisations such as the United Nations (UN), United Nations High Commissioner for Refugees (UNHCR), International Organisation for Migration (IOM) and the International Labour Organisation (ILO). As they are categorised as NTS threats, the atrocity of these activities have created new challenges to states and the lives of vulnerable and innocent people.[58] Therefore, human trafficking including other NTS issues are not only a concern for national security but also to human security.

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[55] Ibid.

[56] Anna Kicinger, "International Migration as a Non-Traditional Security Threat and the EU Responses to This Phenomenon," A Working Paper for Central European Forum for Migration Research, Warsaw, 2004.

[57] Mary C. Burke, *Human Trafficking: Interdisciplinary Perspectives*, New York: Routledge, 2013, p. 9.

[58] Stephen Hoadley, "Irregular Migration as a Security Issue," in Stephen Hoadley and Jurgen Ruland (eds.), *Asian Security Reassessed*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2006, pp. 251-260.

The movements of people across borders are both legal and illegal. The movement of human trafficking victims into a country is considered legal since they travel with legitimate travelling documents although there are many cases of forged visas and travelling documents involved in transporting the victims. In the beginning, these victims are not aware of their actual status since they have been promised decent jobs with lucrative pay and comfortable accommodation, and only when they have arrived at the destination they realised that they had been forced into immoral activities and forced labour. Such acts against these vulnerable people by the human traffickers, pimps and syndicates are deemed a personal security threat and a gross violation of human rights.

Illegal movement of migrants into a country or also known as smuggling of migrants occurs almost in every part of the developing and developed world especially when people move for a better life. This range of individuals is a hidden problem as there is no specific data on them and many have resorted to crime as means of living. Some even go to the extent of robbing and murder for a large sum of money to survive.

In this chapter, the nexus between NTS which unequivocally explains human security and human trafficking will be discussed.

2.3 The Securitisation Theory

The act of securitisation was conceived by Ole Weaver[59] and the concept refers "to the process of presenting an issue in security terms, in other words as an existential threat".[60]

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[59] Ole Wæver, *Securitization and Desecuritization,* Centre for Peace and Conflict Research, 1993.
[60] Ralf Emmers, *Non-Traditional Security in the Asia-Pacific, the Dynamics of Securitization*, Marshall Cavendish: Eastern Universities Press, 2004, p. 4.

When a securitising actor expresses that a politicised issue has a concern of an existential threat to security and is in need of extraordinary measures, this necessitates urgency. The CS describes a framework to determine on how NTS issues perceived to be a threat and in need of extraordinary measures thus become securitised within a given state.[61] This indicates that as long as there is an existence of a perceived threat due to a present danger then, in that case, there is an existing security threat.

However, in the process of securitisation, the CS emphasises the essence of the speech act.[62] With the help of language theory, security can be regarded as a speech act whereby uttering the concern *itself* is the act.[63] By uttering it, an action is done. Therefore, by uttering 'security', a state leader moves an issue into a specific area and claims a special right to use whatever means required to block it due to its existential threat to protect itself and its people.[64]

Although the act of securitisation is accepted as a successful speech,[65] for an act of securitisation to take place, there has to be an existential threat which requires an emergency action or certain measures and an acceptance of that security threat by the relevant audience is vital. Moreover, "it is by labelling something a security issue that it becomes one".[66] Only then is an issue considered to have successfully gone through the process of securitisation once the audience accepts the existential threats.

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[61] Emmers, *Non-Traditional Security in the Asia-Pacific, the Dynamics of Securitization*, 2004, pp. 3-6.
[62] Ole Wæver, *Securitization and Desecuritization*, p. 55.
[63] Ibid.
[64] Ole Wæver, *Securitization and Desecuritization*, p. 55.
[65] Barry Buzan, Jaap deWilde, and Ole Weaver, *Security: A New Framework for Analysis*: Boulder, CO: Lynne Rienner, 1998.
[66] Ole Wæver, "Aberystwyth, Paris, Copenhagen New 'Schools' in Security Theory and Their Origins between Core and Periphery," 2004. Paper presented at the annual meeting of the International Studies Association, Montreal; Rita Taureck, "Securitization Theory and Securitization Studies," *International Relations & Development*, Vol. 9, 2006, pp. 53-61.

The process of securitisation decides upon the threat on the referent object, thus a securitising actor takes extra measures to ensure the survival of referent object. The securitising actor will move the issue from the political circle into the security sphere by discussing security. The act of securitisation pushes the concerned issue to the top of the agenda and permeates it with a sense of urgency, naturally leading to increased stipulation of resources and encouraged interagency cooperation. Securitisation may result in greater efficiency in handling a complex issue, mobilisation of popular support for government policies, greater allocation of resources, and the legitimating and empowering of military and security forces and in the case of criminalisation, police and law enforcement officials.[67]

However, the process of securitisation is not about a question of an objective threat and a subjective perception of a threat. It is explained as inter-subjective which states that the securitisation of a subject is a closely related to its acceptance by an audience.[68] The goal is to have an understanding of who securitises, for whom, and for what issues, and under what conditions. It is perceived as the referent object to be under threat and in need of extraordinary measures. The concept is not limited for traditionalist where it concerns the states and military, and has broadened to include NTS issues as well.

In total, state actors securitise an issue by affirming to a given audience that a referent object is existentially threatened and it requires action outside political circles to confront the threat. A grave concern is successfully securitised once an audience accepts that it imposes an existential threat to the state and its people.

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[67] Melissa G. Curley and Jonathan Herington, "The Securitisation of Avian Influenza: International Discourses and Domestic Politics in Asia," *Review of International Studies*, Vol. 37, No. 1, 2011, pp. 141-166.
[68] Barry Buzan, Jaap deWilde and Ole Weaver, *Security: A New Framework for Analysis*: Boulder, CO: Lynne Rienner, 1998, p. 23.

The theory of securitisation has proven to be analytically invaluable with the consideration of how, why and by whom a security threat is created, yet the theory has its critics consisting of scholars who attempt to modify the theory. One of the most prominent critics of the securitisation theory is that the CS does not address the question of *why* an actor would choose to securitise an issue. Even though an actor may choose to securitise an issue because of a genuinely perceived threat, the audience may rather do so because of potentially tangible benefits.[69]

2.4 Limitations of the Securitisation Model

Besides the theory being Euro-centric, it fails to address the purpose of securitisation – *why* securitisation takes place or *why to* securitise an issue. An act of securitisation is made with a political decision where urgency motivates an issue to beget political support and deployment of resources. As the process of securitisation is risky, desecuritisation may be beneficial by avoiding the risks. Risks from military or political involvements are capable of exploiting the act of securitisation by restraining civil liberties and influences of domestic political institutions or increasing military budgets.

Criticism on securitisation is also based on the less attention given on empiricism[70] due to insufficiencies in its theoretical approach to security studies. Thus it is argued that the dynamics of the securitisation model need more enrichment with further research and outcomes as the theory only has the 'speech act' as a mechanism with no other indicators.

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[69] Mely Caballero-Anthony and Ralf Emmers (eds.), "Understanding the Dynamics of Securitizing Non-Traditional Security," in *Non-Traditional Security in Asia: Dilemmas in Securitization*, Singapore: Ashgate, 2006, pp. 5-7.

[70] Ibid., p. 5.

The securitisation process can impose a threat to international security as it is seen as an opportunity by actors and therefore it can be used for self-interest. Adding to the limitation of the securitisation and desecuritisation model being Euro-centric, its shortcoming is evident in addressing security threats in the Asian context. Moreover, the model does not assess the effectiveness of the policy and the outcomes.

Since the CS of the securitisation model is very Euro-centric, scholars from Southeast Asia have constructed a methodology to investigate the acts of securitisation and desecuritisation.[71] The revised model adopts the following steps ~~by covering~~ and the issue of human trafficking in Malaysia is adapted to apply these steps.[72]

i. **Issue area** – is described by identifying the existential threat and examining the consensus among various actors on the nature of the threat. With this, the existential threat on the referent object is determined for the specific audience. Hence in this matter, the issue area is human trafficking which is viewed as a security threat across political, societal, economic and environmental securities. The severity of this crime internally and across borders is alarming as the perpetrators target the vulnerable populations regardless of gender, age and disability.

ii. **Securitising actors** – explained as to establish the securitising actors and whom they represent and the motivation in securitising an issue. So, the actors are at the state level and non-state level. They are the Malaysian policymakers, political leaders, government agencies, enforcement authorities, NGOs, human rights activist and society as a whole who have common interest on an issue.

iii. **Security concept** – depending on the security concept invoked on the referent objects vary among actors. For instance, local NGOs in Malaysia are fervent in

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[71] Amitav Acharya, prepared the modified framework. Acharya is the Project Director of IDSS-Ford Project on Non-Traditional Security in Asia, 2006.

[72] Mely Caballero-Anthony and Ralf Emmers (eds.), "Understanding the Dynamics of Securitizing Non-Traditional Security," in *Non-Traditional Security in Asia: Dilemmas in Securitization*, Singapore: Ashgate, 2006, pp. 6-7.

combating human trafficking at the national level from human rights perspective thus their main interest is on human security of the victims. Whereas the state priority is by invoking national security as it views the threat the crime imposes on its people and country. IOs appeal to securitise global security as it perceives human trafficking as a global crime against humanity and the total repercussions on states and the people.

iv. **Process** – to examine if the speech act is adequate in the process or to raise other means such as persuasion. It is crucial to identify an act of securitisation on human trafficking especially in Malaysia. In situations when vulnerable populations are at risk by articulating the security seems sufficient however, to persuade to damage it has foremost on the victims (human security) is critical and the negative impact the crime has on the country. Especially when the traffickers are able to enter in and out of a country without being caught, in some cases by bribing government officials which would tarnish the image of the country and reflect badly upon its leaders.

v. **Outcome I: Degree of Securitisation** – to analyse the overall sense of success, failure, uncertain results and mixed outcomes. In Malaysia, the Ministry of Home Affairs has shown efforts in addressing human trafficking by criminalising the crime by way of implementing the Anti-Trafficking in Persons Act 2007 and amending it in 2010; by setting up a secretariat council Anti-Trafficking in Persons and Smuggling of Migrant (ATIPSOM) with its five-year National Action Plan (2010 to 2015) to combat the crime in Malaysia. Besides that, the Malaysian government ratified the UN Palermo Convention against human trafficking and collaborate with neighbouring countries, local NGOs and IOs to show its commitment.

vi. **Outcome II: Impact on the Threat** – to explore the impact of securitisation on the existential threat. Human trafficking is a global phenomenon like an epidemic, and it takes a long-term action to stop this crime. Because of its high earnings from victims who can be used over and over again for a longer period (unlike drugs), the efforts to combat have to be significant and impactful. The statistics on the victims are gathered from various sources by IOs, NGOs, government agencies, scholars, social scientists so the figures vary accordingly.

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vii.   **Conditions Affecting Securitisation** – several factors influence and may have impacts on the act of securitisation and desecuritisation process. The authors foresee that the link between different concepts of national/state security, comprehensive security and human security in the course of an act of securitisation on an issue such as human trafficking on whether the threat from the crime (problem) could be linked with different security concepts. The role of actors and non-state actors may hinder the process as they would have different priorities. Concern over domestic political systems over a securitisation process especially on NTS issues such as human trafficking may affect the process. Finally, the intervention of IOs in persuading a government to securitise the NTS issues due to the threats from human rights protection, human security and humanitarian involvements.

This modified framework on the theory of securitisation has combined the theoretical and empirical analysis of specific case studies, however, there are no cases of human trafficking in this thesis[73] but an academic persuasion to explore the framework on securitising human trafficking in Malaysia.

2.5 The Nexus between NTS and Human Trafficking

The magnitude of the security problems has increased over the years characterised by complex interrelationships by internal problems like terrorism and NTS concerns, regional conflicts and globalisation impact[74] as well as irregular migration.[75] Migration especially unregulated has always been a concern of most governments' since the end of Cold War and the approach of human security which highlighted the security threats arise from migration

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[73] Caballero-Anthony and Emmers (eds.), "Understanding the Dynamics of Securitizing Non-Traditional Security," in *Non-Traditional Security in Asia: Dilemmas in Securitization*, pp. 1-12.

[74] Rizal Sukma, "Southeast Asian Security: An Overview," in N.S. Sisodia and Sreeradha Datta (eds.), *Changing Security Dynamics in Southeast Asia*, 2008, p. 15.

[75] Stephen Hoadley, "Irregular Migration as a Security Issue," in Stephen Hoadley and Jurgen Ruland (eds.), *Asian Security Reassessed*, 2006, p. 251- 267.

especially illegal movements.[76] Illegal migration has become a concern for states because of the influx. In recent years, states have also become more concerned about regulated migration mainly due to various arising problems such as increases in falsified travel documents and passports. Issuing fake travelling documents whether deliberately or unknowingly is a grave immigration offence and a threat to national security as anyone could enter into a country.

In many cases, the act of human trafficking is not only a crime but also has a connection with legal and illegal migration. Syndicates of human trafficking are business savvy and smart because they make use of the weaknesses found in the states' systems by preparing legal travelling documents for their victims. These traffickers are well aware of the legal systems, immigration laws, enforcements rules and regulations of the countries they plan to bring their victims. These ringleaders are not dim-witted as their movements are clandestine and often unrecognised by enforcement agencies. With stricter formal requirements the governments impose formal entry requirements, the agents become more pervasive and cunning with their attempts to circumvent those conditions by illegal means.[77]

Apart from that, the migration-security nexus is highlighted due to its threat to internal security such as the increased crime rates among the immigrants are relatively higher compared to local citizens. Similarly, the international networks of drugs and arms trading as well as human trafficking and terrorists make use of the legal and illegal migration

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[76] Ibid.; Margaret E Beare, "Illegal Migration: Personal Tragedies, Social Problems, or National Security Threats?," *Transnational Organised Crime*, Vol. 3, No. 4, 1997, pp. 11-41; Astri Suhrke, "The 'High Politics' of Population Movements: Migration, State and Civil Society in Southeast Asia," in Myron Weiner (ed.), *International Migration and Security*, Boulder: Westview Press, 1993, pp. 179-200.

[77] Stephen Hoadley, "Irregular Migration as a Security Issue," 2006, p. 256.

channels.[78] A threat from international migration is not only a security concern to most states but similarly inflicts the risks to other countries.

Smuggling of migrants is also an NTS issue. These illegal migrants enter into a country by paying a hefty sum to their agents although they have no idea of their status and future. They trust their agents and leave their homes and families by crossing sea and oceans, roads and jungles to have better opportunities.

These unregulated and illegal entrants introduce a variety of threats to the host countries like social tensions with incoming criminals or rebellious groups, violent disturbances, terrorism and infectious diseases like HIV/AIDs and occurrence in economic costs to shelter detained illegal immigrants before deportation which also absorbs state's costs.[79] In addition, the state has to bear the high-cost of deportation. These smuggled immigrants could become victims of human trafficking in situations like when they are handed over to different agents who would exploit them, and debts bind these victims due to travelling fees which they have to pay their agents hence becoming bonded slaves.[80]

As related in many human trafficking stories by victims all over the world, they enter a country with legal visas and documents to avoid suspicion by the immigration officers or border police, however, upon reaching the destinations they remain their illegally. Their passports are confiscated by the syndicates (agents or pimps) who have absolute power

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[78] Anna Kicinger, "International Migration as a Non-Traditional Security Threat and the EU Responses to This Phenomenon," Central European Forum for Migration Research Working Paper, Warsaw, 2004, p.7.

[79] Ibid., p. 257; Also see Jurgen Ruland, "Ethnic Conflict, Separatism and Terrorism," in Stephen Hoadley and Jurgen Ruland (eds.), *Asian Security Reassessed*, 2006, p. 240; Khalid Koser, *Irregular Migration, State Security and Human Security*, Global Commission On International Migration, 2005. A paper prepared for the Policy Analysis Research Programme; Roxanne Lynn Doty, "Immigration and the Politics of Security," *Security Studies*, Vol. 8, No. 2-3, 1998, pp. 71-93; Warren Zimmerman, "Migrants and Refugees: A Threat to Security?," in Michael S. Teitelbaum and Myron Weiner (eds.), *Threatened People, Threatened Borders: World Migration and US Policy*, New York: WW Norton, 1995, p. 95.

[80] *Trafficking in Persons Report*, Washington DC: United States, Department of State, June 2013, p. 20.

and authority over them. By doing so, these victims are then forced to travel even further to unknown places for forced labour, forced prostitution and commercial sexual activities, involuntary domestic servitude and other forms of bondage.[81]

The member states of Association of Southeast Asian Nations (ASEAN) face various NTS issues, and these nations overcome the problems individually as a nation as well as in close collaboration with their neighbours. The main concern of these nations is the security of their people though people are forced to take the step of travelling to other countries in search of jobs. The push factors including unstable political situations, poor economic conditions with high unemployment rate alongside increased household living costs place people in vulnerable situations.

For these reasons, they are compelled to search for jobs in developed and developing countries with growing economies such as in the United States, United Kingdom, Australia, and the Middle East especially Kuwait and Dubai. In Asia, Japan, South Korea and Taiwan, Malaysia, Singapore, Thailand and Brunei are all coveted.

The threats imposed by human trafficking to security are critical as the movement severely undermines border security as syndicates transport their victims with forged legal documents. Corruption among government officials, human traffickers and smugglers is an inducement that perpetuates the crime. Moving people under the pretence of legal movement and by coercion for the sole purpose of exploitation for profit is deemed a gross violation of human right. Such misfortunes befall under-aged children and young women where they are

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[81] *Trafficking in Persons Report,* Read the numerous TIP reports related by victims of human trafficking on how they were trafficked into the country legally by the traffickers; Kevin Bales, "What Predicts Human Trafficking?," *International Journal of Comparative and Applied Criminal Justice*, Vol. 31, No. 2, 2007, pp. 269-279; Laura Maria Agustin, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, London: Zed Books Ltd, 1998, pp. 53-57.

coerced into commercial sex, forced prostitution and slavery, forced into hard labour especially into domestic households often facing severe beatings, abuses and being repeatedly raped by their pimps, employers and agents.[82]

The crime of human trafficking increases social tensions, deprives countries of human capital, undermines public health, destabilises government authority, promotes organised crimes and could finance illicit activities and terrorism.[83] These are identified security threats to a state and insecurity of people who eventually become victims.

2.6 Human Trafficking and Human Security

The former UN Secretary-General Kofi Anan on the concept of human security explained, "*we must broaden our view of what is meant by peace and security. Peace means much more than the absence of war. Human security is no longer be understood in purely military terms. Rather, it must encompass economic development, social justice, environmental protection, democratisation, disarmament, and respect for human rights and the rule of law*".[84]

Annan in detail illustrates that gross abuses of human rights, the large-scale displacement of civilian populations, international terrorism, AIDS pandemic, drug and arms trafficking, and environmental disasters pose direct threat to human security.[85] Although the crime of human trafficking is not mentioned in this report, it is a recognised human security

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[82] *Trafficking in Persons Report*, Washington DC: United States, Department of State, June 2004.
[83] Ibid., pp. 9-17.
[84] As mentioned by Kofi Annan in his, *Millennium Report*, *Chapter* 3, 2000, pp. 43-44, New York: United Nations, available at: <http://www.un.org/millennium/sg/report/full.htm> (accessed 20 June 2012).
[85] Ibid.

threat towards mankind because of its means of suppression, forced and abusiveness on an individual disregarding gender and age by condemning to spiteful situations like forced and hard labour, forced prostitution and begging, involuntary domestic servitude and enslavement.

In 1994, when the United Nations Development Program identified Human Security as a 'way to go from here', its Human Development Report broadend the traditional notion of military-centric to a concept that included 'safety from such chronic threat as hunger, disease, and repression' as well as 'protection from sudden and hurtful disruptions in the patterns of daily life'.[86] These are the challenges faced by almost everyone not only the vulnerable but the global population due to economic recessions and political disorder.

The concept of human security which is an alternative approach to re-think security by stressing the threats and insecurities of individuals and communities,[87] over the years it has become more significant with the increasing threats and uncertainties.[88] With the emerging threats and insecurities; governments, policymakers and civil society actors inclined to treat national and transnational issues as security matters.[89] Politicians and practitioners began to show interest in NTS issues as a threat to national sovereignty and territorial integrity of nation-states besides being more concerned about their communities and individuals.

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[86] *Human Development Report*, United Nations Development Program, New York: United Nations, 1994.
[87] Commission on Human Security, "Human Security Now" in *Protecting and Empowering People*, New York: United Nations, 2003; Also see Anna Lindley, "Human Security Now: Protecting and Empowering People", *Journal of Refugee Studies*, Vol. 17, No. 2, 2004, pp. 244-246.
[88] Caballero-Anthony and Emmers (eds.), "Understanding the Dynamics of Securitizing Non-Traditional Security," in *Non-Traditional Security in Asia: Dilemmas in Securitization*, p. 1.
[89] Ibid.

With this interest and concern on challenges facing their countries, actors of the state have given real attention to NTS threats. Past NTS challenges faced by Asian communities were the 1997-98 financial crisis, the recurring haze problem in Southeast Asia, the Severe Acute Respiratory Syndrome famously known as SARS, avian flu, international terrorism like 9/11, and the devastating tsunami in 2004.

The issue of human trafficking has been acknowledged and linked to organised criminal groups globally with gross earnings estimated at $32 billion annually and this crime affects 161 countries.[90] Human traffickers and syndicates have created an international market for the trade in human beings due to its high demand and profits for commercial sex and cheap labour. Human trafficking and smuggling activities have been blooming rapidly replacing the trading of drugs and arms reported to be the largest illegal, lucrative business in the world,[91] and this inhumane activity affects the sovereignty of the individuals, society, and economy of a country.

Human security has demystified the traditional concept of 'security'; the safety of the states from military threats to focus more on the safety of people and communities.[92] When the referent object is changed from states to individuals, it suggests extending the view of 'safety' to a condition beyond mere existence (survival) to life worth living, hence, well-being and dignity of human beings.[93] In short, when an individual's dignity is endangered, it is perceived as a human security threat.[94] However, the threat imposed goes beyond dignity,

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[90] See *Global Report on Trafficking in Persons*, New York: United Nations Office on Drugs and Crime, December 2012. (accessed 10 March 2013).
[91] Ibid.; Ronald Skeldon, "Trafficking: A Perspective from Asia," *International Migration*, Vol. 38, No.1, 2000, p. 13.
[92] Shahrbanou Tadjbakhsh and Anuradha M. Chenoy, *Human Security*, Concepts and Implications, London: Routledge, 2007 & 2009, p. 1.
[93] Ibid.
[94] Ibid., p. 1.

as the life of the individual is violated, threatened and imperilled analogous to a victim of trafficking.

Human rights define human security as "to be secure is to be safe, protected. Security is a secure condition or feeling".[95] The victims of human trafficking face beatings, abuse in the hands of their employer and masters, children and women are repeatedly raped for submission, and some even face death in an attempt to escape.[96] The gross violations of freedom from vulnerable people seeking for political, economic, social and cultural rights have become part of the human rights agenda.[97] Therefore, IOs and NGOs have taken in their stride to voice out the atrocious crime of human trafficking forcing state governments to take firm actions by implementing laws and prosecuting the offenders.

The human traffickers abduct children for the purpose of exploiting them for various commercial sexual entertainments besides sending them to work on farms, plantations, domestic households and hard labour industries. Children are also recruited as child soldiers and are exploited into various forms of hard labour and sexually abused by armed groups.[98] Many of these children are taken forcefully by militants to be used as combatants, and young girls are forced to marry or serve as sex slaves to soldiers.[99]

Due to the many faces of human trafficking, it imposes a formidable hurdle for the task force to combat this crime. The impacts from the human trafficking activities are physical and emotional, and it affects the mental and physical state of the victims along with health regardless of gender and age. These vulnerable children are at high risk of contracting

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[95] Bertrand G. Ramcharan, *Human Rights and Human Security*, The Hague: M. Nijhoff Publishers, 2002, p. 9.
[96] Interview with Daniel Lo, Country Manager for the Coalition to Abolish Modern-Day Slavery in Asia (CAMSA), Kuala Lumpur, 18 October 2013.
[97] Tadjbakhsh and M. Chenoy, *Human Security*, Concepts and Implications, 2007 & 2009, p. 124.
[98] *Trafficking in Persons Report*, 2013, p. 37.
[99] Ibid.

sexually transmitted diseases, and many are maimed for life due to hard labour, repeated sex abuse and even death as they are used as targets for combat.

Human trafficking recruiters deceive men, women and children from rural areas stricken with extreme poverty with promises of better living conditions and jobs with high salary in foreign lands. Some advertise jobs in newspapers and social networks for nannies, waitresses, dancers, actors, or even as 'mail-order-bride' services[100] and young men and women fall such deceit. In poor countries in Southeast Asia like Thailand, Cambodia, Indonesia, and the Philippines, traffickers approach poor families with young children by offering hefty sums; purchasing them for prostitution, begging, and child labour. For hard labour, men and women from Bangladesh, India, Indonesia, Nepal and Myanmar are tricked into well-paid jobs and better living conditions in countries like Malaysia, Singapore and the U.S. as well as Europe.

Upon reaching their locations, these men and women along with children face the reality of being manipulated and without realising they have become a statistic of human trafficking. Their vulnerability due to depressed circumstances is an opportunity for heartless, ruthless and money minded human traffickers.

2.7 Attempts to Outlaw Human Trafficking and Slavery

Human trafficking is modern-day slavery and in 1807 the British were the first to implement a law against slavery when the Transatlantic Slave Trade was made illegal. Then

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[100] Jennifer K. Lobasz, "Beyond Border Security: Feminist Approaches to Human Trafficking," *Security Studies*, Vol. 18, No. 2, 2009, pp.319-344; Donna M. Hughes, "The "Natasha" Trade: The Transnational Shadow Market of Trafficking in Women," *Journal of International Affairs*, Vol. 53, No.2, 2000, p. 634.

the US followed suit in 1820 and by 1904, an international agreement was made against the 'white slave trade' with a focus on migrant women and children. In 1910, 13 countries signed the International Convention for the Suppression of White Slave Trade to ban trafficking of people.

Fast forward, the League of Nations held an international conference in Geneva in June 1921 in which the term 'white slavery' was termed as 'traffic of women and children'. Subsequently, in 1949, the United Nations Conventions of the Traffic in Persons and the Exploitation of the Prostitution of Others was passed. This convention was the first effort to curb human trafficking by legally binding the countries which have signed and requiring them illegalised prostitution which limits was within the sexual purpose and not other forms of human trafficking. If slavery was unacceptable then, what about its status in the new millennium.

In November 2000, the United Nations General Assembly held in Palermo City adopted the Trafficking Protocol, which made all forms of human trafficking activities as illegal besides acknowledging human trafficking as one of the fastest-growing criminal enterprises in the global economy and a major challenge to human rights and public security authorities.[101] Three years later in December, the Protocol was enforced and as by 2013, 117 countries have responded by signing and agreeing to combat this crime.[102]

The definition of human trafficking indicates the nexus between NTS and human trafficking. By definition, it is the means used in trafficking a person forcefully, by coercing,

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[101] Edward Newman and Sally Cameron (eds.), "Introduction: Understanding Human Trafficking," in *Trafficking in Humans: Social, Cultural and Political Dimensions*, New York: United Nations University Press, 2008, pp. 4-5.
[102] See *United Nations Convention Against Transnational Organised Crime and The Protocols Thereto*, Vienna: United Nations Office for Drugs and Crime, 2004. (accessed 10 March 2013)

abducting, fraud and deception, being abusive with power and vulnerability of an individual, and being in control over another person[103] for the purpose of exploitation. Such behaviours indeed reflect the position of an individual and the unsecured situations incriminating upon them. The nature of human trafficking itself is a challenge to human security which is against the will of a person to perform an act. Analysing human trafficking within the framework of NTS is apprehensible as it is beyond the traditional framework.

In 1941, Franklin D. Roosevelt, former President of the United States preached about the 'Four Freedoms'; freedom of speech and expression, freedom of religion and worship, freedom from want and freedom from fear. The United Nations in 1994 incorporated the 'freedom from want' and 'freedom from fear' as the fundamental aspect of their development programme by reaffirming the essence of human rights, living with dignity as human beings, by achieving better standards of living through 'larger freedom'.[104] When the freedom of a person is violated, and his spirit is broken, the person becomes insecure under duress. Thus, the concept of human security is characterised as a paradigm shift from the traditional security framework of the state to the security of the people as the referent object.[105]

It is agreed upon that human trafficking is 'a cause of human insecurity' due to the exploitation act by the perpetrators on their victims for long-term profit.[106] To keep gaining

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[103] The Means (How it is done) is one of the Elements of Human Trafficking. See Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

[104] Surin Pitsuwan, "Human Security as a Policy Framework for New Cooperation in Asia," Paper Presentation at Fourth Intellectual Dialogue on Building Asia's Tomorrow, Centre for International Exchange, Tokyo: Japan, 2002, pp. 52-58.

[105] Commission on Human Security, "Human Security Now", New York: United Nations, 2003; Barry Buzan, *What is Human Security? A Reductionist, Idealist Notion that Adds Little Analytical Value, Security Dialogue*, Vol. 35, No.3, 2004, pp. 369-70.

[106] Sorpong Peou, "Critical Challenges For Globalism in Human Security Studies," in Sorpong Peou (ed.), *Human Security in East Asia: Challenges for Collaborative Action*, London: Routledge, 2009, p.16.

this long-term profit, the human traffickers, syndicates and the agents would not stop from this business because of the insecurity of vulnerable populations.

2.8 Conclusion

The illegal movements across borders with fake travelling documents are threats to national security and when the movement involves the exploitation of innocent and vulnerable people including women and children, therefore, it also affects the security of the people. Human trafficking is a transnational organised crime and the abuse of vulnerable populations due to extreme circumstances such as political instability, criminal violence and flux economic state by networks of human traffickers call for urgent action from state and non-state actors. These traffickers seek their business opportunity by manipulating these victims by promising them a better life but only push them deeper into despair and the cruel world of human trafficking.[107]

The crime of human trafficking fits into the expansion of the security agenda where it impacts the human security of the victims as well as the societal and economic security of the receiving and transit countries. The clandestine movement of human trafficking operation would also create tensions among nations' bilateral relations resulting in instability at regional and international levels. Consequently, human trafficking is a threat to national security.

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[107] Interview with Daniel Lo, Country Manager for the Coalition to Abolish Modern-Day Slavery in Asia (CAMSA), Kuala Lumpur, 18 October 2013.

CHAPTER 3

HUMAN TRAFFICKING: THE INTERNATIONAL AND REGIONAL DIMENSION

3.1 Prelude to Human Trafficking

The United Nations Office on Drugs and Crimes (UNODC) asserted that human trafficking or trafficking in persons is a crime against humanity.[1] Human trafficking is not only a global phenomenon but an appalling injustice to vulnerable individuals. This terrible act is recognised by the United Nations (UN) as a major agenda in its war to battle transnational organised crime.[2] Human trafficking is seen and considered a heinous crime towards human beings, affecting millions of vulnerable people around the globe.

The United States Department of State in 2010 reports that human trafficking is a multi-billion dollar business run by small networks and "large polycrime international criminal organisations" of traffickers.[3] It is the third largest organised crime on a global scale after the arms and drug trade, mostly operating from the developing to developed countries[4] but also from the least developed to developing and the developed nations. The U.S. Department of State also identified human trafficking as "one of the greatest human rights challenges of our time".[5] State and non-state actors from government agencies, IOs, NGOs,

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[1] See "Human Trafficking", United Nations Office on Drugs and Crime (UNODC), United Nations, available at: < http://www.unodc.org/unodc/en/human-trafficking/index.html?ref=menuside> (accessed 10 June 2012).

[2] See "Transnational Organised Crime: A Growing Threat to National and International Security", National Security Council, The White House, available at: <http://www.whitehouse.gov/administration/eop/nsc/transnational-crime/threat.> (accessed 10 June 2012).

[3] See *Trafficking in Persons Report*, Washington DC: United States, Department of State, 2010, p. 8.

[4] Ibid. Also see "Which Countries Are Affected by Human Trafficking", United Nations Office on Drugs and Crime, United Nations, available at: <http://www.unodc.org/unodc/en/human-trafficking/faqs.html> (accessed 10 June 2012).

[5] See *Trafficking in Persons Report*, 2005, p. 5.

religious leaders and public have been continuously voicing out their concerns over the challenges deriving from human trafficking problems.

The crime of human trafficking came into the limelight over a decade ago when the UN voiced its concern over the heinous atrocity against humanity in a convention. In 2000, in Palermo, Italy, a total of 148 nations gathered at the UN General Assembly resolution 55/25 to address the notable *UN Convention against Transnational Organised Crime to States,* and 121 states signed to show their commitments to combat transnational organised crime. At the same convention, three supplementary protocols were addressed namely *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*; *Protocol Against the Smuggling of Migrants by Land, Sea and Air* as well as *Protocol on the Illicit Manufacturing of and Trafficking in Firearms*. The UN adopted these protocols as the primary legal instruments to combat transnational organised crime.

The protocol has to be ratified by 40 countries for the supplementary protocol on human trafficking to become an instrumental tool of international laws. Acknowledging the seriousness of the human trafficking crime, more than 80 countries ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* to combat this crime.[6] It has been more than a decade now, and a growing number of nations have ratified, enacted, amended and implemented their domestic laws and policies namely to prosecute the perpetrators, provide support and protection to victims of human trafficking

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[6] Janice G. Raymond, "Guide to the New UN Trafficking Protocol", For the Coalition Against Trafficking in Women (CATW), Category II Consultative Status with the United Nations Economic and Social Council, 2001, pp. 1-19.

and have taken the necessary steps to combat human trafficking. As of June 2014, 117 nations have signed with 159 nations ratifying the protocol against human trafficking.[7]

Each year, thousands of men, women as well as children fall prey to the traffickers and are living in bondage. Most states are facing this endemic crime either as a country of origin, transit or destination for victims of human trafficking. It involves several stages of recruiting, transporting, transferring, harbouring, or receiving a person through the use of force, coercion or other means for the sole purpose of exploiting them for sheer profits. These victims are trapped with ruthless employers who abuse them for financial gain. Human trafficking does not only victimise the persons trafficked but also the families they leave behind, and some never get to see their loved ones again. This modern-day slavery is a crime that spans the globe and reduces people to the status of commodities.

3.2 Defining Human Trafficking

According to the Article 3 paragraph (a) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons* signed in Palermo City defines human trafficking or trafficking in persons is "the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having a control over

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[7] See "United Nations Treaties Collection", Chapter XVIII Penal Matters, New York, United Nations, available at: <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en> (accessed 3 March 2014).

another person for the purpose of exploitation".[8] With more than 150 nations ratifying the protocol against human trafficking, it is secure to say that the governments around the world have taken the rightful initiative to combat human trafficking in their states.

The UN describes exploitation to include, at the minimum, forced prostitution of or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.[9] Trafficking is wrong from every aspect of humanity. Mary Robinson, the former UN High Commissioner for Human Rights opined that, "*It violates the fundamental aspects of human rights such as the right to life, the right to dignity and security, the right to just and favourable conditions of work, the right to health, the right to equality, and the right to be recognised as a person before the law. It is a consequence rooted in poverty, inequality and discrimination*".[10]

Similarly, the U.S Department of State describes human trafficking as "the act of recruiting, harbouring, transporting, providing, or obtaining a person for compelled labour or commercial sex acts through the use of force, fraud, or coercion. Such act has a number of different terms, including involuntary servitude, slavery or practices similar to slavery, debt bondage, and forced labour".[11] Besides, a movement is not necessary in trafficking people. This is because people may be considered trafficking victims regardless of whether they

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[8] Presented in Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, signed in December 2000 in Palermo City, Italy.
[9] Ibid.
[10] Anne Gallagher, "Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis," *Human Rights Quarterly* Vol. 23, No. 4, 2001, pp. 975-1004; See Office of the High Commissioner for Human Rights (OHCHR), Trafficking and the Global Sex Industry: The need for a human rights framework, in Women's Rights are Human Rights, Special issue on Women's rights as read in the Prevent Combat Protect Human Trafficking, Joint UN Commentary on the EU Directive – A Human Rights Based Approach.
[11] See "Definitions and Methodology, Trafficking in Persons Report 2013," Washington, DC: United States, Department of State, available at: <http://www.state.gov/j/tip/rls/tiprpt/2013/210543.htm> (accessed 3 March 2014).

were born into a state of servitude, transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked.[12] At the end of the day the perpetrators main goal is to exploit and enslave their victims by using the myriad coercive and manipulative means to gain monetary profit.

The European Union (EU) defines human trafficking as "the recruitment, transportation, transfer, harbouring or receipt of persons, including the exchange or transfer of control over that person, by means of a threat, or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".[13]

Although there have been some disagreements on the variations of the definition of human trafficking among scholars, practitioners, activists and politicians, the common definition by the UN is applied globally as a foundation for a legal framework to assist, manage and combat this transnational organised crime.[14] The above definition is used for the purpose of this thesis.

Human trafficking, in today's literature, is also known as modern-day slavery, where the persons are enslaved, forced to stay and act against their will, beliefs, upbringing and culture. This new form of slavery is above racial lines, and violence is imposed on the victims to maintain the submissiveness and control over them as Bales mentioned in his

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[12] Ibid.

[13] This definition was taken from the European Commission, Fight against Trafficking in Human Beings, available at: <http://ec.europa.eu/anti-trafficking> (accessed 3 March 2014).

[14] Mary C. Burke, *Human Trafficking: Interdisciplinary Perspectives*, London: Routledge, 2013, p. 5.

numerous books advocating abolishing modern-day slavery.[15] Bales further explains that there various forms of slavery such as state-sponsored slavery practised by Burma and China include people being imprisoned for reasons like practising the "wrong" religion.[16] There are other forms of slavery especially in the absence of law when people are abducted from their homeland and transported across the globe without their consent. Such events took place from 1865 to 1930s in the South of America when hundreds of African Americans were enslaved in mines, factories, plantations, brick kilns and turpentine camps through corrupt legal means.[17]

Modern-day slavery is transient and momentary where traffickers can cease their activities for three to six months, or maybe longer, depending on the circumstances. Victims are not only subjected to violence but subjugated and stripped of their free will.[18] In the case of human trafficking, most victims are held in different circumstances for years by their employers, pimps and traffickers. Although some managed to escape and were rescued during raids and operations many remain trapped in debt bondage and domestic servitude and accept their unfortunate fate.

Over the years, the estimation of the number of people trafficked varies distinctively by sources. From 2002 to 2006, the U.S. State Department's *Trafficking In Persons* (TIP) reports has been providing statistics on trafficked people for myriad forms of exploitation. The figures are as follows; in 2002 the estimation was 700,000 to 4 million; in 2003 from

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[15] Kevin Bales, *Disposable People: New Slavery in the Global Economy*, Berkley: University of California Press, 2012; Kevin Bales, *New Slavery: A Reference Handbook*: ABC-CLIO, 2004; Kevin Bales, *Understanding Global Slavery*, Berkley: University of California Press, 2005; Kevin Bales, *Modern Slavery: The Secret World of 27 Million People,* Oxford: Oneworld, 2009.
[16] Kevin Bales, *Disposable People: New Slavery in the Global Economy*, 2012, p. xxvii.
[17] Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, New York: Anchor, 2009 as mentioned in Bales *Disposable People: New Slavery in the Global Economy*, 2012, p. xxvii.
[18] Ibid.

800,000 to 900,000 however from 2004 to 2006 the figures dropped between 600,000 and 800,000.[19] It was estimated that trafficked women and children in Southeast Asia are around 200,000 to 225,000, which is about a third of the low end of 600,000 of trafficked persons globally. Around 60 per cent (300,000) of trafficked women and children who entered into the U.S were mainly from Southeast Asia yet most of the trafficking occurs within the region.[20] All these trafficking movements are for the sole purpose of economic exploitation.

Table 3.1 as below explains offences in human trafficking.

Table 3.1: Key Words of Human Trafficking Offences[21]

Key Words	Category	Description
Process	Procuring a person for labour or services exploitation such as sex	The victim is transported from the country of the origin to the location of exploitation.
Profit	Examining the purpose of exploitation for the traffickers or employers	The primary motivation and act of the traffickers to exploit the victim for economic profit.
Powerlessness	Examining the process for the victim including force, fraud or coercion	The means by which the traffickers subjugate and overcome the will of the victim to serve the traffickers and the clients.

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[19] Maruja M. B. Asis, "Human Trafficking in East and South-East Asia: Searching for Structural Factors," in Edward Newman and Sally Cameron (eds.), *Trafficking in Humans: Social, Cultural and Political Dimensions*, New York: United Nations University Press, 2008, p. 192; Liz Kelly, "'You Can Find Anything You Want': A Critical Reflection on Research on Trafficking in Persons within and into Europe," *International Migration*, Vol. 43, Issue 1-2, 2005, p. 239; *Trafficking in Persons Report*, 2006.

[20] Ibid.; See *Combating Trafficking in South-East Asia: A Review of Policy and Programme Responses*, International Organisation for Migration (IOM) Migration Research Series No. 2, Geneva: IOM, 2000, p.16.

[21] Daniel Lo, "Investigations: What Are the Key Elements in a Trafficking in Persons Case?," in *The 15th Malaysian Law Conference*, Kuala Lumpur Convention Centre: The Law Review: iMalaysiana 2010, 29 – 31 July 2010.

3.3 Tier Placement of Human Trafficking

The countries are placed in a tier system to analyse the size of the human trafficking problem in each country and the extent of respective governments' response in combating this crime. The efforts of the governments are analysed in compliance with the Trafficking Victims Protection Act (TVPA) minimum standards which are consistent with the Palermo Protocol for the elimination of human trafficking.[22] There are three tiers to evaluate the achievement of a government in combating this crime besides it is an observation to evaluate the governments' corporation in dealing with this issue. The three TVPA tiers are categorised as Tier 1, Tier 2, Tier 2 Watch List and Tier 3. These are explained as below:[23]

Tier 1 – Countries whose governments fully comply with the TVPA's minimum standards for the elimination of human trafficking.

Tier 2 – Countries whose governments do not fully comply with the TVPA's minimum standards, however, are making significant efforts to bring themselves into compliance with those standards.

Tier 2 Watch List - Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards, and
a) the absolute number of victims of severe forms of human trafficking is very significant or is significantly increasing;
b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations,

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[22] *Trafficking in Persons Report*, 2013, p. 41.
[23] The TVPA tiers are explained in all the annual Trafficking in Persons Report.

prosecution, and convictions of human trafficking crimes increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or,

c) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional steps over the next year.

Tier 3 – Describes countries whose government do not fully comply with the TVPA's minimum standards and are not making significant efforts at all to do so.

Although Tier 1 is the highest ranking in the TVPA, it does not mean that a particular country has not encountered any human trafficking problems. This is because Tier 1 indicates that the government of that particular country has acknowledged the existence of human trafficking thus has made significant efforts in addressing the problem by meeting the minimum standards of the TVPA.

For instance, the U.S is ranked Tier 1, and is known for its vast opportunities in multi-sectors. Nonetheless, its government faces critical issues concerning human trafficking on a daily basis when the state border is in close proximity with its neighbour states in South America. Many South Americans risk their lives by crossing the international border illegally to enter the country in hope for better opportunities to fulfil their dreams.[24] However, many of them are trapped in the hands of smugglers and traffickers during their passage and end up in the crop fields and hard labour jobs with no freedom and voice to escape.

Over the years, the United State's TVPA reports have its share of criticism from governments and NGOs especially in upgrading and downgrading a country for its efforts in

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[24] *Trafficking in Persons Report*, 2013, p. 35.

combating human trafficking. For instance, Malaysia was upgraded to the Tier 2 Watch List from Tier 3 in 2015 although human trafficking camps were found between the borders of Malaysia and Thailand. Malaysia was upgraded regardless of the objections made by the local NGOs and INGOs. Concurrently, the ongoing talk on Trans-Pacific Partnership Agreement (TPPA) between Malaysia and the U.S. is believed to be a contributing factor for the upgrading.[25] Malaysia did sign the partnership agreement despite various objections from NGOs and the people.

3.4 Human Trafficking Versus Human Smuggling

Apart from human trafficking problems, the UN is also concerned over the issue of human smuggling or smuggling of migrants. There is a distinct definition of trafficking and smuggling. Unlike trafficking, human smuggling is an illegal operation involving migrants who are willing to smuggle into a country with illegal documents and identity papers prepared by the smuggling agents and are ever ready to be transported with their consent.

These are the people who are willing to migrate illegally and willingly. Before tapping into the real issue, it is better to comprehend the different terms involved in the movement of people. The term migration is described as the movement of people from one country to another whereas immigration is when a person moves to a country.[26] Meanwhile, emigration is when a person moves away from a country.[27] Those who migrate especially from poorer countries it is to escape from extreme poverty, unemployment and political

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[25] Stan Sorscher, "TPP Reduces Human Trafficking and Child Labour to Misdemeanour," *Huffington Post*, 1 June 2015, <http://www.huffingtonpost.com/stan-sorscher/tpp-reduces-human-traffic_b_7488536.html> (accessed 5 May 2016); See "US Decision on People Trafficking in Malaysia "Manipulated"," *International Trade Union Confederation*, 27 July 2015, <http://www.ituc-csi.org/us-decision-on-people-trafficking> ((accessed 5 May 2016)

[26] Burke, *Human Trafficking: Interdisciplinary Perspectives*, 2013, p. 11.

[27] Ibid.

instability. This is when vulnerable migrants fall into the hands of smugglers as well as traffickers.

Hence, the UN Palermo Protocol defines smuggling of migrants as the "procurement, to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".[28]

The modus operandi of human smuggling is arriving at their destinations which involve the crossing of national or international borders with forged visas and documents within states. In addition to the illegal movement, it is highly risky to migrants when they are transported and their lives are at stake. This is because of their illegal status these migrants are transported in big trucks or in car trunks, small boats and old dingy ferries, and some even walk into jungles and cross rivers to enter a country illegally. Since their means of travel are dangerous, the risks they face are high. There are many reported tragic incidents where these migrants face fatality in the deserts, seas and cargo before they reach their 'promised land'.

For example, illegal migrants faced death due to suffocation in packed trucks and car booths,[29] drowned from capsized boats and being attacked by wild animals in the jungles and rivers. Some of the victims are young children and some newborn. In 2012, as many as 130 people including women and children drowned in the off coast of Bangladesh when the boat carrying the illegal passengers trying to enter Malaysia sank in the Bay of Bengal.[30]

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[28] See Article 3, Smuggling of Migrant Protocol, New York, United Nations Office on Drugs and Crime (UNODC), available at: <http://www.unodc.org/unodc/en/human-trafficking/smuggling-of-migrants.html> (accessed 3 March 2014).
[29] Daryl Strickland and Scott Gold, "17 Found Dead at Texas Truck Stop," *Los Angeles* Times, 14 May 2003, <http://www.latinamericanstudies.org/immigration/immigrants-dead.htm> (accessed 3 August 2013).
[30] Harmeet Shah Singh, Elizabeth Joseph, and Jethro Mullen, "More Than 100 Missing after Illegal Migrant Boat Sinks Off Bangladesh," *Cable News Network CNN*, 12 November 2012,

According to the report, authorities were looking for nine suspected human trafficking agents who organised the illegal boat trip which ended in tragedy. Such tragedies occur on a daily basis and considerable measures have to be taken to stop such incidents from recurring. The lives of these vulnerable people are at stake, and they are willing to risk to escape from their misfortune.

The status of migrants may change when different agents take over, and these migrants are eventually trafficked.[31] When illegal migrants pay a huge sum for travelling fares and transportation to a certain destination and upon reaching they may be taken over by a different agent and may need another huge sum to travel to different locations. These new agents will pay for their transportation, and the illegal migrants are indebted to the agents. To pay back the loaned sum, these vulnerable illegal migrants have no choice but to do what the agents require of them. They are also subjected to physical and sexual violence.

More often than not, the men are forced into the 3D jobs namely those that are dangerous, dirty and degrading. These include hard labour in plantations, construction, fishery and farms, and women into domestic work and the sex industry. Under-aged children face similar situations where they are subjected to hard labour, domestic work, sexual exploitation and in certain parts of the world they are forced to become child soldiers, beggars and taken up for illegal adoption.

In certain cases, it may be difficult to establish if a case is one of human trafficking or smuggling. The key components that would distinguish trafficking from smuggling are

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<http://edition.cnn.com/2012/11/01/world/asia/bangladesh-boat-sinks/>; "17 Dead as Migrant Boat Capsizes", *The Borneo Post*, 27 December 2013, <http://www.theborneopost.com/2013/12/27/17-dead-as-migrant-boat-capsizes/> (accessed 3 August 2013).

[31] Article 3, Smuggling of Migrant Protocol, New York, United Nations Office on Drugs and Crime (UNODC).

the elements of fraud, force, and coercion. However, under the laws and by statute in most countries, if the person is under the age of 18 and is induced to perform a commercial act such as sexual, then it is considered trafficking, regardless of whether or not fraud, force, or coercion is used.[32]

According to Burke,[33] there are circumstances where women agreed to be smuggled into a country to work in the sex industry or domestic households or as a nanny, however; they may not be aware that the traffickers will keep all of their earned money, restrict them and have control over their movement. If these women retaliate, they are subjected to abuse, torture and sexual violence. There are also instances where people would move voluntarily when they come across some work opportunities but due to illegal employment practices they may fall into the hands of traffickers. Most of these women are forced into prostitution, and many remain with their pimps as they are accustomed to the ordeal. Many develop Stockholm syndrome towards their captors and become an agent to recruit and traffic younger victims.[34] When the victims have a close relationship and bonding with their captors they eventually prefer to stay with them.

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[32] Interview with Adilla Hj Ahmad, Deputy Public Prosecutor, Attorney General Chambers Malaysia (AGC), 16 October 2013; See Palermo Protocol.
[33] Burke, *Human Trafficking: Interdisciplinary Perspectives*, 2013, p. 12.
[34] *Trafficking in Persons Report*, 2013, p. 29.

Table 3.2: Difference between Human Trafficking and Human Smuggling

HUMAN TRAFFICKING	HUMAN SMUGGLING
Must Contain an Element of Force, Fraud, or Coercion (actual, perceived or implied), unless under 18 years of age involved in commercial sex acts.	The person being smuggled is generally cooperating.
Forced Labour and/or Exploitation.	There is no actual or implied coercion.
Persons trafficked are victims.	Persons smuggled are complicit in the smuggling crime; they are not necessarily victims of the crime of smuggling (though they may become victims depending on the circumstances in which they were smuggled).
Enslaved, subjected to limited movement or isolation or had documents confiscated.	Persons are free to leave, change jobs, etc.
Need not involve the actual movement of the victim.	Facilitates the illegal entry of person(s) from one country into another.
No requirement to cross an international border.	Smuggling always crosses an international border.
Person must be involved in labour/services or commercial sex acts, i.e., must be "working".	A person must only be in the country or attempting entry illegally.

Source: Obtained from the website of Washington DC: U.S State Department[35]

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[35] See "Fact Sheet: Distinctions between Human Smuggling and Human Trafficking," edited by the United States, Department of States, 1 January 2006.

3.5 Slavery

Slavery is ubiquitous. Despite the fact that slavery is not a rare term, yet no one knows the exact figure of people enslaved against his or her will around the world or even in any specific region. However, the International Labour Organisation (ILO) estimates that about 12.3 million people are enslaved globally.[36] Most of the time, slaves are kept hidden and are not included in national censuses hence figures can be difficult to determine. Despite the variance in the figures, some experts estimate that there are about 27 million people enslaved today with some putting the estimate as high as 60 million.[37]

These bonded slavery victims are forced to work without any pay and constantly under the threats of violence and unfortunately unable to walk away freely from their masters. Slavery exists almost everywhere in the world, and it is most prevalent in the poor parts of South Asia.

Asia-Pacific has the largest number of slaves in the world with an estimation of 15 million to 20 million people are bonded labour like in India, Pakistan, Bangladesh and Nepal. These people are held as slaves working for generations to repay small loans. According to the "Free the Slaves' team, "in Southeast Asia, the Chinese and Burmese governments are complicit in slavery meanwhile Indonesian fisheries buy or kidnap children and sell them in the West."

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[36] See *International Labour Organisation Report 2005*.
[37] Kevin Bales, *Modern Slavery: The Secret World of 27 Million People*: Oneworld, 2009; Also see the Centre of the Modern American Abolitionist Movement 'Free the Slaves' which was inspired by Kevin Bales is an international non-governmental organisation and lobby group established to campaign against the modern practice of slavery around the world. Available at: <https://www.freetheslaves.net/SSLPage.aspx?pid=348> (accessed 10 June 2012); Courtney Farrel and Mark Hoerner, *Human Trafficking* (Essential Issues), 2011; Kevin Bales, *Disposable People: New Slavery in the Global Economy*, Berkley: University of California Press, 2012, p. 9.

Three trends contribute to the rise in modern-day slavery. The first being the rise in recent world population where it has tripled in most developing countries. The second is due to the rapid social change that occurred in social and economic sectors displacing the people to urban centres, and their outskirts where there is no 'safety net' nor job security and the third trend is corruption in the government where it allows slavery to go unpunished regardless of its illegal nature.[38] Due to the profitable return from enslavement, traffickers have stolen the lives of vulnerable people regardless of age and gender as these slaves are cheaper and disposable. Fear is inflicted on them to avoid any means of escaping.

Since human trafficking is recognised as the modern-day slavery trade due to the nature of enslaving a person for the purpose of exploitation. In the context of slavery, the act of human trafficking occurs when a person is tricked and lured or kidnapped or coerced and eventually held as a slave. Slavery is when a person has a total control of power over another person by using violence. Slavery occurs due to the vulnerability of individuals and their terrible circumstances.

To maintain that control and power, violence is used to exploit them economically by not paying them anything for the work they do. In essence, the person who has become a slave does not have the right or freedom to walk away. However, an essential point to note is that if moving a person from one place to another does not result in slavery; then it is not an act of human trafficking.[39] Identifying victims of human trafficking can become a challenging task, especially for the frontline enforcement authorities.

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[38] Philip D. Curtin, *The Atlantic Slave Trade: A Census*, University of Wisconsin Press, 1972; Also see "Slavery Map", Free The Slaves, Washington, United States, available at: <https://www.freetheslaves.net/SSLPage.aspx?pid=301moving > (accessed 10 June, 2012).
[39] *Trafficking in Persons Report*, 2013, pp. 8-10.

3.5.1 The Dogma of Slavery

What is slavery? Who is a slave? How does one become a slave? Where does slavery take place? Where does slavery exist? Why slavery happens? There are so many questions to ponder and wonder. However, to answer all the above, an eminent scholar has astutely defined slavery is a "relationship in which a person is controlled by violence through violence, the threat of violence, or psychological coercion, has lost free will and free movement, is exploited economically, and paid nothing beyond subsistence".[40] To add to that definition, slavery is a hidden crime and silent one against the vulnerable populations.

According to Bales, in the 1990s people were certain that slavery no longer existed.[41] Unfortunately, slavery was a hidden act among slaveholders, and the world was not aware of the actual truth. The trading of human beings as one of the major commodities for centuries and many economies were dependent on captive labour.[42] Human trading was fundamental in every aspect of the economy, and the exploitation of these individuals was the brutal truth. Moreover, those who enslave others were ignorant of the fact that owning another person is against the law.

Morally it is unethical to own a person or to enslave but in many countries like India, Africa and Arab it is a cultural fad for leaders, people in the higher hierarchy, monarchy, wealthy and upper cast to hold people as slaves. Slave owners have a special status quo in the society and among their caste people. These bonded slaves can never leave their owners or masters without their permission, and if they do so, they are subjected to punishment,

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[40]   Kevin   Bales,   "Defining   and   Measuring   Modern   Slavery,"   2007.   See
<http://www.freetheslaves.net/Document.Doc?id=21.> (accessed 10 June 2012).
[41] Kevin Bales, *Disposable People: New Slavery in the Global Economy*, 2012, p. xviii.
[42] Burke, *Human Trafficking: Interdisciplinary Perspectives*, 2013, p. 27.

abuses as well as sexual violence. Some even face fatality. Furthermore, little to no efforts have been taken in these parts of the world to abolish slavery or uphold the law against owning human beings.

The *Slavery Convention of 1926* defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" means a person in such condition or status".[43]

The crime of slavery was concealed from the world due to ignorance and the common assumption that the act was extinct.[44] People were convinced that slavery did not exist as slavery was illegal in every country. Therefore, slaveholders kept their criminal activities out of sight. It was also due to civilisation and the adaptation of modern technologies alongside human rights values which made it possible for slavery to exist and be practised by civilised people.

Slavery is as old as human civilisation. The world's great founding cultures like Mesopotamia, China, Egypt and India accepted and acknowledged slavery as a way of life. The culture of slavery was also common in sub-Saharan Africa and the Americas as well as in Asia. In the old days, Africans were specifically transported to the New World based on their race and specific capabilities. However, the slavery culture reached its apex in ancient Greece and then Rome, where human trafficking became a profit making industry.[45]

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[43] See *Slavery Convention of 1926,* Office of the High Commissioner for Human Rights: United Nations Human Rights; available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx> (accessed 10 June 2012).
[44] Kevin Bales, *Disposable People: New Slavery in the Global Economy*, Berkley: University of California Press, 2012, p. xviii.
[45] Milton Meltzer, *Slavery: A World History*, New York: De Capo Press, 1993, pp. 1-6.

According to the inaugural Global Slavery Index (GSI) in 2013, estimation of slavery was a staggering figure of 30 million people enslaved globally.[46] In 2014, GSI showed a staggering figure at 35.8 million people living in some kind and form of modern slavery around the world.[47] The Walk Free Foundation (WWF), an organisation attempting to end global slavery and human trafficking stressed that this figure is due to improved accuracy and precision measures and methodology applied to discover the hidden modern slavery where it was thought to be non-existent, yet it does exist. The GSI comprises Taiwan, South Sudan, North Korea, Kosovo and Cyprus.[48]

This report gives an estimation on slavery in 162 countries.[49] India, China, Pakistan, Nigeria, Ethiopia, Russia, Thailand, the Democratic Republic of Congo, Myanmar and Bangladesh are countries with the highest number of people enslaved. All of these countries contribute 76 per cent of the total estimation of 29.8 million people trapped in modern-day slavery.[50]

The GSI reports that an estimated 24 million people is enslaved in Asia alone. Asia and the Pacific have the largest number of slaves in the world reported to be living in India, China, Pakistan followed by Thailand, Myanmar and Bangladesh. India was ranked with the largest number of people in bondage with 13.95 million, followed by China, 2.95 million and Pakistan, 2.1 million.[51] This GSI estimation is based on three combining factors namely the prevalence of modern-day slavery, levels of child marriages and levels of human trafficking

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[46] "30m Living in Slavery," *The Sun*, 18 October 2013.
[47] See *The Global Slavery Index 2014*, The Walk Free Foundation, Australia, 2014, p.5.
[48] Ibid., p. 17.
[49] See *The Global Slavery Index 2013*, The Walk Free Foundation, Australia, 2013, p. 1.
[50] Ibid., p. 7.
[51] Ibid.

into and out of the country. All these factors give the "weighted measure" for the index.[52] The most disturbing factor is child marriage when under-aged girls are forced into marrying older men, especially with their parents' consent.

There are as many as 19 million people held as slaves in India, China and Pakistan alone, and these people have been working for generations to repay debts and small loans to their masters. Based on the GSI report, India may have such a huge number of slavery due to the exploitation of Indians particularly through debt bondage and bonded labour. A minimum amount of US$250 is needed to settle debts to buy freedom for an entire family in India.

A study in China reveals that prevalence of slavery is mainly due to forced labour in many parts of the economy and especially in labour camps.[53] This includes domestic servitude, forced begging and the sexual exploitation of women and children as well as forced marriages. Thus, China is ranked second in the GSI report. Thailand is ranked seventh with 47,200; Myanmar ninth with 38,400 followed by Bangladesh ranked tenth with 34,300 enslaved people.[54]

In Southeast Asia, the Chinese and Myanmar governments are complicit in slavery. As for the fishery sector in Indonesia, children are bought and or are abducted and sold in East Malaysia. Many Indonesians and Filipinos endure internal enslavement in domestic servitude and trafficking into sexual exploitation in the Gulf States and Japan. Some of the incidents are not reported. Hence the perpetrators escape conviction due to their strong

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[52] Ibid., p. 8.
[53] Harry Wu, "Laogai: Inside China's Forgotten Labour Camps," in *Enslaved: True Stories of Modern-Day Slavery*, edited by Jesse Saga and Liora Kasten, New York: Palgrave Macmillan, 2006, pp. 113 – 142.
[54] See *The Global Slavery Index*, 2013, *Walk Free Foundation*, p. 7.

financial background and status in the society. Often victims who ended up with the authorities are sent away without any compensation but with traumatising physical and mental scars.

Japan is a famous destination for the sex industry with a staggering figure of 40,000 to 50,000 women being trafficked annually by the Yakuza.[55] Japan is also known to be the top user of slave labour among rich countries. The Yakuzas are aggressively involved in organised crime especially sex trafficking, forcing women and girls into prostitution.[56] A similar situation exists in Korea where women are trafficked into the sex industry, and Japan has the legal channel to enter Korea as an entertainer, and there are no means of protection for these workers.[57]

In the Middle East and North Africa with 2.54 per cent, the people are victimised at high levels of the internal and external modes of slavery.[58] Scrupulous brokers buy and traffic children within and between African countries. The slaves are forced to work in cocoa and cotton plantations, fisheries, mines, or as domestic servants and even as prostitutes. Some of the victims are trafficked into Europe, the Middle East and Japan, while others are forced to fight by paramilitary forces such as in Africa where the menace of child soldiers are rampant. The state-sanctioned slavery like in the Sudan sees young girls abducted and trafficked into the Gulf States to serve as prostitutes. Most of these young girls remain in the servitude of traffickers as prostitutes.

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[55] See "Slavery Map," Washington, United States, available at: <https://www.freetheslaves.net/SSLPage.aspx?pid=375> (accessed 20 October 2013).
[56] Maruja M. B. Asis, "Human Trafficking in East and South-East Asia: Searching for Structural Factors," 2008, pp. 190-191.
[57] Ibid.
[58] See *The Global Slavery Index*, Walk Free Foundation, 2013, p. 29.

Africa has the highest measured level of discrimination against women. One result is the high-level of forced and child marriages within the region, as well as the widespread exploitation of trafficked women in forced prostitution and as domestic workers. Apart from that, rapid political change following the Arab Spring calls into question continuing political commitment to the implementation of anti-slavery policies in numerous key countries.[59] Despite numerous policies in place, slavery continues to be practised as it has become a custom and ingrained in the global culture.

The GSI report estimates that 16.36 per cent of the total 29.8 million people are enslaved in Sub-Saharan Africa. This is the largest of the regions measured for the index and holds the most diversity regarding the risk of enslavement.[60] This region faces ongoing conflicts, severe poverty, high levels of corruption and the impact of unsustainable resource exploitation.[61] Moreover, while women are forced into marriages, the same situation is faced by under-aged children. Child marriage is a tradition being tolerated and presumed as legal in many of these African states. Furthermore, polygamy is practised widely by men especially older ones hence young girls become easy targets before reaching puberty.

In Europe and Eurasia, traffickers target young women in Russia and Eastern Europe for forced prostitution in regions like Western Europe, Israel, the Gulf States and as far as Japan. There are others who are caught from different regions like Africa and some within the region are tricked by recruiting agents for the purpose of working in the agriculture sector, food processing and the service sector. Around hundreds of thousands of people are

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[59] Ibid.
[60] See *The Global Slavery Index*, Walk Free Foundation, 2013 p. 25.
[61] Ibid.

trafficked into slavery in Eastern Europe and Eurasia with an estimation of 1.82 per cent and 3.36 per cent respectively.[62]

People in the Americas including the Caribbean are vulnerable to slavery and prone to being trafficked abroad. In Haiti, enslavement of children has affected as many as 1 in 10 children. Hundreds of thousands of people are held in Brazil against their will. As a result, the Brazilian government has taken the initiative by enforcing their law, and this has led to freeing 6,000 to 7,000 slaves annually. From the total of 29.8 million (3.78 per cent total global population) are enslaved in the Americas.[63] Recently in Brazil, 6,000 victims were freed from slavery.[64]

The Walk Free Foundation reports that in North America alone, slaves come from 60 countries and have been found in 90 major cities around the region. These victims of slavery are forced into domestic servitude, farm works and even coerced into the sex industry. Approximately 50 per cent of slavery in the U.S is identified in the commercial sex trade and the other 50 per cent in agriculture, domestic services, manufacturing and other industries. It is estimated that more than 14,500 people are trafficked into the U.S. annually.[65]

If the practice of slavery is not abolished globally, enslavement of people will remain as part of tradition and culture while remain hidden and invisible. With that, trafficking of persons will remain as an ongoing profit-making business and the chain of networks will continue to grow.

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[62] See *The Global Slavery Index*, Walk Free Foundation, 2013, pp. 19 & 27.
[63] Ibid., p. 21.
[64] See "Slavery Map", available at: <https://www.freetheslaves.net/SSLPage.aspx?pid=375.net> (accessed 10 June 2012).
[65] Ibid.

3.5.2 Brief History of Slavery

Slavery is illegal since the 19th century when England outlawed slavery throughout its empire in 1833 and the world's first international abolitionist group and Anti-slavery International was founded in England in 1839. In 1848 the French abolished slavery in its colonies followed by President Abraham Lincoln in 1863 by issuing the '*Emancipation Proclamation*' freeing all slaves in the Southern or Confederate states. Meanwhile in December 1865 after the war ended with the Union's victory, the 13th Amendment to the Constitution abolished slavery in America. Eight years later, Spain ended slavery in Puerto Rico, and Brazil did the same in 1888.[66]

Contemporary slavery is a "social and economic relationship in which persons is controlled through violence or paid nothing and economically exploited".[67] Slavery under the purview of "in international law, the outlawing of slavery has become *jus cogens* which means that it is absolutely accepted and does not need to be written into new treaties and conventions".[68]

In Latin '*jus cogens*' means 'compelling law' or 'strong law' and is a principle of international law which is very fundamental that overrides all other sources of international law, including Charter of the United Nations. The principle of *jus cogens* is preserved in Article 53 of the Vienna Convention on the Law of Treaties: A peremptory norm of general international law is a norm accepted and recognised by the international community of States

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[66] "Human Trafficking and Slavery," *The CQ Researcher*, Vol. 14, No. 12, 2004, p. 283.
[67] Kevin Bales, *Disposable People: New Slavery in the Global Economy*: California: University of California Press, 2004; Janie Chuang, "Beyond a Snapshot: Preventing Human Trafficking in the Global Economy," *Indiana Journal of Global Legal Studies*, Vol. 13, No. 1, 2006, pp. 137-163.
[68] See *Vienna Convention on the Law of Treaties*, Vol. 1155, 1-18232, 23 May 1969, p. 344.

as a whole as a norm from which no derogation is permitted and which can be modified only

by a subsequent norm of general international law with the same character.

By law *jus cogens* requires or forbids the state to do particular acts or respect certain

rights such as criminal offences which the state must enforce against individuals. Such

norms are prohibitions of such crimes and internationally wrongful acts as war, war crimes,

piracy, crimes against humanity, genocide, slavery, apartheid and torture.

With this, the foundation of this full acceptance rests on several ground-breaking

international agreements, beginning with the 1926 Slavery Convention of the League of

Nations which needed the signatory countries to work to abolish every aspect of slavery.[69]

This practice was also banned by the 1948 Universal Declaration of Human Rights which

upholds that "no one shall be held in slavery or servitude; slavery and the slave trade shall be

prohibited in all their forms".[70]

Despite the efforts of numerous world leaders in an attempt to abolish slavery, it still

exists today and takes place in different facets and patterns and is known as trafficking in

persons or human trafficking.

3.6 Elements in Human Trafficking

There are three constituent elements involved in human trafficking on the basis of the

definition provided by the UNODC. The first element is the 'act' that determines what is

done. The act involves recruitment, transportation, transfer, harbouring, or receiving of

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[69] "Human Trafficking and Slavery," *The CQ Researcher*, Vol. 14, No. 12, 2004, p. 287.
[70] Ibid.

trafficked persons. The second element is the 'means' of how it is done which explains the threat or use of force, coercion, abduction, fraud, deception, abuse of power or person's vulnerability, or giving payments or benefits to a person control of the victim. Meanwhile, the third element is the purpose on why it is done. The 'purpose' implies exploitation using exploiting others especially for forced sexual exploitation, forced labour, slavery or similar practices and the removal of human organs.[71] Such exploitation is done for a certain price, and it is usually to return high profits to the perpetrators. That is why human trafficking generates billions of dollars in revenue. With the advancement of high technology, perpetrators can operate behind closed doors with their agents working around the clock.

Human trafficking is categorised by stages from recruitment to transportation and then exploitation. The process can vary in a variety of ways depending on the geographical location, the identity of victims and traffickers as well as the method of exploitation.[72] As far as countries are concerned, they can be source, transit and destination passages for traffickers to operate.

Besides that, trafficking can be categorised regarding the process for instance as a source country, transit and destination.[73] The two levels of human trafficking are domestic and global. At a global level, victims are transported across international borders while in the

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[71] See "What is Human Trafficking," United Nations Office on Drugs and Crime, available at: <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (accessed 3 June 2012).
[72] John Winterdyk, Benjamin Perrin, and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, New York: CRC Press, 2012, p. 27.
[73] Ibid.; Kristiina Kangaspunta, "Mapping the Inhuman Trade: Preliminary Findings of the Database on Trafficking in Human Beings", Paper presented at the Forum on Crime and Society, New York: United Nations, 2003, Vol. 3, Nos. 1 and 2, pp. 81-103.

same capacity when the victims are recruited, procured, moved and exploited within a state it is a domestic human trafficking.[74]

The involvement of villagers as middlemen for employment agencies has been observed as an influential factor. Most of the traffickers consist of local people; people they have known from small or friends or school mates. Hence it becomes easier for them to coerce the villagers. When these perpetrators return home with decent clothes and brag about their money making jobs in another country, incidentally they influence others on the hopeful opportunities. These perpetrators who had working experience and showcased better living conditions by working in foreign lands can manipulate their village people. At the same time, with rapid globalisation, human trafficking syndicates are also seen with suits and briefcases, and they would look professional. These syndicates include men and women in their best attires and with content faces can deceive innocent victims into promising jobs and dreams that are bogus with the sole intention to exploit them.

With such a manipulation strategy, people are forced to make bad decisions and wrong choices to meet their desire to live decently with decent money and proper jobs. However, it is a sham. When they reach the destinations, their fates fall into the hands of the traffickers who would have confiscated their passports and beat them up to succumb as well as threatened to harm their family members. These innocent people without their knowledge are set to be exploited by those they trusted into forced prostitution and pornography, as involuntary household servitude, hard labour, forced begging, involuntary organ donors, forced pregnancies for adoption and as a syndicate to traffic others.

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[74] Winterdyke, *Human Trafficking*, 2012, p. 28.

Though the elements are an outline to explain what human trafficking is and how it operates, human trafficking is also determined by the manipulation of employees.[75] In this context, manipulation occurs when employers refuse and or fail to pay the wages owed to the workers and labourers. In many cases, rescued victims of involuntary domestic servitude are denied their monthly salary from a few months to years. Employers usually threaten them by confiscating their travelling documents. These domestic workers are not only forced to work but are constantly abused. Moreover, these employees are trapped when their employers lock away their passports and identity documents. These employers have the upper hand over their workers by threatening to hand them over to the authorities if they try to run away.

Due to extreme poverty and disproportion of employment, human trafficking syndicates take advantage of the sorry state of individuals who are willing to migrate to earn a living. Thus, substantial funding is required for travelling and arrangement of employment via agencies and because of the added financial pressure migrants become vulnerable to debt bondage arrangements and are being exploited by scrupulous traffickers.

Women who travel from economically weak countries such as Sri Lanka, Myanmar, Cambodia, Thailand, Laos, the Philippines, Indonesia, to work in the domestic households are often held at ransom by their employers. Neglecting the workers' salary for more than three months is considered an offence under the Trafficking in Persons Act as the worker has been exploited and forced to work without pay.

Perpetrators have gone one step ahead from recruiting their victims in the rural and poor areas to cities by changing their modus operandi via the means of technology and social

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[75] Interview with Daniel Lo, Country Manager for the Coalition to Abolish Modern-Day Slavery in Asia (CAMSA), Kuala Lumpur, 18 October 2013.

networks. The blooming and expansion of social network on the internet has given the confidence to traffickers to build a strong chain of networks to approach users on the social networks such as *Facebook*, *Twitter*, *Linked-in*, *Friendster* and much more to grow their organised crime.

It is indeed an immense challenge for parents to supervise their children on the social networks especially when the perpetrators on the network are from a different social background and they may not use their actual identity during their social networking. In addition to this advantage, these perpetrators hide their true identity and motives when they forge friendships with users on the social networks.

Victims have fallen into the trap of hoax advertisements especially modelling opportunities, a career in the entertainment world, media relations and the dream to work in foreign countries.[76] Both men and women believe the perpetrators behind these social networks and form a bond which later on persuaded to meet up for fake interviews or photo shoots and then travel to foreign states. Eventually, reality sets in once the victims reach their destinations and are usually forced into prostitution, forced labour and involuntary domestic servitude. These people become the victims of human trafficking. Children get tricked and sold into prostitution, and they become a statistic of child sex trafficking.

It is impossible for law enforcement agencies to keep track of millions of job advertisements on the internet and social network.[77] Moreover, it is not feasible for parents to watch over their children 24 hours especially when parents are deceived by their children with whom they are in contact with on the social networks and the internet. Therefore, the

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[76] Ibid.
[77] Interview with Hafiz Halim; Inspector with the Royal Malaysian Police (RMP), 19 October 2012.

threat of social network is immense due to its dynamic technology and international networking skills.

For instance, among many stories encapsulated in an enslavement book,[78] Selina a Kenyan woman was very desperate in looking for a job outside her native country as she has a young nephew and parents to care and a brother locked up in a prison. She was constantly applying for jobs on the internet using her Yahoo mail. She received an email from a woman in Egypt looking for a domestic maid and to look after her five-year-old daughter. After few corresponding via emails and an act of compassion by the employer, Selina was comfortable to fly to Cairo and worked for the family. As soon as she stepped into the house, reality set in as she was not given any time to rest but was shocked with instructions and directions on her daily work. She was not allowed to attend church and was only allowed to eat the leftovers from the family. She had to work long hours cleaning and scrubbing the house, and her passport was confiscated. However, Selina was given 15 minutes to use the internet at her employer's home.

Such stories occur through agents but in this case, it happened via email. Therefore, the authorities have no jurisdiction over the individual's action. Because of harsh poverty and imbalance of socioeconomic of a country, people are forced to leave their hometown with a hope of greener pastures. In Selina's case, she was rescued by an American, who was earlier in contact with Selina. Ellen was also looking for an *au pair,* but she wanted someone closer to her home. Because Selina was able to use the internet, she was communicating with Ellen via email. Ellen was coaxing her to tell if something was not right as she watched *The*

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[78] Selina Juma, "Out of Egypt", in Jessie Sage and Liora Kasten (eds.), *Enslaved: True Stories of Modern-Day Slavery*, New York: Palgrave Macmillan, 2006, pp. 143-161.

Oprah Winfrey[79] show on television and the show highlighted girls forced to work long hours without pay which is similar to slavery.

Selina related the abuse and sought help. Ellen with the aid of the American Anti-Slavery Group (AASG) in Boston and a Cairo-based human rights group helped Selina by putting pressure on the employer and releasing Selina from her work. Selina flew back to Kenya and was lucky.[80] For Selina the ordeal was a tragedy, but that did not stop her from looking for jobs as *au pair* in foreign lands due to her country's poor economic conditions. To live and earn she has to find a job which pays not only for her but her family members as well.

Correspondence between individuals is impossible to track, especially men and women who are under the pressure of socioeconomic stigma. Those facing huge accumulated debts, unemployment for a period of time with young children to feed and aged parents to look after, coping with medical bills and increases in the price on food and daily usage of products urge people to search for work in the major cities though they recognise the risk and have no choice but to hazard such risks.

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[79] The Oprah Winfrey show is an American television daytime talk show that highlights on humanities issues such as human trafficking, slavery, child prostitution and child phonographic and sexual exploitation. This show is hosted by Oprah Winfrey herself and it is televised all over the world with multi-faceted viewers.

[80] Selina considers herself very lucky as she managed to keep in touch with a friend via email and she was allowed to use the Internet. There are many young women entrapped with tyrant employers in houses without any Internet facilities and forced to work long hours without pay and proper food. These victims are trapped in involuntary domestic works and are treated as slaves. They are threatened with being sent to the police since their passports have been confiscated by their employers.

Table 3.3: Elements of Human Trafficking

ACT	MEANS	PURPOSE
• Recruitment • Transport • Transfer • Harbouring • Receipt of persons	• Threat or use of force • Coercion • Abduction • Fraud • Deception • Abuse of power or vulnerability • Giving payments or benefits	• Exploration • Prostitution of others • Sexual exploitation • Forced labour • Slavery or similar practices • Removal of organs • Other types of exploitation

Source: UNODC, Toolkit to Combat Trafficking in Persons, Global Programme against Trafficking in Human Beings, 2008

To understand human trafficking, it is essential to relate the structural factors namely social, economic and political context to policy and governance issues which are proximate factors.[81] The interaction between structural factors and proximate factors explain why many individuals are vulnerable and how they are coerced and deceived into trafficking.[82] Besides that, the economic liberalisation policies and technological innovation in telecommunication networks and transportation have increased the demand for cheap labour services as well as sexual services.[83] With this, the control over the movement of people has become more complicated due to the increasingly porous borders.

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[81] Sally Cameron and Edward Newman (eds.), *Trafficking in Humans: Social, Cultural and Political Dimensions*, Tokyo: United Nations University, 2008, pp. 1-4.
[82] Ibid.
[83] Lynellyn D. Long, "Trafficking Exchanges and Economic Responses: Reflections from Bosnia and Herzegovina and Serbia," in H. Richard Friman and Simon Reich (eds.), *Human Trafficking, Human Security, and the Balkans*, Pittsburgh, PA: University of Pittsburgh Press, 2007, p. 20.

Both the structural and promate factors assimilate the pull and push factors that motivate the activity of human trafficking on the local front, regional and internationally. These motivating factors apply to both source and destination countries, however, some are applicable only to one or the other. These factors which induce the flow of human trafficking in and out of states are described and explained in a later part of this thesis.

Table 3.4: Structural Factors[84]

Economic	Social	Ideological	Geopolitical
Globalisation, poverty, deprivation and economic downturns and trends, free market economics, deregulation, migratory movements	Social inequality, gender discrimination, discrimination and marginalisation based upon age namely children and minors, gender status, disadvantaged cultural, regional and linguistic status, prostitution	Racism, xenophobia, gender and cultural stereotyping	War, civil strife, violent conflict, military bases and operations

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[84] Sally Cameron and Edward Newman (eds.), Figure 1.1 Examples of structural and proximate factors involved in trafficking, *Trafficking in Humans: Social, Cultural and Political Dimensions*, Tokyo: United Nations University, 2008, p. 3.

Table 3.5: Proximate Factors[85]

Legal and Policy Aspects	Rule of Law	Inadequate Partnership Between Civil Society and State
Inadequate national and international legal regimes, poor law enforcement, immigration/migration laws and policies, inadequate and poorly enforced labour laws and standards	Corruption, complicity of state in criminal activities, support by state officials of underground sex trade, smuggling, trade in arms and drugs	Weak education campaigns, low awareness among vulnerable communities, apathetic civil society, poor accountability of state organisations

These structural and proximate factors enable us to understand the underlying root causes of human trafficking to occur mainly due to economic instability, underdevelopment, poverty, unemployment, feasible trafficking routes, wobbly immigration rules, corruption and the lucrative profit gained from operating as well as abetting in the process.

3.7 Organisation of Human Trafficking

The actors behind the activities of human trafficking driving the criminal market as an international trade varies from an opportunistic amateur to an entrepreneur or sophisticated organised networks.[86] Syndicates of human trafficking use amateurs to lure young men and women looking for dream jobs especially in foreign lands. In rural areas stricken with poverty and underdevelopment young people would want to go to large cities to work and make big money. These dreams are used as a business opportunity by the

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[85] Ibid.

[86] See James O. Finckenauer and Jennifer Schrock, "Human Trafficking: A Growing Criminal Market in the U.S," 2000, available at: <http://digitalcommons.unl.edu/humtraffdata/14/> (accessed 15 April 2014).

syndicates and pay the amateurs who are small-time opportunists, and tricksters encourage men and women to be trapped and trafficked for the greed of money.

There are vast networks of human traffickers who operate locally, regionally as well as at the global scale. These traffickers are ruthless and eye the vulnerable populations. Because of the clandestine movement of human trafficking, it is rather difficult for authorities to track the operations as the methods used vary. It is also due to the profitability of marketing trafficked men, women and children for exploitation across industries.

To have a successful business in trafficking human beings, the syndicates have extensive network contact with the criminal underworld groups, the Italian and European Mafias and the Japanese Yakuza, smugglers and also a collaboration with corrupted authorities. They operate manually as well as using social networks to look for their victims. With millions of job advertisement on the Internet, it becomes hassle free for the organisation to trap their victims at a larger scale. Moreover, with the birth of numerous social networks, the trafficking organisations are hands on in using their techniques be in touch with the users online subsequently accumulating a number of potential victims.

3.8 Myriad Forms of Human Trafficking

Human trafficking is the third largest organised crime on a global scale with operations running extensively from the developing to the developed world. Many kinds of human trafficking activities take place in various parts of the world, and a consistent character is the coherent abuse and exploitation of vulnerable victims regardless of gender, age, religion, health, and most essentially the right to freedom. The various types of human

trafficking which are not so common to the public are cultural trafficking, religious trafficking, child soldiers, pawning and debt bondage, agricultural and forced labour, cultism and forced marriages for sexual exploitation and involuntary domestic servitude.[87]

Though the common features are labour trafficking, sex trafficking, child trafficking, which are highlighted and mentioned in numerous volumes with various names and definitions. Apart from above-mentioned, women trafficking are also frequently addressed by gender and feminist scholars whereby women are trafficked for the purpose of commercial sex and involuntary domestic servitude.

Some of the traditional practices in societies are supposed to be special for children before they become adults, and there is the cultural belief of warding off evil spirits. In some communities, the practice of sacrificing a young girl or virgin is performed in the name of religion and culture. The original practice was intended to honour the religious institution and respect the traditions. However, over the years people have become zealous and corrupted that they abuse these traditional practices to facilitate modern slavery.[88] It is malpractice enticing girls into prostitution.

The practice of dowries and purchasing brides are carried out in many communities in Asia, some African and Middle Eastern countries.[89] Children as young as six years old are forced into early marriages with older men. The practice is the older man keeps the young girl for domestic works or to work on the farm as well as to tend to the husband's daily

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[87] Aiko Joshi, "The Face of Human Trafficking," *Hastings Women's LJ* 13 (2002): 31; Kevin Bales, *Understanding Global Slavery*, Berkley: University of California Press, 2005; Patrick Belser, "Forced Labour and Human Trafficking: Estimating the Profits," ILO Working Paper No. 42/2005, Geneva, 2005, p. 17; Sigma Huda, "Sex Trafficking in South Asia," *International Journal of Gynecology & Obstetrics*, Vol. 94, No. 3, 2006, pp. 374-381; Margaret Haerens (ed.), *Human Trafficking*, Detroit: Greenhaven Press, 2012.
[88] Ibid.
[89] Maruja M. B. Asis, "Human Trafficking in East and South-East Asia: Searching for Structural Factors," 2008, p. 191.

needs. Many of these young girls are not adaptable to work long hours in the farms and by carrying heavy loads so they are abused by their spouses and family members. Because of their tender age and good looks the husbands forced them into prostitution for extra income. If these girls refuse, they are tortured and beaten up severely by the husbands as well as the in-laws.

The U.S. TIP Report that "a 15-year old girl Kinah was forced into a marriage and was kept in the basement by her in-laws for six months to force her into prostitution. Kinah disobeyed her in-laws and therefore her fingernails were ripped out, her fingers were broken, and she was abused with hot irons. In May 2013, her missing husband, mother-in-law and with sister-in-law were sentenced to 10 years in prison for torture, abuse and human rights violations. During the report, an arrest warrant had been issued for her missing husband".[90]

Cultural trafficking is a form of human trafficking where the victims' fundamental beliefs, tradition and cultural practices are stripped off and are intimidated forcefully to adopt the life of the oppressors in the new environment. Victims are forced to adapt to new ways of life, food, language to blend in the host countries. Often these victims are denied of their dignities and human rights in the society that they are newly adapting. A case in point is in Nigeria where the Boko Haram extremist group abducted young girls and boys of different religion and forced them to convert to the group's beliefs and they were sexually exploited as well as tortured.[91]

In the context of religious trafficking, young women and children are exploited with the pretext of religious training and moral teachings. In some parts of sub-Saharan Africa,

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[90] *Trafficking in Persons Report*, 2013, p. 45.
[91] See "Missing Nigerian Girls", *NBC News*, 14 April 2014, available at: <http://www.nbcnews.com/storyline/missing-nigeria-schoolgirls> (accessed 20 May 2014).

children are forced to beg with empty cans and bottles on the streets for their Imams and Sheikhs.[92] When these children are on the street begging, they fall prey to traffickers who offer more money, food and a better environment to live only later to face mistreatment and abuse.

The U.S. Trafficking in Persons (TIP) Report explains the major forms of human trafficking that takes place in all the continents around the globe.[93] The list includes forced labour, sex trafficking, bonded labour, forced child labour, debt bondage among migrant labours, involuntary domestic servitude, child soldiers and child sex trafficking[94] as well as organ harvesting.[95] Apart from the mentioned forms of human trafficking including smuggling of migrants are babies trafficking, trafficking of babies from newborn to above one-year-old is regarded as the lucrative business and in high demand in Southeast Asia. For instance, in Malaysia, according to a local daily, a baby was sold between RM10,000 (US$3,160) and RM20,000 (US$6,320).[96] Such incidents take place illegally, and syndicates kidnap infants and young children for trafficking.

Abducting babies and children from hospitals and public places have become a rampant crime in Malaysia. An enforcement officer who has been with the Anti-trafficking in Persons Unit for more than five years[97] related that the police act as swiftly as they can whenever they receive reports of baby and children missing or being abducted. He even

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[92] See Child Exploitation and Online Protection Centre (CEOP) and Home Office, A Scoping Project of Child Trafficking into and within the UK, 2007.
[93] *Trafficking in Persons Report*, 2010, p. 8.
[94] Ibid.
[95] *Trafficking in Persons Report*, 2014, p. 32.
[96] "Together we stand against human trafficking and smuggling of migrants," *The New Sunday Times*, 23 October 2011.
[97] Interview with Hafiz Halim; Inspector with the Royal Malaysian Police (RMP), 19 October 2012.

shared that the enforcement unit works together with state police especially when the perpetrators are moving with their victims across the states.

Having defined the term human trafficking and its horrible consequences, the U.S TIP Report also outlined what human trafficking is not.[98] It is rather surprising to note that illegal adoptions, trading of human organs, child pornography and prostitution are not considered a form of human trafficking.[99] The report further explains that illegal adoptions may not involve any force, fraud or coercion for the child to render service.

To quote, *travaux preparatories*[100] of the Palermo Protocol, if the illegal adoption leads to a practice similar to slavery, only then it will fall within the scope of the Protocol.[101] As such it applies to trade in human organs as well unless the patient is exploited where the organ is purchased at a lower price. This normally happens in least developed and developing countries where kidneys are sold for soaring prices, however, manipulated during the purchase stage at a lower value. Thus, it is prohibited under the Palermo Protocol if the victim is forced and threatened to sell off their organs.

On cases pertaining to child pornography, if the images are of drawings and computer-generated images then it is not considered sex trafficking except for cases where the child is exploited. When the child is forced to perform sex acts for the purpose of pornography production, then it falls under the jurisdiction of human trafficking. In the

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[98] *Trafficking in Persons Report*, 2010, p. 8.
[99] Ibid.
[100]*Travaux préparatoires*, also referred to as "negotiating history" and "drafting history", are the preparatory works, including documents, reports, minutes, drafts, and other materials, from the drafting and the negotiation of the treaty. The *travaux préparatoires* provide the background to the elaboration of the definition of trafficking as laid down in the Palermo Protocol, which has been an issue of major struggle and dispute between those who consider prostitution itself to constitute trafficking (abolitionists) and those who consider prostitution a form of labour, acknowledging the sex industry as a sector in which trafficking occurs. The definition of trafficking in the Palermo Protocol represents a compromise between these positions as it allows room for interpretation. See <http://lastradainternational.org/?main=documentation&document=2039>
[101] Ibid.

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circumstances of possessing and distributing child pornographies, though, it is a criminal offence but under the TVPA it is not an act of human trafficking.

In some countries, prostitution is legalised as employment. Nevertheless, these countries are under the assessment of the TIP committee in the attempt to reduce the demand for commercial sex. This is to enable the efforts in eliminating severe forms of human trafficking for the purpose of commercial sex and prostitution.

Though there is a thin line to differentiate the act of human trafficking yet it has many facets via its unique and diverse modus operandi. Below is a pie chart describing types of modern slavery along with estimation in million by ILO in 2012.[102]

Figure 3.1: Types of Modern-day Slavery
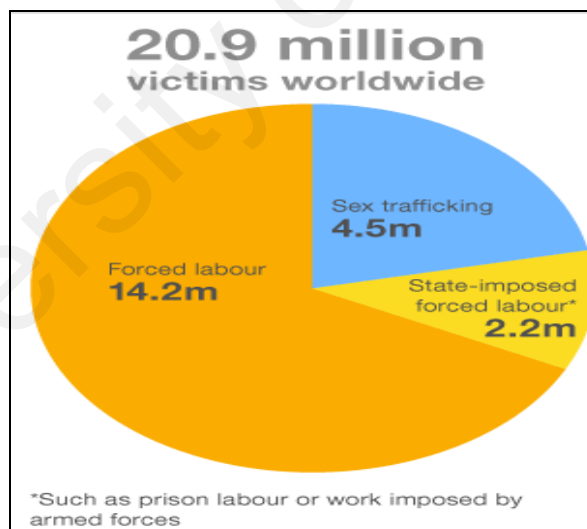
Source: International Labour Organisation (ILO), 2012

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[102] *Types of Modern Slavery*, International Labour Organisation, 1 June 2012, available at: <http://www.ilo.org> (accessed 3 August 2012).

3.8.1 Forced Labour

Article 2(1) of the ILO Convention 1930 (No. 29) pertaining to Forced Labour or Compulsory Labour describes forced labour as "all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered voluntarily".[103]

Since 2005, the ILO has classified forced labour into three main categories,[104] namely:

• Forced labour imposed by the state covers all forms of work exacted by public authorities, military or paramilitary, compulsory participation in public works and forced prison labour (within the scope of ILO Conventions No. 29 and No. 105);

• Forced labour imposed by private agents for sexual exploitation covers any commercial sexual activity, including pornography, exacted from the victim by fraud or force; and,

• Forced labour imposed by private agents for labour exploitation includes bonded labour, forced domestic work, forced labour of migrants in many economic sectors and work imposed in the context of slavery or vestiges of slavery. Forced illicit activities such as forced begging for gangs, for example, are also included in this category.

In addition to the above definitions, forced labour includes practices such as slavery and those similar to slavery, debt bondage and serfdom as defined in other international

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[103] See *Forced Labour Convention, 1930 (No.29)*, Geneva, International Labour Organisation (ILO), available at:
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3 12174:NO> (accessed 15 August 2014).
[104] *Profits and Poverty: The Economics of Forced Labour*, Geneva, International Labour Organisation (ILO), 2014, p. 5.

instruments, such as the League of Nations Slavery Convention (1926)[105] and the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956). Further, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has provided guidance on the scope of the definition of forced labour, stressing that it encompasses trafficking in persons or the purpose of labour and sexual exploitation,[106] as defined by the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.[107]

In June 2012, the ILO released the most updated figure on forced labour and an appalling estimation of 21 million people are identified to be victims of forced labour. Out of this staggering figure, 15 million are reported to be adults and 6 million victims are children.[108] The latest estimation by ILO was a revised figure of 2005 when it was estimated that 12.3 million (with more than 2.4 million were trafficked) people were trapped in jobs they were forced, coerced and deceived.[109]

Further to the new updates, ILO had more revealing statistics, and the breakdown is 18.7 million (90 per cent) people are forced to work in the private sectors where individuals and companies exploit them. From this figure, 4.5 million (or 22 per cent) are exploited by the sex industry and 14.2 million (or 68 per cent) into forced labour in sectors such as agriculture, construction, domestic work and manufacturing. Above all, women and girls

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[105] The 1926 Slavery Convention defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" (Article 1(1)).

[106] ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR): Eradication of forced labour: General survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105) (Geneva, 2007), Report III (Part 1B), para. 77

[107] The Protocol supplements the UN Convention Against Transnational Organised Crime (2000). It criminalises trafficking in persons, whether it occurs within countries or across borders, and whether or not conducted by organised criminal networks.

[108] See *The U.S Department of Labour commends the ILO for its Global estimate of forced labour*, available at: <http://www.ilo.org/sapfl/News/WCMS_182302/lang--en/index.htm/>;
<http://www.dol.gov/opa/media/press/ilab/ILAB20121144.htm> (accessed 1 June 2012).

[109] See *Forced Labour Statistics*, ILO, 2014, pp. 16-19.

mark a higher percentage of victims of forced labour 11.4 million (or 55 per cent) compared to men and boys where the estimation is 9.5 million (or 45 per cent). However, about 15.4 million (or 74 per cent) are adults (in the age group of 18 years and above) while 5.5 million (or 26 per cent) are under-aged children.[110]

The Asia-Pacific region accounts for the largest number of forced labourers − 11.7 million (or 56 per cent of the global total).[111] The second highest number is found in Africa at 3.7 million (or 18 per cent), followed by Latin America and the Caribbean with 1.8 million victims (or 9 per cent). The Developed Economies and the European Union account for 1.5 million (or 7 per cent), while countries of Central, South-Eastern and Eastern Europe (CSEE) and the Commonwealth of Independent States (CIS) have 1.6 million (7 per cent). Meanwhile, in the Middle East, it is estimated that 600,000 (or 3 per cent) victims of forced labour.[112]

The ILO reports that forced labour in the private economy makes US$150 billion in illegal profits annually while two-thirds of the estimated total (or US$99 billion) generates from commercial sexual exploitation. Meanwhile, US$51 billion comes from forced economic exploitation namely domestic work, agriculture and other economic activities.[113]

In Southeast Asia, Myanmar (Burma) is known for its state-induced forced labour since the inception of military rule in 1962. A gross violation of human rights and blatant abuse of its people through excessive force by the military junta forcing the men, women and

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[110] *New ILO Global Estimate of Forced Labour: 20.9 million victims*, Geneva, ILO, available at: <http://www.ilo.org/sapfl/News/WCMS_182109/lang--en/index.htm> (accessed 1 June 2012).
[111] *Profits and Poverty: The Economics of Forced Labour*, ILO, 2014, p. 7.
[112] Ibid.
[113] *ILO Global Estimates Of Forced Labour: Results And Methodology (Special Action Programme to Combat Forced Labour),* Geneva, 2012; See also International Labour Standards on Forced Labour, Geneva, ILO, available at: <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm#P23_4987> (accessed 10 May 2014); *Global Slavery Index 2014*, The Walk Free Foundation, p. 11.

children to work in multiple industries such as logging, mining, garment and oil and natural gas including plantation and tourism sectors.[114] Although the atrocity of the junta has been ongoing for more than three decades, mixed reactions from numerous international communities failed to stop the aggressive actions of the junta on its people. The junta defended their actions by stating that their people volunteered to work freely.[115]

Based on the 2013 U.S. TIP Report, various forms of forced labour occur around the globe. While in Russia men are exploited into forced labour, in West Africa, boys are forced to beg for corrupt religious teachers in Koranic schools. In Mexico boys are used for illegal drugs production while in the United Kingdom they serve as drug pushers or mules. Above that, in South Asia, entire families are enslaved in debt bondage in agriculture, brick kilns, rice mills and stone quarries.[116] Similarly, in South America and Africa, male victims of human trafficking are exploited in the agricultural sector, construction, mining and logging while boys from Myanmar and Cambodia are forced to work on fishing vessels.[117]

3.8.2 Sex Trafficking

Sex trafficking is when a person under the age of 18 is deceived, forced and coerced to perform a commercial sex act. The term 'commercial sex act' according to the Trafficking Victims Protection Act (TVPA), means any sex act on account of which anything of value is

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[114] Sheila M. Arianayagam and Jatswan S. Sidhu, "Modern Slavery: State-Induced Forced Labour in Myanmar (Burma) and Reactions from the International Community," *Malaysian Journal of International Relations*, Vol. 1, December 2013, pp. 122-149.
[115] Ibid.
[116] *Trafficking in Persons Report*, 2013, p. 35.
[117] Ibid.

given to or received by any person.[118] By any means, women and children are exploited for prostitution and pornography. Sex trafficking is the most publicised aspect of human trafficking and is the most profitable business that continues to escalate. This is because unlike drug, arms and other illegal crimes, victims of human trafficking can repeatedly be used to generate more profits.[119]

Under the TVPA sex trafficking falls in the category of severe forms of human trafficking. Moving to and from locations and transporting physically is not necessarily a criterion for the victim to fall within these definitions.[120] Sex trafficking involves individuals profiting from the sexual exploitation of others and it severely affects the physical and psychological state of its victims.

Besides that, "sex trafficking also may occur within debt bondage, as individuals are forced to continue in prostitution through the use of unlawful "debt", purportedly incurred through their transportation, recruitment, or even their crude "sale" which exploiters insist they must pay off before they can go free. However, an adult's consent to participate in prostitution is not legally determinative: if one is thereafter held in service through psychological manipulation or physical force, he or she is a trafficking victim and should receive benefits outlined in the Palermo Protocol and applicable domestic laws". [121]

According to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), sex trafficking is whether it happens within a country or across

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[118] *Trafficking in Persons Report*, 2014, p.11; *Trafficking Victims Protection Act: Minimum Standards for the Elimination of Trafficking in Persons*, Office to Monitor and Combat Trafficking in Person, U.S State Department, 2014, available at: <http://www.state.gov/j/tip/rls/tiprpt/2014/226655.htm> (accessed 20 June 2014).
[119] Susan W. Tiefenbrun, "Sex Sells but Drugs Don't Talk: Trafficking of Women Sex Workers and an Economic Solution," *T. Jefferson L. Rev.* Vol. 24, 2001, p. 161.
[120] *Trafficking Victims Protection Act: Minimum Standards for the Elimination of Trafficking in Persons*, Office to Monitor and Combat Trafficking in Person, U.S State Department, 2014.
[121] *Trafficking in Persons Report*, 2014, p. 29.

national borders the despicable act violates basic human rights, including the rights to bodily integrity, equality, dignity, health, security, and freedom from violence and torture. CEDAW further iterates that sex trafficking is a form of sex discrimination and a human rights violation.[122]

In April 2012, the UN released a report stating that an estimated figure of 2.4 million people are traded into slavery annually which a staggering 1.9 million (or 80 per cent) are victims or sex trafficking.[123] However, according to ILO's recent record, an estimation of 4.5 million people are victims of sex trafficking.[124] However, the TIP Report stated that men are also exploited into sex trafficking rings. It is a hidden traditional and cultural practice in many parts of the world. In Afghanistan and Sri Lanka, boys are subjected to prostitution, in Mexico and Central America, boys are lured into commercial sexual exploitation, and the practice continues to the United States. Boys in Southeast Asia are exploited into prostitution often serving paedophiles and for the purpose of pornography. Male Brazilian victims of sex trafficking were rescued from forced prostitution as far as Spain.

One of the largest exporters of sex slaves is in Southeast Asia exporting to brothels in Japan, China, Australia, Europe and the U.S. The perpetrators usually hunt for their victims in the rural areas consumed by abject poverty. It is reported that in parts of Southeast Asia as many as 30,000 children are lured and exploited in the sex trade. An owner of a brothel in Asia spends as little as US$50 to buy a woman or a child. For them, these women and

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[122] Article 6, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Also see, *Trafficking for sexual exploitation is "incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse"*. General Comment 19: Violence against women, 11: 14, 1992.
[123] *UN Report: 1.9 Million People Are Victims of Sex Trafficking, Most Won't Be Rescued*, The Inquisitr, 4 April, 2012, < http://www.inquisitr.com/215448/un-report-1-9-million-people-are-victims-of-sex-trafficking-most-wont-be-rescued/>; *ILO global estimate of forced labour: results and methodology*, International Labour Organisation, 2012, p. 13.
[124] Ibid.

children are business commodities and have no freedom. Freedom is only obtained when these victims pay back their 'debts' which is purportedly incurred by the owners through recruitment, transportation, accommodation and crude 'sale'[125].

According to UNODC, the most common form of human trafficking is commercial sexual exploitation at 79 per cent compared to forced labour which is at 18 per cent. It also revealed that women turn out to be the largest proportion of traffickers luring other women and young girls into commercial sex.[126] The data was obtained from 30 per cent of the countries which provided information on the gender of the traffickers.[127] The scariest part is when only one in 100 victims is rescued from their forced circumstances and prostitution. Most victims disappear without a trace when they try to run away or refuse to obey their owners' demands.

In Mumbai brothels, women from Bangladesh, Nepal and India are subjected to sex trafficking and forced into prostitution. There are reported incidents where mothers sold their daughters into prostitution. Jorani* a survivor of human trafficking, shared her thoughts, "*When I had sex with him, I felt empty inside. I hurt and I felt very weak. It was very difficult. I thought about why I was doing this and why my mom did this to me".* [128]

Another story related by a victim of sex slave on how she became a sex slave at the age of sixteen in 1981 to an American man she knew only for a few minutes.[129] Bruce was very

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[125] *Trafficking in Persons Report*, 2010, p. 9.
[126] See "Global Report on Trafficking in Persons," United Nations Office on Drugs and Crime, New York, available at: <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> (accessed 20 June 2014). This UNODC report on human trafficking exposes the modern form of slavery.
[127] Ibid.
[128] Jorani, not her real name, is a Cambodian survivor of human trafficking, 2013. Adapted from *Trafficking in Persons Report*, 2014, p. 29.
[129] Jill Leighton, "My Life as a Slave in America," in Jesse Sage and Liora Kasten (eds.), *Enslaved: True Stories of Modern-Day Slavery*, Palgrave Macmillan, 2006, pp. 61-80.

manipulative with his sweet talk and managed to convince Leighton with a job proposal as an actress, and she could stay with him. Believing in what he said, she blindly followed him in his car blindfolded to the dirty basement area, and she was beaten and forced to become his sex slave for the next three years. She was beaten severely, abused and molested sexually and had several forced abortions. She had to perform not only for him but his friends as well. She was taken to the hospital a couple of times but unfortunately the staff at the hospital remained silent even when they questioned her bruises but no action was taken. A couple saw the man shoving her into the trunk of a car and did nothing in helping her, and the police was mum when they saw her during his arrest and did not protect her. She managed to run away and start a new life. However, the trauma she endured remain. As a survivor of human trafficking, she questioned the society who was blind by this crime and was unable or willing to help her even on humanitarian grounds.

3.8.3 Bonded Labour or Debt Bondage

Bonded labour is one form of coercion by utilising a bond or debt. Bonded labour is also known as debt slavery and depicts a person's pledge of their labour or services as security for the settlement of debts or other commitment. According to the Global Slavery Index (GSI) 2014, there are approximately 20.5 million bonded labourers with about 88 per cent of this population in South Asia.[130] India with a staggering figure of 14, 285,700 has the highest number of people trapped in modern slavery which highlights the prevalence of bonded labour in the country, followed by China (3, 241,400), Pakistan (2, 058,200),

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[130] *The Global Slavery Index 2014*, The Walk Free Foundation (WFF), 2014, p. 20.

Uzbekistan (1, 201,400), Russia (1, 049,700), Nigeria (834,200), the Democratic Republic of Congo (762,900), Indonesia (714,100), Bangladesh (680,900) and Thailand (475,300).[131]

The Palermo Protocol requires states to criminalise threats and other forms of coercion for the purpose of forced labour or services or practices similar to slavery or servitude. Some of the victims of bonded labour inherit debt from their ancestors. In Southeast Asia alone it is estimated that there are millions of trafficking victims are working to pay off the debts of their ancestors. Many fall prey to traffickers or recruiters who unlawfully exploit an initial debt assumed as a term of employment.

Usually, migrant workers apply for debt in their countries of origin and most of the time with the support from the employment agencies as well as in the destination country which contributes to a situation of debt bondage. Normally it happens when the migrant worker signs some employment contract with the agency and therefore is tied legally with the agency or with the employment company in the destination country.

Bonded labour is inclined to link with migration and exploitative labour contract systems. Migrant workers from Asian countries like Indonesia, India and the Philippines find themselves trapped in 'bonded' labour contracts due to exorbitant fees. Their main destination countries include Malaysia, Singapore and as far as the Middle East. "The boundaries between clandestine work and organised crime are sometimes blurred". [132]

Traditional forms of bonded labour are found in multiple economic sectors namely agriculture, rice mills, brick kilns, silk weaving and other economic activities in South Asia, especially in India, Nepal and Pakistan. Bonded labour can affect a whole family when the

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[131] Ibid., p. 21.
[132] *Forced Labour and Human Trafficking*, Handbook for Labour Inspectors, International Labour Organisation, 2008, p. 8.

head of the household, usually a man, pledges not only his labour but that of family members to receive an advanced payment from his employer or credit in the case of need.[133] Often this debt multiplies due to incurred interest and is passed on to the new generation. Hence, this family will be indebted forever.[134]

Furthermore, their small wages are deducted for debt payment and by doing so, the families would never be able to settle the entire sum. The debt remains and further multiplies due to high-interest rate, and it continues to the next and following generations. Apart from that, their wages are deducted as a penalty due to poor work performance or for breaking some rules and regulations.

According to Kara,[135] in India the initial debts on bonded labourers are US$162. However, this amount increases due to exorbitant interest rates. For instance, with an initial debt of US$162 the average interest rate on loans would be at 62 per cent hence, after six and a half years later the average outstanding debt will be US$282.[136]

Such a tradition is also observed in some parts of Africa and the Middle East where enslavement by being bonded has existed since ancient times. Some like to be bonded as they are well fed and looked after by their master which is one the reasons for the silence on slavery and bonded labour.

Bonded labour is very common in many parts of the developing world, and it is also known as forced slavery. It is a method of enslaving people which continues to exist. According to the U.S. TIP Report, millions of victims are forced to work in difficult

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[133] Ibid.
[134] See "Bonded Labour," London, Anti-Slavery International, available at: <http://www.antislavery.org/english/slavery_today/bonded_labour/> (accessed 20 June 2014).
[135] Siddhartha Kara, *Tackling the System of Slavery in South Asia*, Columbia: Columbia University Press, 2012.
[136] Ibid.

conditions to pay off their ancestors debts believed to be a traditional system.[137] With a view to repaying these debts, people become vulnerable and fall as victims to gullible and false promises as well as upon employment contracts with lucrative wages. Thus, many of them end up as trafficking victims in foreign lands and face miserable situations.

Kara reiterated that a total aggregate debt of US$4.5 billion made from bonded labourers in South Asia whereas US$15 billion net profit was earned in South Asia alone and globally a total of US$17.6 billion profit was generated in 2011.[138]

In Latin America, debt bondage and other forms of coercion force indigenous and poor people into forced labour in various sectors such as logging, mining and agriculture. The recruitment system is often based on a complex system of contractors and sub-contractors who take their cut from these indebted workers and some of them who work for years without ever receiving any substantial income.[139]

However, in human trafficking cases, the situation of bonded labour arises when a trafficked person is being sponsored by the perpetrator for accommodation, food and clothes. The recruiters unlawfully exploit an initial debt assumed as a term of employment. Hence, the victim owes the trafficker and due to debt bondage the victim has become a bonded labourer until the debt is settled.[140] Often, the debt is never settled as the owner repeatedly exploits to maintain the bondage.

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[137] *Trafficking in Persons Report*, 2010, p. 9.
[138] Kara, *Tackling the System of Slavery in South Asia*, 2012.
[139] *Forced Labour and Human Trafficking*, Handbook for Labour Inspectors, International Labour Organisation, 2008, p. 8.
[140] John Winterdyk, Benjamin Perrin, and Philip Reichel (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, Boca Raton: CRC Press, 2012, p. 27.

3.8.4 Involuntary Domestic Servitude

Involuntary domestic servitude is a unique form of human trafficking which usually occurs in private households where victims are vulnerable to abuses. Vulnerable situations take place when domestic workers typically women and young girls are forced to work in domestic households without proper payment or none at all. In reality, domestic workers are not always victims of human trafficking. However, these workers are potentially at high risk of trafficking due to the nature of the work which is isolated, and the extreme power imbalances exist between the employees and their employers and recruiters.[141] According to the TVPA definition of human trafficking, "a victim need not be physically transported from one location to another in order for the crime to fall within the definition" of severe forms of trafficking in persons.[142]

Domestic workers are among the most vulnerable groups of workers because the majority are migrants who have left their country in search of employment. This group of workers encompass a significant part of the global workforce especially in private households and according to ILO there are at least 53 million domestic workers (excluding child domestic workers) globally, and 83 per cent are women.[143] This figure does not account for the number of illegal migrants who are trafficked and forced into domestic works.

Maid agencies do not reveal the background of these domestic workers and these workers are threatened not to reveal their actual circumstances. Agents often drop off and

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[141] Alice Huling, *Domestic Workers in Malaysia: Hidden Victims of Abuse and Forced Labour*, New York: University School of Law, 2012, p. 638.
[142] *Trafficking In Persons Report*, 2014, p. 9.
[143] See "Domestic Workers," International Labour Organisation, available at: <http://www.ilo.org/global/topics/domestic-workers/lang--en/index.htm> (accessed 15 November 2014).

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pick up these workers to avoid runaway incidents. There are also workers who stay with their employers, and their personal documents and passports are taken away either by their employers or the agents to avoid any means to abscond.

Susceptible circumstances occur in the private households because domestic workplaces are informal, connected to off-duty living quarters and often not shared with other workers.[144] Apart from that, these homes are isolated therefore there is no inspection from authorities, unlike formal working places. Private homes are conducive for exploitation and workers do not have the access to reach out for help. Due to such circumstances, employers exploit their domestic workers by forcing them to work long hours without break or rest. They are also forced to work every day of the week without time-off or rest days. Apart from domestic labour, these workers are also subjected to do things against their religious beliefs. For instance, workers are forced to cook pork which is *haram*[145] for Muslims or beef to the Hindus.

Besides that, the freedom of these domestic workers is curtailed, and they are socially isolated. Moreover, since these workers are women, they suffer all kinds of harassments and are also sexually exploited. Many were abused, tortured, beaten and locked up, malnourished as well as raped by their employers besides subjected to overwork and underpaid or not paid at all.[146] According to Daniel Lo of CAMSA,[147] most of the reported domestic abuse cases are extreme where the employers had no choice but to bring their abused maids for medical treatment. That is when the hospital authorities report the abuse cases. Lo points out that

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[144] *Trafficking In Persons Report*, 2013, p. 34.
[145] It is against the religion of Islam to touch or consume pork.
[146] For example, see Azizah Junoh, *Abuse of Foreign Domestic Workers in Malaysia*, 2006.
[147] Interview with Daniel Lo, Country Manager for the Coalition to Abolish Modern-Day Slavery in Asia (CAMSA), 18 October 2013.

such treatment is effectively known as slavery, and this form of slavery happens all across the globe. Neither the legal migrants nor the illegal ones have any voice to shout for help and seek to escape from the clutches of their employers or agents.

Domestic workers face exploitation mainly due to gaps in national labour and employment legislation besides being unjustly treated due to race, caste and sex. Countless cases involve foreign domestic workers and in the beginning before the implementation of the Anti-Trafficking in Persons Act, they were charged as abuse cases and often, the employers are acquitted. Some are charged under the respective countries' labour law but ever since the Palermo Convention, responsible governments have taken the exploitation of domestic workers critically.

A decade ago, an abuse case on domestic workers would only get a minimum coverage but at present mistreating and exploiting these workers fall under the jurisdiction of human rights violations especially when they become victims of human trafficking. It is a violation of basic human rights when a domestic worker's salary is not paid for several months or none at all, therefore, it falls under the protocol. Moreover, it is a crime when these workers are being tortured, locked up, raped and starved with their travelling passport, and personal documents are confiscated.

3.8.5 Child Trafficking

The internationally accepted definition of child trafficking is described in the Palermo Protocol to Prevent to suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational

Organised Crime (UNTOC).[148] In 2012, UNODC stated that the percentage of child victims had risen in a three-year span from 20 per cent to 27 per cent and of every three child victims, two are girls, and one is a boy.[149] The number of global victims of human trafficking is estimated from 2 to 4 million and roughly 50 per cent of those are children.[150]

According to ILO, child trafficking is taking the children away by force or manipulatively from their protective environment and preying on their vulnerability for the purpose of exploitation. The ILO Convention No. 182 (1999) on the Worst Forms of Child Labour (WFCL) classifies trafficking among "forms of slavery or practices similar to slavery".[151]

The United Nations Children Fund (UNICEF) adheres to the Palermo Protocol definition on child trafficking and strongly advocates the safety and security of every child globally threatened by violence, abuse and exploitation.[152] UNICEF further explains that a child is a person under the age of 18 years. The movement of the child with the aim to exploit could also involve a transaction of receiving payment or benefit in agreement to the exploitation of that child.

Besides taking the children away by force, there are other contributing factors to child trafficking. The prime factor is severe poverty driving parents to the extreme in giving

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[148] The United Nations Convention Against Transnational Organised Crime is adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organised crime. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children entered into force on 25 December 2003.
[149] See "Child Trafficking Statistics U.S & International," Compiled by Ark of Hope for Children, Florida, 22 February 2014, available at: <http://arkofhopeforchildren.org/child-trafficking/child-trafficking-statistics> (accessed 3 June 2014).
[150] Ibid.
[151] See "Trafficking in Children," International Labour Organisation, available at: <http://ilo.org/ipec/areas/Traffickingofchildren/lang--en/index.htm> (accessed 15 November 2014).
[152] See "Note on the definition of child trafficking," UNICEF, available at: <http://www.unicef.org/about/who/index_introduction.html> (accessed 15 November 2014).

up their young children and even babies as they could not even afford to feed their infants. Apart from that, children trapped in war conflict zones and natural disasters become a burden to their parents. Therefore, scrupulous people take the opportunity by manipulating the vulnerable circumstances of these poor people and coax them into giving up their children.

There are several forms of child trafficking for the purpose of forced labour, begging, recruitment as child soldiers and suicidal bombers, sexual exploitation, illegal adoption and organ trafficking. According to ILO in 2010, there were 215 million child labourers aged between five and 17 years old compared to 8.4 million in 2002. From the astounding figure, 115 million are found in the worst forms of child labour. In the same year, ILO stated that 53 million children under the age of 15 work in the hazardous environment and by all means should be "immediately withdrawn from such work".

Article 3 of ILO Convention No. 182, labour exploitation of children includes:[153]

(a) all forms of slavery or practices similar to slavery, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict (Convention 182, Art. 3(a));

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or pornographic performances (C182, Art. 3(b));

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[153] See ILO Convention No. 182 Worst Forms of Child Labour, 1999, available at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182> (accessed 15 November 2014).

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties (C182, Art. 3(c));

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (C182, Art. 3(d) and C138, Art. 3);

(e) work done by children below the minimum age for admission to employment (C138, Art. 2).

Children being the most vulnerable population are easily trafficked by perpetrators when their parents give them up due to extreme poverty, abduct forcefully from streets and schools, forced to work to support elderly parents and younger siblings.[154] When the human trafficking agents visit the rural areas where people have no access to proper food and shelter and medical care, the people are enticed by the many promises of job employment in foreign lands. Parents fall hard to the false promises and allow their children to follow the agents who would give them a small fee for giving up their children. These children may end up in brothels, streets begging for money, wealthy homes to works as maids and also for illegal adoptions.

Child trafficking has been growing and polarised globally due to demand for defenceless and innocent children by business people as well as employment agencies to work on farms and fields, stone quarries, building sites to carry bricks and cement sacks, embroidery stitches factories and industrial sites. Children who are trafficked for the purpose of begging are forced to work long hours and late into the night. It is very common in India.

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[154] *Children Out of Sight, Out of Mind, Out of Reach; Abused and Neglected, Millions of Children Have Become Virtually Invisible*, UNICEF, December 2005.

Child trafficking includes forced child labour, child sex trafficking and child soldiers. Young children are forced into hard labour, many are recruited to work in domestic households, and this usually happens among relatives and families.[155] Children are enslaved in slavery-like practices to work in several households despite illegal in the eyes of the law, and the practice is highly condemned. The situation of a child becoming a victim of human trafficking is when the child is under the care of guardians or non-family members who force the child to work for financial benefits and does not allow the child to leave willingly.

For instance, in Syria, there are about 200,000 refugee children as young as five years old working in Lebanon's potato and bean fields or collecting figs in the Bekaa Valley.[156] These Syrian refugee children are forced to work as they need the money for food, to pay rent and other necessities.[157] Many of these children are beaten with sticks and treated like slave labour, and unfortunately, countless children have died due to tetanus poisoning and hazardous hard labour. They are paid less than 90p per day or nothing at all.

Child sex trafficking is "when a child (under 18 years of age) is recruited, enticed, harboured, transported, provided, obtained, or maintained to perform a commercial sex act, proving force, fraud, or coercion is not necessary for the offence to be characterised as human trafficking".[158] According to the TVPA report, no cultural or socioeconomic rationalisations alter the fact that children who are prostituted are indeed trafficking victims.[159] A trafficked child could earn up to US$30,000 to their trafficker.[160] According to UNICEF, in 2005 about 2 million children were exploited every year in the global

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[155] *Trafficking in Persons Report*, 2014, p. 34.
[156] Robert Fisk, *Forced child labour in Syrian refugee camps*, *theSun*, 29 October 2014.
[157] Ibid.
[158] *Trafficking in Persons Report*, 2014, p. 29.
[159] Ibid.
[160] Kriistina Kangaspunta, *Trafficking in Persons: Global Patterns*, Vienna: United Nations Office on Drugs and Crime, 2006.

commercial sex trade[161] especially for pornography and prostitution. It is estimated that 76 per cent of transactions for sex with underage girls start on the Internet.[162] Moreover, the victims of trafficking are becoming younger day-by-day and are prime targets for paedophiles.

The Internet is a contributing factor for child pornography to become a lucrative industry and has become a global crisis. According to the National Centre for Missing & Exploited Children (NCMEC), 19 per cent of identified offenders had images of children younger than three years old, 39 per cent had images of children younger than six years, and 82 per cent had images of children younger than 12.[163] Most of these children are victims of organised crime including trafficking.

Boys are also exploited for sex trafficking though it is often hidden as it reflects cultural taboos in some parts of the world. According to the U.S TIP Report, in Afghanistan and coastal Sri Lanka boys are more subjected to prostitution, whereas in Mexico and Central America, migrant boys are susceptible to commercial sexual exploitation while travelling to the United States and similarly in Southeast Asia boys are exploited in prostitution.[164] Sex tourism and child pornography have become global industries and with the increase of Internet technology and social networks, paedophiles can easily access child pornography.

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[161] *Children Out of Sight, Out of Mind, Out of Reach; Abused and Neglected, Millions of Children Have Become Virtually Invisible*, UNICEF, December 2005.

[162] See "Child Trafficking Statistics U.S & International," Compiled by Ark of Hope for Children, 22 February 2014, available at: <http://arkofhopeforchildren.org/child-trafficking/child-trafficking-statistics> (accessed 3 June 2014).

[163] National Centre for Missing & Exploited Children (NCMEC) is an NGO in the U.S aids in recovering missing children and raising public awareness about ways to help prevent child abduction, molestation, and sexual exploitation. See <http://www.nsvrc.org>

[164] *Trafficking in Persons Report*, 2013, p. 35.

According to the U.S Justice Department and National Centre for Missing and Exploited Children, a pimp earns between US$150,000 to US$200,000 per child each year, and the average pimp has four to six girls in the United States. The Polaris Project, a U.S based organisation advocate and combat human trafficking globally reports that these trafficked girls are forced to entertain clients sexually up to 48 times per day.[165]

Defenceless children are also sold by their families to traffickers and then the perpetrators traffic them to countries favourable for child marriages. These young children are forced into marriages to men who are old enough to be their father and grandfather and then they are enslaved by the in-law families to do all the house chores including working in the farms and caring for the livestock. In the case of human trafficking, because the children are under-aged, and they are being married involuntarily, such acts are illegal. Therefore child marriage is a case of human trafficking although it is lawful to marry off young girls to older men in some countries.

Another manifestation of child trafficking is when children are abducted and trained to become child soldiers and suicide bombers. Although there are no verifiable figures on how many children are serving as child soldiers globally, UNICEF estimated that some 300,000 children both boys and girls under the age of 18 are involved in more than 30 conflicts worldwide.[166]

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[165] See National Human Trafficking Resource Centre, Operated by Polaris Project, available at: <http://www.traffickingresourcecenter.org/sex-trafficking-venuesindustries/residential-brothels> (accessed 20 June 2014).
[166] See "Factsheet: Child Soldiers," UNICEF, Geneva, 2012, p. 1; Siddharth Chatterjee, "For Child Soldiers Everyday is a Living Nightmare", *Forbes*, 9 December 2012, available at: <http://www.forbes.com/sites/realspin/2012/12/09/for-child-soldiers-every-day-is-a-living-nightmare/> (accessed 10 January 2013).

The act of abducting children for the purpose of child soldiers in war-stricken countries have increased, and the UN responded critically by addressing the gravity of the exploitation of children by combatants. Child soldiers are prominent in several African countries namely Sudan, Somalia, South Sudan, Libya, Mali, Chad, Uganda, Central Africa, Sierra Leone, Congo, Liberia and Mozambique.[167] In Arab nations prior to the Arab Spring, it was prominent in Yemen and Iraq, and in Asian country such as Myanmar, Afghanistan and Thailand[168] where they recruit children through force, fraud or coercion. Children are used in the war as they are easily manipulated and controlled by the militants.

These innocent children are forced to work as porters, cooks, guards, servants, messengers or spies. Many of these children are abused and exploited sexually, and girls are forced to marry the soldiers. Subsequently, these children are at high risk of contracting sexually transmitted diseases. Often the culprits may consist of government troops, paramilitary organisations or rebel groups.[169] Apart from that, trafficked children are also used as human shields and human mine detectors in the war zone.

Such alarming trends call for an urgent respond from international actors, therefore, on December 23, 2008, the Child Soldiers Prevention Act (CSPA) was signed into law and took effect on June 21, 2009. By implementing the CSPA, it requires the publication of the annual TIP Report of a list of foreign governments identified during the previous year as

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[167] *Trafficking in Persons Report*, 2014, p. 39; See "10 Shocking Facts about Child Soldiers in Africa," *Answer Africa*, 18 June 2013, available at: <http://answersafrica.com/child-soldiers-in-africa.html> (accessed 20 June 2014).
[168] "Child Soldiers Worldwide," New York, Human Rights Watch, 12 March 2012, available at: <http://www.hrw.org/news/2012/03/12/child-soldiers-worldwide> (accessed 10 January 2013).
[169] *Trafficking in Persons Report*, 2013, p. 37.

having governmental armed forces or government-supported armed groups that recruit and use child soldiers, as defined in the Act.[170]

For the purpose of the CSPA, and consistent with the provisions of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the term "child soldier" means:[171]

(i) any person under 18 years of age who takes a direct part in hostilities as a member of governmental armed forces;

(ii) any person under 18 years of age who has been compulsorily recruited into governmental armed forces;

(iii) any person under 15 years of age who has been voluntarily recruited into governmental armed forces; or

(iv) any person under 18 years of age who has been recruited or used in hostilities by armed forces distinct from the armed forces of a state.

The term "child soldier" includes any person described in clauses (ii), (iii), or (iv) who is serving in any capacity, including in a support role such as a "cook, porter, messenger, medic, guard, or sex slave".

In the Middle East, trafficked children are used as bogeys for camel riders.[172] They are used as sports entertainment and most of the time these children face death below the feet of camels and horses. Children are forced to work and are treated badly in many parts of the world by people from all walks of life regardless of education, wealth and intelligence.

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[170] Ibid., p. 38.
[171] *Trafficking in Persons Report*, 2013, p. 38.
[172] Ibid.

3.9 Characteristics of Human Trafficking

In view of the fact that human trafficking is recognised as an organised crime, in Southeast Asia human trafficking involves mostly "disorganised crime" among individuals or small groups linked on an informal basis as there is no standard profile of the traffickers as they range from truck drivers to village aunties to labour brokers as well as corrupted enforcement officers.[173]

According to Burke, traffickers have several roles such as recruiters, brokers or agents, contractor, employment agent, travel agent, document forger or thief, transporter, an employer who is the buyer, enforcer or known as a guard, and finally, a pimp.[174]

3.9.1 Human Traffickers and Their Co-Conspirators

There are several characteristics of the human traffickers and the victims and the circumstances influencing the entrapment. Though literature has described the offenders as big, bad, ugly wolves, surprisingly during interviews the perpetrators were also identified as prominent professionals.[175] Usually, the professionals include businessmen, doctors, and judges who use their money to influence the law enforcement and authorities. These perpetrators are respected in the community and are wealthy and backed by support from their communities.

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[173] David A. Feingold, "Human Trafficking," *Foreign Policy* (2005): 26-32; Emmers, *Non-Traditional Security in the Asia-Pacific, the Dynamics of Securitization*: 2004, p. 63.
[174] Burke, *Human Trafficking: Interdisciplinary Perspectives*, 2013, pp. 16-17.
[175] Interview with Azizah Kassim, IKMAS, 13 January 2014 and NGOs.

They do not work alone and to disguise what they do they use middlemen to traffic in victims for labour and sex trafficking. Middlemen are not only men but also women who recruit men and women and train them on how to behave when they are face to face with authorities. Drug traffickers are also involved in human trafficking to earn a profit from trading people.[176]

3.9.2 Victims: Characteristics and Recruitment

Victims of human trafficking are typically vulnerable individuals including young men and women, under-aged children as well as adults. However, there are victims, who are learned and eagerly seeking for glamorous jobs and status in a country usually trapped in human trafficking.

Children as young as five are usually given away by their parents due to extreme poverty, or abducted by the offenders for sexual exploitation, forced begging and forced labour. The syndicates normally kidnap older children below the age of 16 via middlemen and agents are forced into prostitution. These young victims are also forced to work as maids and helpers involuntarily in domestic households, restaurants, shops and farms.

In some parts of the world, young boys and girls are abducted for religious sacrificial purposes, to be young brides for older men, to serve as sexual pleasures for men in the army and so on. Although they are innocent children, they are not spared by the scrupulous perpetrators whose only concern is profiting from these children.

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[176] Jeremy M. Wilson and Erin Dalton, "Human Trafficking in the Heartland Variation in Law Enforcement Awareness and Response," *Journal of Contemporary Criminal Justice*, Vol. 24, No. 3, 2008, pp. 296-313.

Secondly, men and women are lured with lies, love and false marriages, compelled, kidnapped and threatened to be exploited for various reasons. Vulnerable people in desperate situations are easy victims of trafficking and face horrible consequences in the hands of their captors during their journey and in an attempt to escape some even face death as a lesson to others.

Third, some victims are recruited with the aid of the sophisticated social networks and the Internet. There are millions of job ads, campaigns, modelling agencies, actors' studios and theatres looking for young talents and with these all these opportunities, the perpetrators are equally savvy and use the technology and social networks to recruit their potential victims.

Some of the girls seek prostitution as they perceive it to be a glamorous lifestyle[177] and the reality sinks in when they are enslaved, forced to serve many men one day and repeatedly raped for sexual entertainment. Moreover, these women may never manage to escape the clutches of the pimps and recruiters.

3.9.3   Working Locations and Conditions

Human trafficking operates at all three levels; globally, regionally and locally and the modus operandi is similar where the victims are transported across the state or within via land, sea and air. Often the victims are transported across the state borders in trucks, cars and stops at cheap motels and if via sea usually within borders. For instance, from rural villages

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[177] Ibid.; Interview with Ooi Jilien, IOM Malaysia, 7 November 2013.

travel to the city involves the transportation of ferries and *sampan*[178] and aeroplane for foreigners who travel with their 'agents' who are the associate or partners of the syndicates.

Upon arriving at the locations, these victims have moved again to various places in the city for forced labour, sexual exploitation, involuntary domestic servitudes, plantations, welding factories, construction industries. Once they are settled their actual jobs are revealed, and there is no liberty to escape their ordeals as debts and contractual agreements bound them. Women trapped as maids or helpers in households, restaurants, spas and massage parlours often face terrible violence such as beatings, abuse and even rape at the hands of their masters, pimps and employers. Working hours are long and have no rest time except during meals.

Their conditions are deplorable where many are cramped in a small room without proper sleeping facilities and given one or two meals per day. Women in households are forced to sleep in the kitchen at night and may not have off-days or time off to rest. They are treated badly and allowed only a meal a day or forced to eat leftovers. Some are not allowed to worship their religious beliefs and are condemned to cook food that they are forbidden to touch.

3.9.4   Control and Abuse

To have total control over their victims, the traffickers use the method of confiscating the victims' travelling and identity documents to inflict fear and threaten to turn hand them over to the local enforcement authorities if they try to escape. Apart from that, victims are

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[178] Sampan is a Bahasa Malaysia word for wooden boat build by native villagers for domestic travelling to cross the rivers.

threatened, sexually abused, isolated and impose actual physical violence and bind them with debt bondage.[179] These men and women are also restricted in their movements, and they have no freedom to go anywhere or do what they want. To ensure that these victims listen to their instructions, the traffickers threaten them with surrendering them to the police to face jail terms.

Subsequently, the traffickers use the method of harming their family members back home. As some of the traffickers are known in the community or through their associates in the local community, the victims are threatened to gain their commitment. In some cases, victims are held bondage to seek for ransom from their low-income families. These victims are beaten and tortured until the families pay their ransom, and these people have nothing as they have sold off their belongings to fund the travelling fees and documents of their sons or daughters to travel with the agents. Hence, they have to ask the help of their other family members and villagers to rescue their children from the captivity of the human traffickers. Once the ransom is paid, victims are free to go but some are unfortunate and forced into slavery.

Sex traffickers' technique is to give new identities to their victims and teach them never to disclose their real identities or age to the police if they are ever caught. Therefore their documents are never with the victims, and when the law enforcement officers rescue these victims, they are faced with challenges in identifying their actual identities. As these women have been trained and threatened by their captors with lies such as; if they were to reveal their real identities then they are thrown in jail by the police for prostitution. This is

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[179] Kevin Bales, *Understanding Global Slavery*, Berkley: University of California, Press, 2005.

because these young women are not aware that they are victims of vulnerable situations such as sex and labour trafficking and they are forced to do things against their will.

When these victims are rescued by law enforcement authorities such as the police, immigration officers, marines and NGOs, they are free to move on with their lives or return to their respective countries. However, since some victims face emotional and physical trauma and have no source of income, the may return to prostitution as they have nowhere else to go.[180]

Some of the victims are addicted to drugs and alcohol to forget their nasty situations. Traffickers persuade these women to take drugs and alcohol to have control over them and at the same time they can manipulate these victims under the influence of drugs and alcohol. Most of the victims take refuge from these substances and misuse them. When they are rescued, they are still dependent on drugs and alcohol which would be hard for them to let go hence they fall back into their old lives.

With such appalling incidents incurred by the perpetrators on the victims' physical and emotional lives, it is morally essential to help the victims of human trafficking with rehabilitation, counselling and nurturing. It is also to guide the victims back to their normal lives and to be accepted in their family and community.

Often when these victims are neglected and not given proper care, they would return to their pimps and become a recruiter themselves and employ young women into forced prostitution. When they are shunned away by the community, these victims vent their anger into other young girls and women by helping the agents, pimps and syndicates in the

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[180] Interview with Azizah Kassim, IKMAS, 13 January 2014.

recruitment process. This is due to the emotional impact and depression they face because they did not enter into prostitution willingly but were cheated and forced into it. So when their families, neighbours and communities turn away from them instead of helping, they retaliate by joining the human trafficking syndicates as they have no place in a society supposed to give them a helping hand.[181]

3.10 Conclusion

In summing up the hidden crime, human trafficking is the modern form of slavery when another is depriving a person's freedom in leaving a job for another, in choosing the workplace or to control their body. Modern slavery seeks to exploit a person by possessing or controlling their individual liberty to earn a profit. "Slave holders use many terms to avoid the word "slavery" such as debt bondage, bonded labour, attached labour, forced labour, indentured servitude and human trafficking".[182]

Perpetrators are robust in their operations of trafficking people regardless of gender, age and humanity. Motivated by the profit earned by trafficking persons, numerous networks operating at a global level emerge involving technologies and social networks. It is a big business and according to ILO modern slavery contributes to the production of at least 122 goods from 58 countries globally. The ILO estimates the illicit profits of forced labour to be US$150 billion per annum.[183] From this staggering amount, more than one-third of the profits of US$51.2 billion are earned from forced labour exploitation including US$8 billion

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[181] Interview with Ooi Jilien, IOM Malaysia, 7 November 2013.
[182] See "Trafficking and Slavery Fact Sheet," Free the Slaves, available at: <https://www.freetheslaves.net/document.doc?id=34> (accessed 15 November 2014).
[183] *Profits and Poverty: The Economics of Forced Labour*, Geneva, ILO, 2014, p. 13.

made in involuntary domestic work. Also, the profits are highest in Asia with US$51.8 billion due to having the highest number of victims.[184]

In a typical scenario, offenders are often criminals and thugs but according to victims' testimonies, most of the perpetrators seem nice and convincing therefore vulnerable people fall easily as victims of trafficking. Moreover, enforcement agencies and authorities were caught closely linked with human trafficking rings thus rescued victims are trapped in the system and end up in the hands of the traffickers.

Men, women and children are easy prey for human traffickers due to the instability of economic, social and political factors giving the perpetrators a chance to manipulate and deceive these vulnerable groups. States are accountable for educating and creating awareness among the actors and non-actors in the state to eradicate human trafficking at the global level.

For example, the Government of Myanmar reflected their efforts to eradicate the practice of child soldiers by releasing 595 children in 2014. It is a significant effort since the *Tatmadaw* army signed a pact with the UN in June 2012 to put an end to the harmful practice of recruiting and using children in the military.[185]

It is the responsibility of the government to address the serious problem of human trafficking by collaborating with local communities at grass roots level to provide immediate responses of preventing human trafficking activities.[186] Besides collaborating, it is equally

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[184] Ibid.

[185] "Myanmar military frees over 400 child soldiers," *Sunday Star*, 25 January 2015.

[186] Judy Hale Reed, "Addressing The Problem: Community-Based Responses and Coordination," in Mary C. Burke, *Human Trafficking: Interdisciplinary Perspectives*, London: Routledge, 2013, p. 256.

important to coordinate various programs and work together with multiple organisations effectively to achieve the common goal that is to curb human trafficking.[187]

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[187] Ibid.; Interview with Ooi Jilien, IOM Malaysia, 7 November 2013.

CHAPTER 4

HUMAN TRAFFICKING IN MALAYSIA:
ROOT CAUSES, CHARACTERISTICS AND IMPACT

4.1 Introduction

Human trafficking affects all ten countries that make up the Association of South-East Asian Nations (ASEAN) namely Malaysia, Brunei, Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Singapore, Thailand and Vietnam. In numerous reported cases, Cambodians were forced to work on fishing boats in the waters of Thailand and New Zealand, Burmese women and girls were tricked across the border into China to be sold as brides, and women from South Korea, China and Thailand were trafficked and coerced into Australian brothels. Migrant construction workers in Singapore accumulated debts to recruitment agencies that made them vulnerable to forced labour whereas domestic workers from the Philippines and Indonesia were abused in private households in Malaysia, Hong Kong and throughout the Middle East.

It is estimated that there are some 2.4 million international migrants in Malaysia from the world's estimation of 213 million and in Asia the figure shows 61.3 million in 2010.[1] There is a tremendous rise in the estimation since 2006 of 53.3 million international migrants in Asia.[2] There are more than 10.9 million refugees in Asia alone of a global figure of 16.3 million, and Malaysia is home to more than 35 thousand

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[1] See *World Migration Stock*, New York: United Nations, Department of Economic and Social Affairs, Population Division (1990-2010), 2009, available at: <http://esa.un.org/migration/p2k0data.asp> (accessed 4 January 2013).

[2] Maruja M. B. Asis, "Human Trafficking in East and South-East Asia: Searching for Structural Factors," in Edward Newman and Sally Cameron (eds.), *Trafficking in Humans: Social, Cultural and Political Dimensions*, New York: United Nations University Press, 2008, p. 181.

refugees.[3] However, these figures do not reflect the unauthorised migrants in the region as well as the suspected colossal statistics of trafficking in persons.

Before the new millennium, Malaysia was not considered to be essentially affected by human trafficking crimes as it was one of the receiving countries for labour migrants from the region. Therefore, labour issues were seen in the context of illegal labour immigration.[4] Labour shortage in Malaysia in specific industries such as construction sites and domestic households have led to a major flow of migrating professionals as well as unskilled labour into the country.

The major flow of foreign labours into Malaysia took place in the 1980s due to the rapid economic growth of Malaysia which increased the labour demand due to the labour shortage.[5] Malaysia was developing in multiple sectors especially at construction sites, land and estate sectors as well as the expansion of the infrastructure and services where the growth highly depended on skilled foreign labours. Simultaneously, locals were not willing to work in the challenging environment especially the dangerous and dirty jobs particularly required at the construction sites. Apart from that, locals feel degraded working on the plantation, farms and construction meaning the industry lacks manpower and expertise to develop. Hence, the Malaysian government had to seek foreign labour willing to leave their homeland to work in Malaysia. When a country allows labour migration such as Malaysia in the early 80s and 90s due to lack of

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[3] See *World Migration Stock*, Department of Economic and Social Affairs, Population Division (1990-2010).
[4] Annuska Derks, "Combating Trafficking in South-East Asia," in *A Review of Policy and Programme Responses*: International Organisation for Migration (IOM), 2000.
[5] Azizah Kassim, "Cross-border movement of foreign workers in Malaysia: a comparative analysis," *Economic Report 2004*, 2003, pp. 78-91.

manpower to develop the infrastructures of the country, such action circuitously allowed the inflow of illegal immigration into the country.[6]

Before the implementation of the Second Malaysia Plan (1970-1975), the Malaysian government was not well equipped to manage the inflow of foreign workers into the country. The first initiative on the policy of the immigrant workers took place in the 1980s with the signing of the Medan Agreement between Malaysia and Indonesia in 1984, effectively implemented in the early 1990s.[7] The implementation of the policy was to resolve labour shortage in the country especially when the government was steadfast in developing the nation simultaneously to curb illegal entrance of foreign workers into the country.

However, due to the high demand of foreign labours in the various sectors of industries, employment agencies manipulated the recruitment process through different mechanisms of recruitment including the working conditions and the bargaining power of foreign domestic workers, depending on the legal situation, the nationality and capacities of the woman, as well as on the working conditions.[8] Malaysia was not so concerned about human trafficking issue in the beginning, but the government was paying more attention to the number of illegal immigrants entering the country for employment.[9]

Many were willing to enter Malaysia illegally because of the job prospects at constructions sites and odd jobs. Recruitment agencies mushroomed in Malaysia as well as in migrant countries assisting the migrants to trespass the country by preparing fake personal documents and travelling visas and relevant papers to get away from the

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[6] Kathy Richards, "The Trafficking of Migrant Workers: What Are the Links between Labour Trafficking and Corruption?," *International Migration*, Vol. 42, No. 5, 2004, pp. 147-68.
[7] Ibid.
[8] Diana Wong, "Foreign Domestic Workers in Singapore," *Asian and Pacific migration journal: APMJ*, Vol. 5, No. 1, 1995, pp. 117-38.
[9] Annuska Derks, "Combating Trafficking in South-East Asia," in *A Review of Policy and Programme Responses*: International Organisation for Migration (IOM), 2000.

immigration authorities. These foreign workers were willing to take the dangerous route via sea on cramped boats with hundreds of other migrants at night to evade the vigilant marine police.

The arrival of migrant workers into Malaysia was flowing in rapidly especially when the job demand was high for skilled and semi-skilled labours. The Malaysian government signed MoUs with source countries to ensure legal recruitment and to decide upon types of jobs to be allocated to the foreign workers, work contract with tenure as well as wages. On top of that, these workers are permitted to work in the country with work permits authorised by the Malaysian government.

Regardless of strong measures imposed by the Malaysian government on recruiting foreign workers legally, illegal entries by foreigners into the country have increased over the years. In 1990, according to Labour Force Survey (LFS), there were around 380,000 foreign labours in Malaysia and the figure rose to 2.1 million in 2010.[10] In a decade, the employment rate of foreign labourers in Malaysia has amplified from 93 per cent to 95 per cent for male and from 41 per cent to 60 per cent for female foreign workers.[11] However, according to the report, the data may not be very accurate as there were many foreign workers undocumented and not reckoned in the administrative data. Nonetheless, the data showcased a significant rise in foreign labour in Malaysia from 1990 to 2010. The following year the figure increased to more than 2 million including illegal foreign workers.

The evidence is obvious as a repercussion of massive illegal entries for more than two decades in Malaysia. In 2011, the Malaysian government applied the biometric

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[10] *Immigration in Malaysia: Assessment of its Economic Effects and a Review of the Policy and System*, World Bank in Collaboration with Institute of Labour Market Information and Analysis (ILMIA), Ministry of Human Resources Malaysia, 2013.
[11] Ibid.

system under the 6P amnesty programme to record foreign workers (both legal and illegal) and a total of 2, 320, 034 foreign workers and illegal workers were registered in Malaysia[12] and their regional distribution in the country is highly imbalanced and many concentrated in Peninsular Malaysia.[13] This is because 82 per cent of the foreign workers were located in Peninsular Malaysia and the rest were in Sabah/Labuan and Sarawak.[14] The breakdowns of legal workers were 1,016,908 whereas illegal workers were around 1, 303,126 in Peninsular alone.[15] However, these figures may not be very accurate as many foreigners would not have registered under the 6P programme.

Whereas, in 2010, the Amnesty International (AI) reported that Malaysia had an additional 2.2 million illegal foreign workers[16] and within a year the figure has dropped to 1.3 million. This shows that number of illegal workers in the country is obscure, and there is a high likelihood that many illegal migrants have not registered. The ambiguity of the illegal migrant workers statistics could be due to their susceptible circumstances, and the probability of these workers as victims of human trafficking are high.

The victims of human trafficking are treated as mere commodities and slaves, and the act is hidden therefore the actual figure of vulnerable people trapped in deplorable and slave-like situations are indistinct. The gathered statistics of human trafficking victims at the global and local level are of rescued trafficked victims by the enforcement agencies.

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[12] "More than 2.3 million foreigners registered under 6P programme", *Bernama.com*, 5 September 2011, see <http://mapo.bernama.com/news.php?id=611630> (accessed 4 April 2012).

[13] *Immigration in Malaysia: Assessment of its Economic Effects and a Review of the Policy and System*, World Bank in Collaboration with Institute of Labour Market Information and Analysis (ILMIA), Ministry of Human Resources Malaysia, 2013.

[14] Ibid.

[15] "More than 2.3 million foreigners registered under 6P programme," *Bernama.com*, 5 September 2011, see <http://mapo.bernama.com/news.php?id=611630> (accessed 4 April 2012).

[16] Hamzah Abdul-Rahman, Chen Wang, Lincoln C. Wood, Shu Fung Low, "Negative impact induced by foreign workers: Evidence in Malaysian construction Sector," *Habitat International*, Vol. 36, No.4, 2012, pp. 433-443.

In 2011, foreign workers from Indonesia made up the highest number with 640,609 illegal and 405,312 legally working in Malaysia.[17] Next is Bangladeshis with 267,803 illegal and 132,897 legal workers followed by Nepalese workers with a total of 221,617 legally working in the country meanwhile unlawfully around 33,437 workers.[18] The 6P programme seeks to identify the number of foreign workers in the country. These workers legal as well as illegal have to go through the registration process via the biometric system. The system was introduced not only to acquire the actual figures of foreign workers in Malaysia but as a security tool in managing trans-border crime, especially people smuggling and human trafficking.

Malaysia is recognised as an 'archipelagic system' of two major intraregional labour migration systems in the Southeast Asia region.[19] Alongside Singapore and Brunei, these three countries were observed as the main destination countries attracting workers from the neighbouring nations like Indonesia and the Philippines for the labour force. Meanwhile, the second system is known as the Mekong sub-regional system, where Thailand as the key target for migrant workers arriving from Myanmar, Cambodia, Laos PDR and Vietnam.[20]

Malaysia is allegedly famous for its destination for organised crimes especially among human traffickers as well as people smugglers.[21] The porous border along the coastal line is an easy entrance for offenders to transport their victims into the country.

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[17] "More than 2.3 million foreigners registered under 6P programme," *Bernama.com*, 5 September 2011, available at: <http://mapo.bernama.com/news.php?id=611630> (accessed 4 April 2012); Zulkifli Jalil, A multi-prong strategy, *Utusan Online*, 28 September 2011, available at: <http://ww2.utusan.com.my/utusan/special.asp?pr=theMessenger&y=2011&dt=0928&pub=theMessenger&sec=Features&pg=fe_01.htm> (accessed 4 April 2012).

[18] Ibid.

[19] Susan Kneebone and Julie Debeljak, "Combating Transnational Crime in the Greater Mekong Subregion: The Cases of Laos and Cambodia," in Leslie Holmes (ed.), *Trafficking and Human Rights: European and Asia-Pacific Perspectives*, Cheltenham Glos: Edward Elgar Publishing, 2010, p. 134.

[20] Ibid.

[21] See more information in the United States, Department of State's Annual *Trafficking in Persons Report*, from 2006-2013.

Malaysia is also known as the source and transit country to a lesser extent for women and children who are trafficked for the sole purpose of commercial sexual exploitation and domestic servitude.[22] Men are trafficked into the country for forced labour and women are also forced into forced labour in factories, farms and plantations, private households as domestic works at various locations and sectors within Malaysia.[23]

The occurrence of human trafficking activities is proven from numerous reports and data such as the trafficking pattern among the Cambodian and Laotian women travelling to Malaysia as domestic workers or sex workers by passing Thailand on the way, and the number of women trafficking has been increasing over the years.[24] Data obtained from the Malaysian enforcement agency shows statistic on forced labour from February 2008 to September 2012 had a total of 153 cases. The Selangor state alone had 37 cases, followed by Johor with 25 cases and Sarawak and Kuala Lumpur with 24 and 22 cases respectively. The majority of the victims trapped into forced labour were Indonesians and others from Philippine, Thailand, Vietnam, Bangladesh, India, China, Sri Lanka including Malaysians.[25]

Similarly, tragedies occurred in the Malaysian sea indicating events of human trafficking activities, for example, a drowning incident off Pengerang in Johor. The marine authorities arrested 33 foreigners from several countries like Pakistan, Afghanistan and Iraq sailing on a boat off Kuala Langat in Port Klang, which established the suspicions that Malaysia is a transit point for human trafficking syndicates.[26] The

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[22] Ibid.
[23] Ibid.
[24] Susan Kneebone and Julie Debeljak, "Combating Transnational Crime in the Greater Mekong Subregion: The Cases of Laos and Cambodia," in Leslie Holmes (ed.), *Trafficking and Human Rights: European and Asia-Pacific Perspectives*, Cheltenham Glos: Edward Elgar Publishing, 2010, p. 134.
[25] Statistic obtained from the Royal Malaysian Police with permission.
[26] V. Shankar Ganesh, Evangeline Majawat, and Jassmine Shadiqe, "Signs That Show Malaysia on Human Trafficking Route," *New Straits Times*, 30 April 2009, <http://www.highbeam.com/doc/1P1-163452783.html> (accessed 1 June 2012).

same report highlighted that the drowning victims were nine and eight were identified as Pakistanis.

Most of these human trafficking victims were trafficked from nearby regions and as far as Bangladesh, Colombia, China, Ecuador, India, Nepal, Pakistan, Russia, and Uzbekistan.[27] The identified neighbouring countries were Indonesia, Thailand, Philippines, Burma, Cambodia, and Vietnam.[28] Vulnerable women and children from these countries were trafficked into Thailand and Malaysia to be exploited in the sex industry and as forced labour in factories as well as domestic workers in private households.[29] Apart from that, Malaysian women and children along with victims from Thailand, Vietnam and China were targeted by the perpetrators to be exploited for labour and commercial sexual works in Cambodia.[30]

In most cases, many of these victims migrate voluntarily and legally to Malaysia with an idea of a better employment compared to their poor stricken countries. These legal migrants are promised with contractual jobs along with decent pay and stay. However, they were subjected to deplorable conditions of involuntary servitude in the domestic households, and various sectors such as agriculture, food service, plantation, fishery farms,[31] and heavy industrial as well as at dangerous construction sites.[32] Similar situations happen to those who came in illegally and got entrapped in the hands of traffickers. They were exploited economically and treated ruthlessly.

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[27] See "Malaysia, Trafficking Routes," The Protection Project, 2010, p.1; Regulating Immigration and Human Trafficking, 27th Commonwealth Parliamentary Conference of Members from Small Countries, New Delhi, 24 September 2007.
[28] See Patt, Prof. Martin, "Human Trafficking & Modern-Day Slavery – Malaysia," available at: <http://www.gvnet.com/humantrafficking/Malaysia-2.htm> (accessed 24 April 2012).
[29] Susan Kneebone and Julie Debeljak, "Combating Transnational Crime in the Greater Mekong Subregion: The Cases of Laos and Cambodia," Cheltenham Glos: Edward Elgar Publishing, 2010, p. 139.
[30] Ibid.
[31] Nurul Qoriah, *Fishing industry in South-East Asia rife with human trafficking*, Global Eye on Human Trafficking, International Organisation for Migration (IOM), Issue11/March 2012, p. 4.
[32] Ibid.

Trafficking of human beings and other kinds of exploitation occur within the common hackneyed migratory destinations in the region. There are two characteristic migration systems; the first is the archipelagic ASEAN system, in which vulnerable individuals mostly from the Philippines and Indonesia migrate to Malaysia, Singapore, and Brunei. The second characteristic is the Mekong sub-regional system, in which Thailand has emerged as the main destination point for sex and labour workers from Burma, Cambodia, Laos, and Vietnam. These two features are in a similar way for both legal and illegal migration flows.[33]

As far as Southeast Asia is concerned, Bangladeshis, Sri Lankans and Nepalese enter Malaysia with dreams to have a proper job with decent pay. They come as international students and tourists manipulating the students and tourist visas. For instance, in Johor Bahru thousands of illegal Bangladeshi workers came into the country under the pretext of student visas and as tourists. The perpetrators who helped them to enter the country were Malaysian institutes of higher learning and education centres who conspired with the human trafficking syndicates.[34] Both institutes and centres forged the attendance records besides providing progress reports for the students to cheat the Malaysian Immigration when the time comes to renew the visas. Students visas are preferred compared to tourist visas because the period of stay granted for students is two to six months compared to one month for tourists.

Besides that, these Bangladeshis were charged RM10, 000 to RM12, 000 to enter the country posing as students and the local lecturers from the language colleges wait at the Kuala Lumpur International Airport to produce the necessary documents to certify

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[33] Amarjit Kaur, "Managing the Border: Regulation of International Labour Migration and State Policy Responses to Global Governance in Southeast Asia," Paper presented at the 16th Biennial Conference of the Asian Studies Association of Australia, Wollongong, 2006.

[34] Nelson Benjamin, "Influx of Workers Posing as Students: Thousands of Bangladeshis Aided by Institutions Working with Human Traffickers," *Sunday Star*, 3 November 2013.

them as students coming to Malaysia to learn English.[35] Once they leave the airport, they were taken to a safe house in Klang Valley before continuing their journey to Selangor or Perak to work in factories as welders and labourer earning a meagre salary of RM30 to RM60 per day depending on their skills.[36]

These men used agents who cheated them of their money and exploited them by forcing them to work long hours; more than ten hours for a meagre salary. Before leaving their country, these men save up an entire year just to pay the agents. Some lend from loan sharks, and many sell their belongings and properties for the promised opportunities in Malaysia. Many were promised works in garment factories for a salary more than RM1, 500 per month and would be able to return home in a few years after saving up from their earned salary in Malaysia. However, that is not the case as these men were scorned and manipulated by the agents with the help of locals. These locals (the perpetrators) are private college lecturers who aid human traffickers. On top of that, these lecturers act as agents in preparing forged students' travelling papers and documents for these Bangladeshis including Sri Lankans and Indians.[37]

For these deceived victims, their dreams to have a proper job with decent pay were shattered the moment their fate fell into the hands of the traffickers,[38] and they were also deprived of necessities such as comfortable shelter, decent food and clothing. As much as they work long hours, they were also trapped in the factories and unable to seek help from authorities or anyone. This is because they would have overstayed in the country without their knowledge. To avoid the risk of getting caught by enforcement officers, they stay in the safe house or factories or houses prepared by the employment.

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[35] Ibid.
[36] Nelson Benjamin, "Influx of Workers Posing as Students: Thousands of Bangladeshis Aided by Institutions Working with Human Traffickers," *Sunday Star*, 3 November 2013.
[37] Ibid.
[38] Nelson Benjamin, "Hopes and Dreams Shattered," *Sunday Star*, 3 November 2013.

As and when there is a major crackdown operation by the enforcement authorities on illegal immigrants, these men are forced to run away, and some stay in the jungle for a few days until the operation ceased.[39] The unlucky ones who got caught have to spend a period in detention, and most would be deported to their respective countries.

Apart from illegal migrants trapped in the human trafficking operations, refugees have also become vulnerable to the menace within Malaysia's borders. The U.S. TIP Report stated that the Malaysian government refused to grant these refugees formal status or allow them to work legally. It further exposed that many of the 10,000 refugee Filipino Muslim children residing in Sabah were subjected to forced begging.[40]

4.2 Root Causes of Human Trafficking

Human trafficking occurs due to the various problems taking place in the country of origin and the opportunities found in destination countries. Moreover, rapid globalisation has directed the operations of organised crimes such as human trafficking, human smuggling, arms and drug trading to a new level with the expansion of technology and social network. Among many Southeast Asian countries, Malaysia is developing extraordinarily, and one of the contributing factors is due to globalisation, and it is prospering wealthily.

Such wealth and prosperity attract vulnerable people from the poorer countries especially the least developed nations to eye Malaysia for work opportunities. In the name of globalisation, the demand for cheap labour from these countries encourages the

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[39] Nelson Benjamin, "Roads Not Paved with Gold for Bangladeshi Workers," *Sunday Star*, 3 November 2013.
[40] "US penalises Malaysia for shameful human trafficking record," *The Guardian*, 20 June 2014, <www.theguardian.com/global-development/2014/jun/20/malaysia-us-human-trafficking-persons-report> (accessed 11 November 2014).

supply of workers into the country and indirectly opens up the channel for human trafficking syndicates to intervene for own monetary purposes. The cause of this human trafficking problem can be divided into push and pull factors.[41]

4.2.1 Push Factors

The push factors are identified in the source country of the victims of human trafficking. Their poor socioeconomic background including extreme poverty, debt, lack of education and knowledge, economic demand due to financial constraint, insecurity of their environment such as political and economic instability forced them to leave their country in search of greener pastures and stability in foreign lands. Foreign men and women are willing to work in various sectors from the plantation, fishery farms[42] to construction as well as in the service sector such as cleaners and sweepers. Women are more concentrated in the domestic households even though in the case of human trafficking they were conned by the perpetrators with factory or hotel jobs before leaving their country.

The economic insecurity of a state is a major contributor to the economy of human trafficking. When the poorest people in the poorest countries are affected by economic insecurity, they are weakened and vulnerable to hidden threats. This vulnerable population are deprived of necessities in life such as food, shelter, education, proper healthcare, employment with decent income and security. To survive, they look for opportunities elsewhere and fall into the hands of human traffickers who have enticed them with false promises. Inevitably this vulnerable person contributes to the economy

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[41] Zarina Othman, *Human (In)security, Human Trafficking and Security in Malaysia*. Paper presented at the 4th International Malaysian Studies Conference (MSC 4), Universiti Kebangsaan Malaysia, 5 August 2004.
[42] Nurul Qoriah, *Fishing industry in South-East Asia rife with human trafficking*, Global Eye on Human Trafficking, International Organisation for Migration, Issue11/March 2012, p. 4.

of human trafficking and generates high revenue which they will never get to enjoy. This is a typical scenario befalling victims of human trafficking.

Due to poor economic situations in the least developed countries as well as in some developing countries like Indonesia and the Philippines, people travel to Malaysia by falling into the hands of corrupted employment agents. These recruitment agents are normally someone in the community known to have vast contacts in finding work or assist with transport and other arrangements.[43] Making false promises and luring men and women to travel with them to work is an effective method in their modus operandi. Some of these agents use people who worked and earned well or are still working in countries like Malaysia to gain the trust from the victims. Such efforts allow the agents to gather as many victims as they can traffic into countries with better job opportunities and employment such as Malaysia, Singapore and even Australia.

For families with young daughters, the demand for a virgin girl by older men entices the families to sell their daughters unknowingly to agents and human trafficking syndicates. Selling young girls occurs especially in the extreme poor parts of rural villages. However, in Malaysia so far there have been no incidents reported especially on selling young girls, but it is rampant in other Asian countries such as India, Thailand, Myanmar, Cambodia, Laos and Vietnam. Poor families who are extremely underprivileged and burdened with many other children are forced to sell off their young children. Many of the source countries are unstable compared to neighbouring countries.[44]

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[43] June Kane, "Making Money Out Of Misery: Trafficking for Labour Exploitation," in Mary C. Burke (ed.), *Human Trafficking: Interdisciplinary Perspectives*, New York: Routledge, 2013, p. 115.
[44] Ibid.; John Winterdyk, Benjamin Perrin, and Philip Reichel, (eds.), *Human Trafficking - Exploring the International Nature, Concerns, and Complexities*, CRC Press: Boca Raton, 2012, pp. 7-10.

4.2.2 Pull Factors

There is a market demand for human slaves, and this is because there are many sellers in such a marketplace due to the benefits garnered from this business that there are people willing to be part of this crime just for the money. These individuals have different price tags when they are forced into various economic sectors in which the retail consumers intend to use the trafficked person.[45] Various attributes are required for prostitution, or agricultural work or domestic service and these characteristics may overlap because a trafficked individual can be utilised for different jobs[46] and over and over again.

In the case of internal human trafficking in Malaysia, employment opportunities are concentrated mainly in the city areas especially the larger ones such as Kuala Lumpur, Ipoh, Klang, Shah Alam, Johor Bharu, George Town, Malacca, Seremban, Kota Kinabalu, and Kuching. Developments are vast in the city and people leave their rural villages to the metropolitan in search for better job opportunities which pays a decent wage. Many chase their dreams of being an entertainer in the entertainment world hence vulnerable young people with raw talents from small towns easily fall victim to false promises and into the hands of perpetrators. The chances of being trafficked are high because these young people would just want to go to the city and listen as well as follow what the perpetrators ask them to do.

Meanwhile, external human trafficking are foreigners who are trafficked into Malaysia due to significant pull factors. The pull factors that increase human trafficking in Malaysia are globalisation, tourism,[47] education and jobs opportunities along with

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[45] Kevin Bales, *Understanding Global Slavery*, Berkley: University of California Press, 2005.
[46] Ibid.
[47] Interview with Prof. Dr. Azizah Kassim, IKMAS, 13 January 2014. Seminar, Awareness Campaign on Human Trafficking and Migrant Smuggling, University Malaya, 20 September 2012.

decent lifestyle, secured living, the similarity in geography, religion and cultural beliefs. Indonesians and the Filipinos are being trafficked into the country due to their similarities in culture and religion.[48] Moreover, the porous borders of Malaysia in the northern states and along the coastline are feasible for organised crime especially human trafficking (including migrant smuggling) to take place effortlessly. The facts on Malaysian porous coastal was highlighted in the Reuter's report that the "porous state of Malaysia's 500 km (310 miles) northern border, with thousands of Rohingya ethnic group entering unhindered at a time when the government has taken a tough public stance against illegal immigration."[49]

Moreover, human trafficking has become sophisticated in recent years due to efficient technology and enhanced communication systems.[50] With rapid social networks and diversified Internet mobile applications, the operations of human trafficking are monitored and facilitated remotely by the trafficker and their chain of networks.

Corruption is another causal factor contributes to the continuity and longevity of human trafficking activities to run smoothly. The corruption practice among government officials and law enforcement authorities just to gain the extra financial benefits lures them into a partnership with the numerous syndicates of human trafficking such as employment agencies, individuals, recruitment agents, owners of pubs, karaoke lounges, massage and beauty parlours and so on.[51] Normally such corruption and bribery practice

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[48] Zarina Othman, *Human (In)security, Human Trafficking and Security in Malaysia*.

[49] Stuart Grudgings, "Exclusive - Trafficking Abuse of Myanmar Rohingya Spreads to Malaysia," *Swissinfo*.ch, 6 March 2014, <http://www.swissinfo.ch/eng/news/international/Exclusive_-_Trafficking_abuse_of_Myanmar_Rohingya_spreads_to_Malaysia.html?cid=38099884> (accessed 10 May 2013).

[50] As mentioned by R. Narayanan representative of Malaysia at "Cooperation and Shared Responsibility in the Global Fight against Organised Crime, in Particular Drug Trafficking, Illegal Arms Sales, Human Trafficking and Cross-Border Terrorism," Geneva, 121st Assembly of the Inter-Parliamentary Union and Related Meetings, 19-21 October 2009.

[51] Sheldon X. Zhang and Samuel L. Pineda, "Corruption as Causal Factor for Human Trafficking," in *Organised Crime: Culture, Markets and Policies* edited by Dina Siegel and Hans Nelen, New York: Springer, 2008, p. 45.

occur among immigration and customs officials as well as patrol borders for a smooth transaction to obtain travelling visas and documentations. Malaysia borders with Thailand, Philippines and Kalimantan hence turned out to be the perfect spot for human traffickers to enter the country illegally with their victims especially with the help of corrupted government officers.

For instance, in 2010, eight Malaysian Immigration Department officers were held in connection with human trafficking activities, and they were detained under the *Internal Security Act 1960*.[52] A year later they were freed and sacked of their government posts.[53] Such leniency and double standard without charging them under the Anti-Trafficking in Persons Act were received with mixed feelings by civil and human rights groups. This is one of the reasons for Malaysia to remain on the Tier 2 Watch List of the Trafficking Victims Protection Act (TVPA) for the fourth consecutive time.

4.3 Characteristics of Human Trafficking in Malaysia

4.3.1 Malaysia as a Destination

The enforcement authorities found that the trafficking syndicates are shifting their operations into Malaysia as the Thai enforcement team raided the jungle camps near the border which have become a prison for the Muslim asylum seekers running away from persecution in Myanmar. In that report, a Reuter's interview with the victims revealed that the human trafficking network is larger than the authorities have acknowledged.[54]

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[52] "Malaysia Accuses Immigration Officials of Human Trafficking," *Global Inquirer*, 13 October 2010, <http://globalnation.inquirer.net/news/breakingnews/view/20101013-297563/Malaysia-accuses-immigration-officials-of-human-trafficking> (accessed 3 June 2012); Pauline Wong, "Ramadan Blessing for Eight Isa Detainees," *theSun*, 2 August 2011.
[53] Azril Annuar, "Eight Officers Were Sacked: Immigration Dg," *theSun*, 9 August 2011.
[54] Initial investigation by Reuter was published on 5 December 2013.

Due to unstable economic and political situations in their country, these victims have no choice but to flee from their country only to be fallen into the traps set by the traffickers. In Thailand the local police have rescued and detained more than 600 Rohingya ethnic and Bangladeshis in January to drive away the traffickers and smugglers from the illegal camps across Southern Thailand.[55]

Many of them end up in Malaysia, and things did not turn out well for them. In a crackdown operation in the states of Penang and Kedah conducted by the police, they discovered Rohingya men were bound together with metal chains in an apartment.[56] After the rescue operation, the victims were interrogated, and the police affirmed that it was a human trafficking case. The Rohingya men were tied by the traffickers to avoid any runaway incidents. The perpetrators have kept hundreds of Rohingya Muslims locked up in houses in northern states of Malaysia. The majority of these victims are stateless Muslims from the western Myanmar running away from their country only to fall into the hands of human traffickers. Once in the clutches of the traffickers, they were beaten mercilessly, deprived of food and demanded ransom from their families. Unfortunately, some of them were unable to take the abuse and died from serious injuries.

Apart from that, many of the trafficking victims have willingly smuggled into Malaysia by paying whatever they had to scrupulous agents and then without them realising they were trafficked to other places by different agents, based on interviews

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[55] Ibid.

[56] Stuart Grudgings, "Exclusive - Trafficking Abuse of Myanmar Rohingya Spreads to Malaysia," Swissinfo.ch, 6 March 2014, <http://www.swissinfo.ch/eng/news/international/Exclusive_-_Trafficking_abuse_of_Myanmar_Rohingya_spreads_to_Malaysia.html?cid=38099884> (accessed 10 May 2013); "Trafficking Abuse of Myanmar's Rohingya Spreads to Malaysia," Reuters, 6 March 2014, <http://my.news.yahoo.com/trafficking-abuse-myanmar-rohingya-spreads-malaysia-024348328.html> (accessed 10 May 2014).

conducted by the Malaysian police during investigations.[57] These victims trust the agents so much that they were willing to sell off their lands and properties only to be cheated and left in despair with nothing. If they were handed over to different agents, then these victims have to pay more fees whenever there is a changeover to be taken to different locations.

Many students especially girls who have stopped schooling due to poverty and poor education in some of the least developed countries like Myanmar, Cambodia, Nepal are eager to help their families and younger siblings. They are easily exploited by the syndicates in luring them into false job promises or better opportunities. [58] Many of these young girls are recruited in their country of origin by these syndicates before moving to destination countries like Malaysia.

4.3.2 Malaysia as a Tourism Destination

Malaysia is a tourist spot for foreigners and one of the methods used by human traffickers to bring in their victims is through visiting tourists. It is feasible for the transportation of the victims into Malaysia due to convenient 'visa-on-arrival' which is misused by human traffickers. Crossing the Malaysian border as a tourist is considered safe and non-suspicious and a short-term visa is granted. However, the perpetrators manipulate the victims by forcing them to overstay in the country. When the victims overstay, they know they have broken the immigration law which the traffickers use to instil fear in the victims. This is when the victims become more vulnerable due to language barriers and fear of being caught by enforcement authorities.

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[57] Inspector Ku Masharizul Ku Mahmood presented in a Seminar Awareness Campaign on Human Trafficking and Migrant Smuggling, 20 September 2012.
[58] Ibid.

Apart from that, the human trafficking syndicates also find loopholes in the immigration system and use them to their benefit. Corruption among enforcement officers in particular immigration officers and border police are undisputed as the former can forge travelling documents and visas for human traffickers to operate smoothly, and the latter allows the entrance of traffickers who travel with their victims into the co and afterwards being forced into commercial sexual.[59] These victims initially resist once they realise they have been cheated by the traffickers who posed as agents. To break their will and desire to escape, these victims are beaten, raped and drugged repeatedly forcing them to comply. At the same time their travelling documents, driving license if any, identity documents or birth certificate are confiscated preventing them from seeking help or escaping.

Those unable to take the abuses tried running away and ended up in the hands of law enforcement officers. Some were rescued during raid operations by the enforcement authorities, and their stories were told during interrogation.[60] Victims who tried running away and unfortunately caught by the traffickers have faced terrible punishment where they were beaten severely as a lesson for others.

Sex trafficking and commercial sex trade are very much associated with "sex tourism" and "romance tourism" however, it is not clearly determined if Malaysia is a destination for traffickers. Sex tourism refers to men engaging and exploiting women and girls, and even boys. Whereas, romance tourism refers to women who engage men for short-term sexual encounters during holidays and it is popular among women from

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[59] Nelson Benjamin, "Influx of Workers Posing as Students: Thousands of Bangladeshis Aided by Institutions Working with Human Traffickers," *Sunday Star*, 3 November 2013.
[60] Interview with Hafez Halim, Royal Malaysian Police, 19 October 2012.

Canada, United States and Europe.[61] A similar situation exists in Thailand, but these are men looking for females for short-term sexual encounters. Such a situation is complicated because there are sex workers willing to entertain men as it is their work but since the sexual demand is high especially during peak visiting season, women and young girls become vulnerable and exploited by sex traffickers.[62]

4.3.3 Malaysia as a Transit Point

Syndicates of human trafficking and their agents perceive Malaysia as a profitable destination. These scrupulous traffickers use Malaysia as a transit point before continuing their journey to various destinations around the world. As much as the definition describes human trafficking as an international organised crime, it is also a non-cross-border issue as the offence could take place between states and within a state.[63]

In Southeast Asia, human trafficking mostly involves "disorganised crime" among individuals or small groups linked on an informal basis as there is no standard profile of the traffickers as they range from truck drivers to village aunties to labour brokers as well as corrupted enforcement officers.[64]

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[61] Claude D'estree, "Voices from Victims and Survivors of Human Trafficking," in Benjamin Perrin John Winterdyke, Philip Reichel (eds.), *Human Trafficking: Exploring the International Nature, Concerns and Complexities*, CRC Press: Boca Raton, 2012, p. 85.

[62] Ibid.

[63] David A. Feingold, "Think Again: Human Trafficking," *Foreign Policy*, Vol. Sept / Oct, No. 150, 2005 pp. 26-32; Emmers, *Non-Traditional Security in the Asia-Pacific, the Dynamics of Securitization*: 2004, p. 63.

[64] Ibid.

4.4 Human Trafficking Activities in Malaysia

This section epitomises human trafficking in Malaysia by highlighting cases and incidents reported by enforcement authorities, NGOs. Some preferred to remain anonymous due to their nature of work. Below is the statistics of human trafficking operations in 14 states in Malaysia.

Table 4.1: Malaysia: Human Trafficking Cases by States, 2008-2012

STATES / YEAR	2008	2009	2010	2011	2012	Total
Perak	1	11	5	13	19	49
Selangor	3	36	37	25	31	132
Kuala Lumpur	6	39	16	18	28	107
Pahang	0	1	0	1	1	3
N. Sembilan	1	10	2	4	5	22
Melaka	0	3	6	3	5	17
Johor	3	14	14	13	11	55
Perlis	0	0	2	0	0	2
Kedah	0	0	1	3	0	4
Kelantan	0	2	1	4	3	10
Terengganu	0	0	0	1	4	5
Penang	1	18	8	10	11	48
Sabah	0	8	14	5	17	44
Sarawak	2	9	26	16	14	67
Total	**17**	**151**	**132**	**116**	**149**	**565**

Source: Statistics Obtained from the Royal Malaysian Police (various years)

Figure 4.1: Malaysia: Human Trafficking Cases by States, 2008-2012
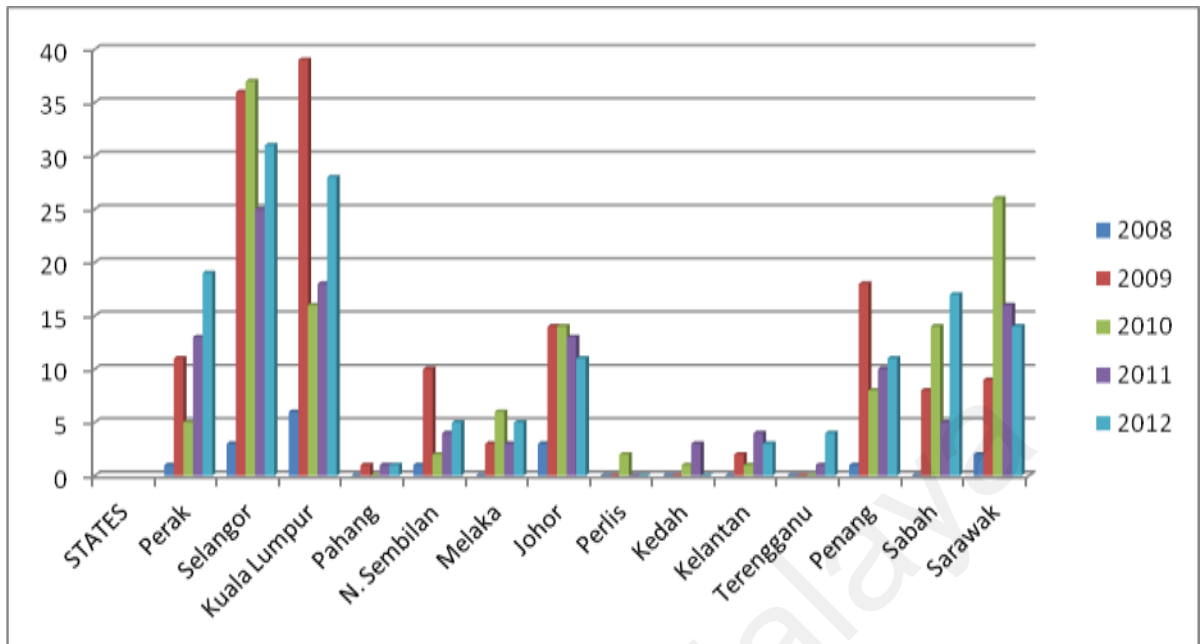
Source: Statistics Obtained from the Royal Malaysian Police (various years)

Based on the above statistics, human trafficking cases in Selangor are high due to the strategic location of the major ports on the coast and the feasibility for syndicates to traffic victims via sea. Port Klang is also known to be a trafficking point for the illegal entry for migrants and agents to transport their victims in and out of the country easily.[65] Kuala Lumpur is a favourite location for sex trafficking syndicates and most of the human trafficking victims were rescued from pubs, spas, massage parlours, karaoke lounges and restaurants during raids by the enforcement agencies. Some of the detained victims had student visas obviously under pretence or forced into the commercial sex by the agents and pimps. Like Selangor, the state of Johor is also a famous trafficking point for agents. Johor has its port located advantageously in Pasir Gudang for trafficking syndicates to transport their victims especially from Indonesian. Johor Port is also known for its free trade zone, and its warehouses are exempted from customs duties. It is also a

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[65] See Malaysia, Trafficking Routes. (accessed 4 April 2012).

famous tourist spot and a highly developing state in Malaysia with direct access to Singapore.

In Perak, human trafficking problems are also high due to the various fishermen villages scattered along the coastal line. Some of the human trafficking victims were rescued from the fishery industry especially in Teluk Intan and Hutan Melintang towns which have been identified as trafficking points by the enforcement agencies. Most of the rescued victims are from Vietnam, Indonesia, Myanmar and Cambodia. A total of 45 cases on migrant smuggling were reported in Perak alone and the victims are from Myanmar citizenship and mainly work in the fishing villages.[66] As for rescued human trafficking victims of sexual exploitation and forced labour crimes, most are from Sri Lanka and Myanmar and few from India. States like Malacca, Penang, Johor and other states in Malaysia including Sabah and Sarawak have relatively high human trafficking cases because of tourism and being located strategically along the coast.

Sabah and Sarawak with its porous borders and evidence from recent Lahad Datu incident indicate that perpetrators easily invade Malaysian borders. Most of the human trafficking victims are from the Philippines and neighbouring islands looking for opportunities in the cities. Simultaneously, there is internal human trafficking in Borneo into Peninsula Malaysia, and they are manipulated with promises of well-paid job opportunities and accommodations.

However, human trafficking cases in Kedah, Perlis and Kelantan are very low though these states border with Thailand. This could be due to vigilant police border controls in both countries preventing the movement of human traffickers. However, these states have a high number of illegal migrants, especially Kedah with 108 cases and Perlis

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[66] Statistics obtained from the Royal Malaysian Police.

with 107 cases from November 2010 to September 2012 as obtained from the Malaysian police. Though there are reports of Rohingya refugees camping at the border of Thailand waiting to enter Malaysia illegally. Some of these Rohingya are easy prey for human traffickers.

Table 4.2: Malaysia: Number of Illegal Migrants Detained by States, 2010-2012

YEAR STATES	2010–2012
Perak	45
Selangor	93
Pahang	16
N. Sembilan	24
Melaka	23
Johor	244
Perlis	107
Kedah	108
Kelantan	1
Terengganu	8
Penang	100
Sabah	107
Total	**876**

Source: Statistics Obtained from the Royal Malaysian Police (various years)

Based on the table above, the statistics exhibit the number of illegal migrants caught and identified by the Malaysian enforcement authorities in 12 states in Malaysia between November 2010 and September 2012. The state of Johor has the largest number of illegal migrants with a staggering 244 cases. Most of the victims are from Indonesia, followed by Afghanistan, Pakistan and Sri Lanka. Kedah has 108 illegal migrants from Myanmar.

In Sabah, most of the identified illegal migrants are from the Philippines with 107 documented with illegal status. In Perlis, the state is attracted to illegals from Indonesia as well as Myanmar. Selangor is known as the little haven for illegal migrants from Indonesia, and the rest are from Sri Lanka, Bangladesh, Palestine, Afghanistan and China.

In the northern states of Kedah, Perlis, Perak and Penang, which are strategically located near the Thai border, people from Myanmar trespass the international borders and settle in the states by doing odd jobs especially in fishery, agriculture and construction sites. Some travel through Kelantan and Terengganu to continue their journey to the major cities. Illegal migrants from Indonesia, Bangladesh and Sri Lanka use the sea passage to enter the country illegally, and the maritime enforcement agency apprehended most of them. There are also cases of illegal migrants from Palestine, Afghanistan, Pakistan, China and India often travel via air with forged documents and overstay. On numerous occasions, many of them risk their lives by travelling in boats.

Unfortunately, these illegal migrants are victims of smuggling rings are detained and deported to their respective countries. Some of these victims seek refugee status from the UNHCR. They would be held for a given period until the status is granted. If not, they are sent back regardless of their countries' political and economic situations.

At the same time, the enforcement officers have to ensure that these illegal migrants are not victims of human trafficking. Often illegal migrants fall prey to trafficking agents, hence it is important for the frontline officers to interview them so that they are detained under the Anti-Trafficking in Persons (ATIP) act instead of anti-smuggling of migrants' act which was included in 2010 after the amendment of the ATIP Act 2007. The statistics shown in Table 4.2 are for 2010 after the inclusion of migrants

smuggling into the act as the Majlis Anti-Pemerdagangan Orang (MAPO) council realised that the traffickers partner with human smugglers in their modus operandi.

Figure 4.2: Malaysia: Arrests of Human Traffickers by States, 2008-2012
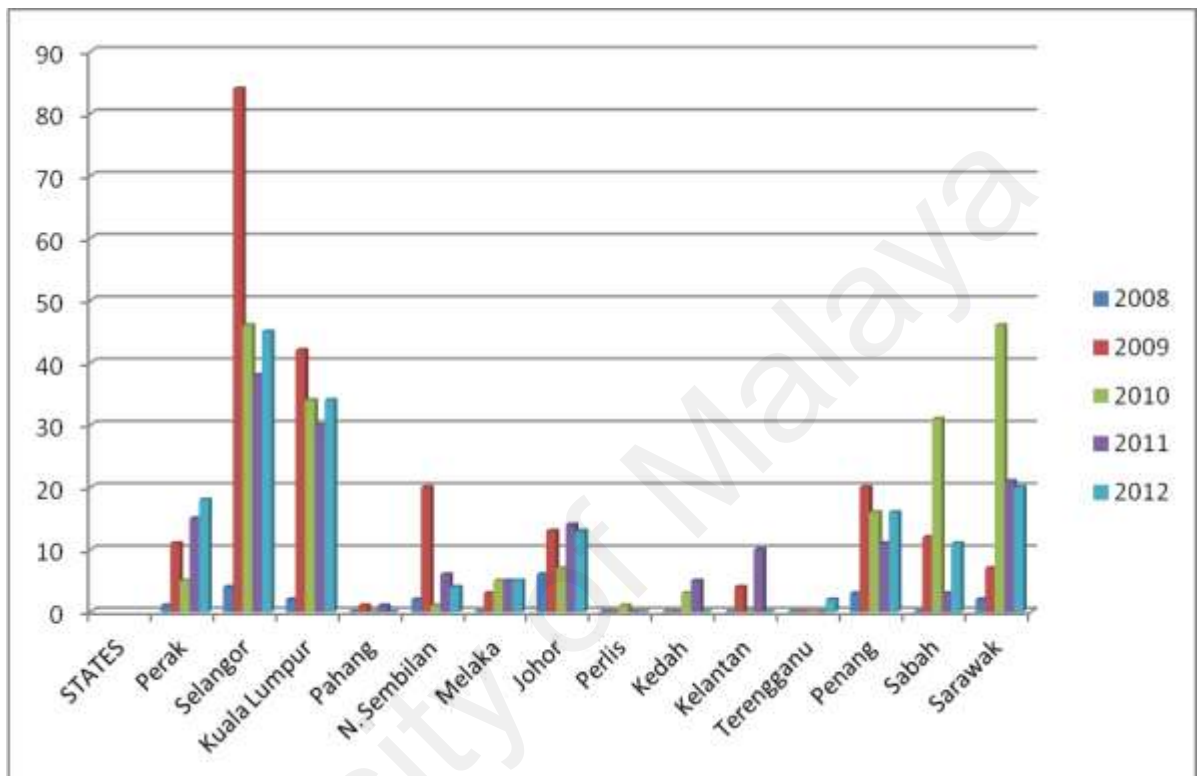
Source: Statistics Obtained from the Royal Malaysian Police (various years)

Based on the graph above, Selangor exhibited the highest total number of arrests in 2009, which dropped in 2012 in comparison with others states in Malaysia but nevertheless remains high. This is again due to the state's location on the coast and Klang Port being a favourite point for traffickers and human smugglers to enter the country via sea. The ports of Penang, Johor, Malacca, Sabah and Sarawak are desired spots for trafficking in human beings from neighbouring countries. Asylum seekers and refugees are easy targets for smugglers as they use the vulnerable situations of these victims who are running away from their countries due to political conflicts.

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Kuala Lumpur, the capital of Malaysia, is a hotspot for traffickers to gather their victims for various purposes of exploitation. Usually, women and children are exploited into forced prostitution, and many rescued victims were identified during raids at entertainment centres such as pubs, karaoke lounges, snooker and hotels, business premises like beauty and massage parlours as well as restaurants. Men are equally exploited for forced labour, and some men are forced into prostitution to entertain wealthy ladies and men. Although so far in Malaysia, enforcement authorities have not made an arrest and identified men for sexual exploitation. Rescued male victims in Malaysia are victims of forced, hard and cheap labour.

4.4.1 Sex Trafficking

In typical cases, trafficked women were forced to work in sweatshops, spas, masseurs, karaoke lounges, pubs, restaurants as well as for commercial sexual or forced prostitution. However, a recent report illustrates that the traffickers have upgraded their spots to exclusive five-star hotels and karaoke joints where operating licenses are still issued for these outlets.[67] Women are also tricked into domestic work when they were promised factory jobs in Malaysia. When they reach Malaysia, these women were forced to work as maids in domestic households for long gruelling hours. Their passports were confiscated, and they were not allowed to leave the house nor call their family members.[68] Some women were lured by the agents and human traffickers for waitressing jobs at hotels in major cities in Malaysia, but they ended up as guest relations officers (GROs) often entertaining clients into the wee hours of the morning.[69]

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[67] "Despicable act documented," *The Star*, 10 April 2012.
[68] Hariati Azizan, "A Long and Winding Road," *Sunday Star*, 20 October 2013.
[69] Jastin Ahmad Tarmizi, "Human Trafficking Syndicate Busted," *The Star*, 22 July 2013.

Since 2008 until 31ˢᵗ May 2012, the Malaysian enforcement agencies have rescued some 694 victims of human trafficking where 518 were locals and the rest were foreign nationals.[70] The respective Malaysian enforcement authorities under the MAPO secretariat had identified a total of 323 human trafficking cases on sexual exploitation alone across Malaysia. Kuala Lumpur was listed high on the sex trafficking cases with a total of 74, followed by Selangor with 58 cases and Sabah and Sarawak with 39 and 35 cases respectively.[71]

According to a local mainstream daily, 15 women were rescued by the Malaysian police from a tip-off from the Pakistan Embassy. These rescued women were six Indians, four Pakistani, three Nepalese and two from Bangladesh. From the interviews, the victims related that they were forced by the syndicates to work as GROs at night in the premises which also operate as a restaurant during the day. Besides serving at night, these women were also offered jobs as cultural and traditional dancers to entertain clients.[72] These women were forced to perform the *Mujra* a provocative and alluring dance to entertain clients especially men.

Mujra is a form of dance by courtesans during the Mughal era with elements of native classical dance, music and poems from Mughal cultures. It is a tradition practised in Pakistan, India and Bangladesh. *Mujra* is a dance between art and exotic with courtesans often dancing for royalty or wealthy patrons during the Mughal rule. However, in the present day, it is performed at events such as weddings, birthdays, bachelor parties and also as a modern dance performance shows. On the other hand, *Mujra* is also performed provocatively for clients in the pubs and bars as sexual innuendo.

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[70] "694 Human Trafficking Arrests Since 2008," *theSun*, 18 July 2012.
[71] Statistics obtained from the Royal Malaysian Police with permission.
[72] Ibid.

In another case, a brother and a sister were charged with exploiting 31 Indonesian women to work in various spas in the Klang Valley.[73] These rescued trafficking women were between the age of 21 and 59. On the same day, the World Youth Foundation chairman Datuk Seri Mohd Ali Rustam said that efforts from various agencies are strong to combat human trafficking which is estimated to be worth at RM105.6 billion annually.[74]

Often the human traffickers are locals and operate with foreign assistance, like in the case in Ipoh where a local excavator operator and his Vietnamese girlfriend trafficked into the country two Vietnamese women for immoral activities.[75] Both were arrested and charged in court and imprisoned for ten years. The prosecutor for this case fought for "a deterrent sentence as the human trafficking offence could tarnish the image of the country".[76] The rise of human trafficking activities in Malaysia definitely reflects badly on the country when the crime is against humanity and vulnerable people become the targets of the human traffickers.[77]

Women and girls are treated as mere commodities and according to Glorene A. Das, a programme director of Tenaganita, "a girl can be sold and used over and over before she collapses or has gone mad, commits suicide or dies of disease".[78] Such incidents occur to victims of sex trafficking which is equally crude, heinous and ruthless against women of all ages including children. Das explains that when a woman is trapped in the sex industry for a price of RM300 per customer per night, she can generate a significant amount of profit the by entertaining many men in just one night. For this

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[73] "Siblings Charged with Exploiting Foreigners," *theSun*, 5 September 2013.
[74] "Join Efforts to Stop Human Trafficking," *theSun*, 5 September 2013.
[75] Roshidi Abu Samah, "Human Traffickers Jailed," *The Star*, 15 October 2011.
[76] Ibid.
[77] Interview with James Nayagam, Commissioner of Human Rights Commission of Malaysia (SUHAKAM), 9 September 2013.
[78] Lim Chia Ying, "Despicable Act Documented," *Star2*, 10 April 2012.

reason, she is used by heartless pimps for several years.[79] Unlike drugs which are used for single consumption, girls are commodities that can be used repeatedly.

What is more disturbing is that there are reported missing children. No one knows what happened to them not even their parents, friend and enforcement officers. Statistics of reported missing children below the age of 12 in Malaysia from 2011 to February 2014 is a total of 765 of which 415 children were found.[80] Unfortunately, 350 children are still missing, and these children could have ended up in the hands of human traffickers. Besides that, since 2010, about 1,800 children between the ages of 12 to 18 years were reported to be missing.[81] According to the Child Rights Coalition Malaysia, in March 2012 the Malaysian government affirmed that from 2008 to 2012, a total of 122 victims were children from the rescued figure of 977 victims of human trafficking.[82] Although the reported statistic is 122 the number could be higher with many more children trapped in the hands of traffickers, pimps or agents.

According to Das, the syndicates use young boys and men to recruit by luring young girls before they led to the traffickers. These boys lure young girls by making them fall in love with them, showering them with expensive gifts to earn their trust. Once these men accomplish their goal, they hand over these girls to the human traffickers.[83] Such a method is used by the syndicates throughout Malaysia especially in the rural areas.[84]

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[79] Ibid.
[80] See *Missing Children Statistic*, Royal Malaysian Police, available at: <http://www.rmp.gov.my> (accessed 10 May 2012).
[81] Lee Mei Li, "A Parent's worst fear," *The Star*, 17 January 2014, <http://www.thestar.com.my/Lifestyle/Family/Features/2014/01/17/A-parents-worst-fear-for-child-safety/> (accessed 3 March 2014).
[82] Ibid.
[83] Interview with an anonymous informer, an NGO officer, 10 December 2012.
[84] Interview with an anonymous informer, an NGO officer, 10 December 2012.

As for sex trafficking, exclusive five-star hotels and karaoke joints are prime locations for syndicates to send their "girls" for forced prostitution as enforcement authorities raid brothels more so than outlets. However, if there is a tip on such illegal activities, the enforcement officers do not hesitate to raid hotels, pubs or outlets.[85]

With the advance of high technology, the Internet has become a helping tool for offenders to misuse the variety of social networks and employment websites to advertise job opportunities particularly a career in modelling and entertainment industry, as a domestic worker and masseurs in foreign countries.[86] People are also lured via dating websites and exploited into sex trafficking.[87] Thus far there have been no human trafficking cases reported in Malaysia via the use of Internet. However, this does not mean that Malaysians or foreigners have been deceived and exploited by the means of social technology.

Das further explained that apart from sex trafficking, women are trafficked and sold as foreign brides. These vulnerable girls and women are transacted as a commodity and are labelled as a 3-in-1 or cash-and-carry trade where a client could walk into a shop and choose a bride from the women displayed.[88] The fairer they are, the more expensive the woman would cost. In most cases, these victims are Vietnamese women. A 3-in-1 trade means a man could choose a woman from the 'bridal shop' where this woman is obliged to do domestic works for this man in the morning then follow him out to work in his business and finally at night she becomes his sex slave, therefore, it is termed a 3-in-1

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[85] Interview with Hafiz Halim, Royal Malaysian Police, 19 October 2012.
[86] Maxine M. Major, "Technology and Human Trafficking," Idaho: University of Idaho, 2012, pp. 3-4.
[87] Jonathan Mendel and Kiril Sharapov, "Human Trafficking and Online Networks: Policy Briefing," Budapest: Centre for Policy Studies, Central European University, 2014, p. 9.
[88] Lim Chia Ying, "Despicable Act Documented," *The Star*, 10 April 2012.

package with benefits.[89] These victims could be victims of sex or labour trafficking, or fresh girls trafficked to be sold as brides to foreign men.

According to a social worker with the Malaysian Women Aid's Organisation (WAO),[90] a rescued Cambodian girl related that her family was threatened when they realised that her age was altered in her family book (similar to Malaysian birth certificate) to show an older age hence they refused to send her off to work as a maid in Malaysia. Due to fear many were forced to leave their country and some may have paid a lot of money to the agent or syndicate for their work. These girls have no other options but to adhere to their earlier agreement. Unfortunately, these girls end up as sex slaves in brothels and other joints.

Many of these girls are drugged during the day and kept awake at night to serve the clients. Unable to take the toil of being repeatedly raped, many tried to escape. To prevent these girls from running away, the pimps inflict fear by punishing them ruthlessly. To teach others a lesson, the girl is stripped naked in front of other girls and hung upside down from the fan with her toes touching the centre as it spun. The girl was never seen again.[91]

The Malaysian police have also rescued other nationalities besides Asians. In Kuala Lumpur, the police have rescued 21 Ugandan women from the sex slave ring.[92] The police busted a major Ugandan sex slave ring which forced its people into prostitution in China, but the victims were rescued, and the pimps were detained in Kuala Lumpur during an operation. The rescued women were between the ages of 18 and 42

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[89] Ibid.; Lim Chia Ying, "NGOs to stage show against human trafficking," *The Star*, 10 April 2012, <http://www.thestar.com.my/Lifestyle/Features/2012/04/10/NGOs-to-stage-show-against-human-trafficking/> (accessed 15 June 2013).
[90] The social worker is Wong Su Zane as cited in "Heinous tales," *The Star*, 10 April 2012.
[91] Ibid.
[92] Rashitha A. Hamid, "Sex Slaves Freed," *The Star*, 19 October 2011.

were locked up for three months in an apartment in Bandar Sunway and forced to work non-stop for 10 hours daily.

A victim related her story on how she was promised a job as a maid with an attractive salary of US$1, 000 (RM3,100) by a "recruitment agent" back at her home in Kampala, Uganda. She was sent to China where she did not work as a maid but was forced to serve men sexually against her will. After that, she was brought to Malaysia to entertain clients and to serve her own countrymen as sex slaves. These women were beaten up and raped repeatedly if they refused and some were even starved. To be free from the syndicates' clutches, these victims had to pay a debt bondage of US$7,000 (RM22,000). Despite paying off their debts these women were cheated and refused their freedom.[93]

Figure 4.3: Global Human Trafficking

Source: Joanne Bauer, "Modern-Say Slavery and Human Trafficking: Is Business Ready to Face up to It?," *The Corporate Social Responsibility Newswire*, 14 January 2013, available at: <http://www.csrwire.com/blog/posts/675-modern-day-slavery-and-human-trafficking-is-business-ready-to-face-up-to-it> (accessed 1 June 2013).

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[93] Rashitha A. Hamid, "Lured, Beaten and Then Raped," *The Star*, 19 October 2011.

The above map indicates the number of those trafficked for sexual purposes. An estimated 142,000 people are trafficked for sexual exploitation in Malaysia. Sexual exploitation and forced labour are the most common forms of human trafficking as verified by reputable International Organisations (IOs) such as the United Nations (UN), Amnesty International (AI) and the International Labour Organisation (ILO).

4.4.2 Child Trafficking

Besides sex trafficking, Malaysia also has cases of baby trafficking. Between 2008 and 2012, there were 29 cases on trafficking in babies and children with five cases in Pulau Pinang, six in Sarawak and 18 in Selangor.[94] According to a Malaysian enforcement officer, when it comes to baby and under-aged children kidnapping, they respond immediately. This is because the victims are extremely young and defenceless they have been taken away forcefully and cunningly from their homes, hospitals, shopping complex, playgrounds only to be trafficked for a price. The baby trafficking syndicate is equally lucrative. Couples burdened with poverty are willing to abduct babies and young children to hand over to the trafficking syndicates for profit. Due to the high demand for babies and young toddlers, individuals are driven by greed to abduct children for syndicates. Therefore, the law enforcement authority acts swiftly when informed of missing and kidnapped children.[95]

In 2013, a 60-year old housewife in Shah Alam was sentenced to 14 years and fined RM30, 000 by the High Court for trafficking three babies (two boys and a girl).[96] The Malaysian enforcement authorities and agencies under the MAPO secretariat have

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[94] Statistics obtained from the Royal Malaysian Police with permission.
[95] Interview with Hafez Halim, Royal Malaysian Police, 19 October 2012.
[96] "Woman, 60, Gets 14 Years for Baby Trafficking," *theSun*, 31 January 2013.

been rescuing children and babies from the clutches of the human trafficking rings. On February 2013, the Malaysian police rescued 32 children after they busted a baby trafficking syndicate.[97] The police rescued many children during their rescue operations. For instance, ten children were rescued during a month-long operation codenamed *Ops Pintas Sayang I* which started on 24 December 2012. Subsequently, 22 children were saved in *Ops Pintas Sayang II,* which was carried out concurrently in six states in Malaysia on 21 February 2013.[98]

Another method of trafficking babies is by offering money to foreign pregnant women particularly from destitute backgrounds namely Thai, Indonesian, Indian and Bangladeshi to give up their newborns for a price usually from RM2, 500 to RM4, 500. It is known as baby selling for a profit and is exploited by traffickers. These vulnerable women are compelled to sell their babies due to their abject poverty and the burden to feed an extra mouth. Under different circumstances, women are lured, cheated and impregnated for their babies to be sold for childless couples. A local daily reported the police crippled the sales of more than 50 newborns in the past five years.[99] During the raid, 21 women between 14 to 39 years old were rescued, and they were pregnant.

Upon buying the newborn babies, the syndicates then sell these babies with their original birth certificates to childless couples for between RM18, 000 and RM30, 000. The adoption seems legitimate because of the birth certificate. Babies and toddlers kidnapped from hospitals, homes and public vicinities are also trafficked for legal and illegal adoption. They are legal when these young victims end up in the adoption agencies and illegal when they are sold in the black market. There are wealthy childless

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[97] Winnie Yeoh, "Rescued Children Pay the Price," *Sunday Star*, 3 March 2013.
[98] Ibid.
[99] Charles Ramendran, "Baby-for-sale racket Busted," *theSun*, 5 August 2015.

couples willing to spend a lot of money to buy babies and toddlers on the black market, and they do not mind if the babies are from foreign countries.

The enforcement officers arrested adoptive parents who had legally gone through the adoption process and were in disbelief when they realised the child they have adopted is a victim of human trafficking.[100] There are several private adoption agencies in the U.S. and Europe and the odds are probably high for trafficked babies to end up in the adoption process. In Malaysia, child adoption is under the jurisdiction of the welfare department making it impossible for trafficked babies to end up in the system.

Besides the operations conducted by the Malaysian police, the Immigration Department of Malaysia has its modus operandi to rescue human trafficking victims. The Johor Bahru state Immigration Department saved six Sri Lankans from a hotel in the city.[101] The victims were men, and they were trafficked by recruitment agents who had promised them factory jobs with an impressive salary of RM5, 000 per month. Unable to escape, these men succumbed to their fate and led their lives as slaves.

4.4.3 Labour Trafficking

Malaysia is a favourite destination in Southeast Asia because of its vast job opportunities across industries. The country is growing rapidly thanks to globalisation which motivates the movement of foreign workers from neighbouring nations both illegally and legally. Since the demand for labourers is high especially in the construction sites, electronic industries, manufacturing factories, plantations, and fishery as well as in

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[100] Interview with Hafez Halim, Royal Malaysian Police, 19 October 2012.
[101] "Six Sri Lankan Trafficking Victims Rescued," *The Star*, 30 June 2011.

the households, human traffickers make use of the market demand for traffic in foreign workers. They exploit the situations of the vulnerable and traffic them by various means.

A discovery by Verité's two-year study of labour conditions in electronics manufacturing in Malaysia found that one in three foreign workers surveyed in Malaysian electronics were forced labour.[102] The team interviewed more than 500 male and female workers across all the main producing regions, electronics products, and foreign worker nationalities including Malaysian nationals. The outcomes from these interviews point out that forced labour is present in the Malaysian electronics industry and that the problem is indeed widespread.

These foreign workers were promised a good salary and steady work which would entitle them to a better life for themselves and their families. However, many were subjected to high recruitment fees, personal debt, complicated recruitment processes, lack of transparency about their eventual working conditions, and inadequate legal protections.[103] The system in which foreign workers are recruited, placed and managed is complex enough to create vulnerability even in the absence of willful intent to exploit.

Similar events take place in recruiting foreign workers to work in domestic households. Foreign women were deceived into working in factories only to be forced involuntarily in private households as maids and babysitters. Such a case of Iman,[104] a

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[102] See "Forced Labour in the Productions of Electronic Goods in Malaysia, A Comprehensive Study of Scope and Characteristics," *Verité*, 2012, <http://www.verite.org/research/electronicsmalaysia> (accessed 5 May 2016).

[103] Ibid.

[104] Name has been changed for protection. Iman is one the reasons for the researcher to embark on this doctorate journey. The thirst to find out why such thing happened and did not have a clue about human trafficking until she delves deeper and realised there is more to abuse and illegal immigrants. Iman was rescued by the police and after investigation she was sent to detention then deported to her country Indonesia. Her employer was not charged. They were asked to pay her due. That was all. Iman was traumatised and she was more than 40 years old. Her employer and her sisters were younger than Iman and they had no respect for her. Iman was slapped, punched and beaten up, forced to do heavy work and mocked and insulted. The most shocking part was that her employer and family members are teachers by profession.

petite 40-year old Indonesian maid was abused and beaten for no reason, or some small reasons picked at by her employer and family members.

She was forced to work till midnight then the next morning she has to wake up as early as four. She starts with washing clothes, washing the house compound, and other house chores. In a private interview at a police station,[105] she informed that she was hired by a Malaysian family from an agent as a seamstress (as she was a trained seamstress back in Indonesia) and to babysit her employer's child. She was hired in Kuala Lumpur then brought to another town in Perak to live with the employer's parents during her employer's childbirth confinement period. Her employer just had a baby so Iman was hired to look after the eldest child.

After a while, the family she was living with was very abusive with words which escalated to beatings. She was given only one meal per day causing her to lose so much of weight that she looked like a 'walking skeleton'. Not only that, she was not paid for more than a year. When questioned on the beatings, Iman was very much traumatised. She said on a daily basis her employer's mother and sister had beaten her with a broomstick, slapping her hard on the face and even threw her down on the floor and punched her. She was accused of stealing another sister's gold bracelet, but they did not find the bracelet when they ransacked her bag. At night she slept on the kitchen floor.

The above story is one of many stories told by victims of trafficking. Though Iman was hired as a maid to babysit the children, it was lawfully wrong of them to ask her to do house chores according to Employment Act 1955.[106] When a person's wages is

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[105] Not disclosed due to security reason.
[106] Seminar Awareness Campaign on Human Trafficking and Migrant Smuggling, 20 September 2012. A speaker from the Labour Department, Abdul Razak b. Ahmad, Deputy Director of the Enforcement and Legal Department said that it is wrong and prohibited to force a worker to perform work that is not written in the contract. According to the Employment Act 1955 which enlists types of forced labour, an employer can be prosecuted for bonded labour, cheating during recruitment, fail to adhere to terms and conditions,

held back, forced to do things they are not supposed to do, and then inflict physical and emotional abuse besides being forced to starve, such actions are categorised as human trafficking. Human trafficking is not only about transporting a person from a state to another place without the consent. There is a lack of awareness of the fact that someone could be a victim of human trafficking and not an offender.

4.5 Trafficked Malaysian Women

Malaysians especially women are also trafficked abroad to the United States, Australia, Canada, China, Hong Kong, Japan, Macau, Singapore and Thailand[107] for different bonded labour, domestic servitude and the sex industry. One of the main entrance points in Malaysia is in Sabah where Filipinos[108] are trafficked to work in pubs and karaoke lounges, massage parlours and for commercial sex. Besides being forced into the sex industry, some of them work as maids in domestic households. It is a known fact that perpetrators use Malaysia as the transit country for trafficking between Thailand and the Philippines and between other Asian countries like Japan, Korea and the West the United States. Without a shadow of doubt internal trafficking occurs too.[109]

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fail to pay or delay in paying less than 70 per cent of their wages, fail to give rest day, annual leave and sick leave. However, if violence occurs, the case is filed under criminal and under the police jurisdiction. For runaway cases, it is under the purview of Immigration Department. So far, the Labour Department has filed two cases in which they lost in both cases. The seminar was organised by IKMAS, National University Malaysia (UKM) with ATIPSOM in University Malaya.

[107] See "Malaysia, Trafficking Routes," The Protection Project, 2010, p. 2; Regulating Immigration and Human Trafficking, 27th Commonwealth Parliamentary Conference of Members from Small Countries, New Delhi, 24 September 2007; Amy O'Neill Richard, "International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organised Crime," State Department's Bureau of Intelligence and Research, 1999, p. 5.

[108] See "Malaysia, Trafficking Routes," 2010, p. 2; Diana Wong and Gusni Saat, *Trafficking of Filipino Women to Malaysia: Examining the Experiences and Perspectives of Victims, Government and NGO Experts: Executive Summary*, Turin, United Nations Interregional Crime and Justice Research Institute, United Nations Global Program against Trafficking in Human Beings, 2004, p. 2.

[109] Ganesh, V. Shankar, Evangeline Majawat, and Jassmine Shadiqe, "Signs That Show Malaysia on Human Trafficking Route," *New Straits Times*, 30 April 2009, <http://www.highbeam.com/doc/1P1-163452783.html> (accessed 10 May 2013).

Even though to a large degree most of the literature is focused on transnational human trafficking, however, internal trafficking is common in Southeast Asia. Victims are forced to migrate from poverty-stricken rural areas to urban and tourist centres seeking economic opportunities. Due to their poor economic background, human traffickers seize the opportunity by taking advantage of their circumstances and lure young people from rural villages to the city with job prospects. Such movement occurs internally and does not involve cross-border crossings. In Cambodia, almost 74 per cent of the population is considered internal migrants, and many of them fall prey to the trafficking syndicates.[110]

4.6 Malaysia as a Source Country

A case reported that "six Malaysian women were held in Melbourne in sexual servitude" and the alleged perpetrator was a Malaysian woman. These rescued women of Indian background were recruited on Malaysian soil and then sent to Australia on student visas by different agents. Once in Australia, they were forced to pay for the cost of their airfare, visa and course fees amounting to about A\$5,000 (RM16, 126). Unfortunately, these women were unable to pay back such a large amount. Therefore, they were held in a brothel against their will until they pay off their debts by working for seven days a week as sex workers. Though these victims managed to settle their debts, yet their pimp refused to let them go by threatening to revoke their visas".[111] Due to fear, these women were compelled to remain with the pimp as sex slaves.

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[110] *The Mekong Region Human Country Datasheets on Human Trafficking 2010*, Bangkok, United Nations Interagency Project on Human Trafficking (UNIAP), 2010, p. 1.
[111] "Malaysian 'Sex Slaves' Trial Opens in Sydney," *theSun*, 5 February 2013.

The ILO estimates that a minimum figure of persons trafficked into forced labour and sexual exploitation in Asia and the Pacific alone is 1.4 million from 2.4 million globally.[112] An estimation figure of 200,000 to 450,000 people are trafficked annually within the Greater Mekong Sub-region.[113] However, at least 200,000 to 250,000 women and children are trafficked from Southeast Asia annually,[114] and the figure has been escalating since then. Thailand and China ranked very high as the origin countries compare to the rest of the Asian countries like Cambodia, Laos, Myanmar, the Philippines, and Vietnam, which also ranks high. In the citation index, Thailand ranks very high as the origin, transit and destination country.[115]

4.7 The Impact of Human Trafficking

With rapid economic growth and social development in Southeast Asia, criminal organisations have equally become business magnets in their various illegal trading. Transnational organised crimes such as drug trafficking, human trafficking and migrant smuggling as well as counterfeit products have become the talk of major summits and conferences by international organisations and NGOs in tackling and combating them drastically. As the main focus of this research is on human trafficking, this crime has become an immense challenge to world leaders due to multilateral security reasons of the state and the impacts on the state, its actors and non-state actors.

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[112] See *Border Liaison Offices in Southeast Asia 1999-2009, Ten Years of Fighting Transnational Organised Crime*, Bangkok, Regional Centre for East Asia and the Pacific, United Nations Office on Drugs and Crime, 2010, p. 13.
[113] Ibid.
[114] Mikel Flamm, "Exploited, Not Educated Trafficking of Women and Children in Southeast Asia," *UN Chronicle* Volume XL Number 2, 2003, available at: <http://www.un.org/Pubs/chronicle/2003/issue2/0203p34.html> (accessed 10 May 2013).
[115] See *Trafficking in Person: Global Patterns*, New York, United Nations Office on Drugs and Crime, 2006, p.18.

The reality of security challenges facing Southeast Asia has not reformed significantly even after the end of the Cold War. The magnitude of the security problems has increased characterised by complex interrelationships by internal problems like terrorism and NTS concerns, regional conflicts and globalisation impact.[116] The ASEAN nations face a range of NTS issues and among them are human trafficking and migrants smuggling. The main concern of human trafficking and migrant smuggling is where these migrants would become illegal and eventually many fall victim to human trafficking. Therefore, human trafficking is a threat to the security of the people.

Malaysia has become a favourite spot for the trafficking syndicates to operate. Hence it is a great challenge for the respective government to acknowledge and administer as the crime reflects badly on the reputation of the country. In 2011, Malaysia had an estimated 2,320,034 foreign workers and illegal workers registered in the country[117] with 82 per cent of the foreign workers located in Peninsular Malaysia, and the rest is presumed in Sabah/Labuan and Sarawak.[118] The estimated breakdown of legal workers with 1,016,908 and illegal workers around 1,303,126 in Peninsular alone is disturbing.[119] Although these figures encapsulate the existence of illegal workers in Malaysia, it is alarming to know the mode of their access into the country. Many of them could be the victims of human smuggling and human trafficking.

The irregular movements across have become a complex dilemma for the states to overcome this crime and manage it strategically. The modus operandi of human trafficking and clandestine illegal migration has distinct definitions and activities, yet

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[116] Rizal Sukma, "Southeast Asian Security: An Overview," in N.S. Sisodia and Sreeradha Datta (eds.), *Changing Security Dynamics in Southeast Asia*, New Delhi: Magnum Books Pvt Ltd, 2008, pp. 15-25.

[117] More than 2.3 million foreigners registered under 6P programme, *Bernama*, 5 September 2011, <http://mapo.bernama.com/news.php?id=611630> (accessed 4 April 2012).

[118] *Immigration in Malaysia: Assessment of its Economic Effects and a Review of the Policy and System*, World Bank in Collaboration with Institute of Labour Market Information and Analysis (ILMIA), Ministry of Human Resources Malaysia, 2013.

[119] More than 2.3 million foreigners registered under 6P programme, *Bernama*, 5 September 2011, <http://mapo.bernama.com/news.php?id=611630> (accessed 4 April 2012).

both crimes are closely intertwined.[120] Both movements are irregular migration exposing the states as well as the migrants cum victims to various vulnerable conflicts and insecurity. Due to challenging situations, these illegal migrants inevitably become victims of human trafficking when changeover takes place between agents. When such circumstances transpire, for local enforcement authorities such as the police borders, immigration officers and police, their task to identify the actual victims becomes extra challenging. This is because the difference between illegal migration and human trafficking in the border areas is blurred.[121] Any errors would impact their work credibility and mistakes tend to take place even after being attentive in identifying the victims of trafficking from illegal migrants.

The government of Malaysia faces numerous challenges when it comes to the handling of the unrestricted flow of illegal migrants into the country. Negative impacts from this irregular flow are a threat to the national security of the state. The wide range of conflicts and problems arising from this movement create an imbalance between the local population and foreigners. The illegal migrants who have successfully entered the country in the name of globalisation by evading the security borders have become more vulnerable to traffickers.

Although the impact of globalisation on nations and the people has had a vastly positive effect on economic growth, it has its downside where the "gap between the rich and the poor leading to a revolt from the margins".[122] The gap and the margins shove

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[120] Ernesto U. Savona and Sonia Stefanizzi (eds.), *Measuring Human Trafficking: Complexities and Pitfalls*, New York: Springer, 2007; Maruja M. B. Asis, "Human Trafficking in East and South-East Asia: Searching for Structural Factors," in Sally Cameron and Edward Newman (eds.), *Trafficking in Humans: Social, Cultural and Political Dimensions*, Tokyo: United Nations University, 2008, pp. 186-189.
[121] Maruja M. B. Asis, "Human Trafficking in East and South-East Asia: Searching for Structural Factors," 2008, p. 195.
[122] Sagarika Dutt, "Human Security in South Asia and the Role of the UN and Its Agencies," in Sagarika Dutt and Alok Bansal, (eds.), *South Asian Security 21st Century Discourses*, London: Routledge, 2012, p. 197; Also see Karin M. Fierke, *Critical Approaches to International Security*, Cambridge: Polity Cambridge, 2007, p. 149.

deprived people make bad decisions by travelling out of the country more often than not illegally to look for better opportunities as the impact of globalisation does not favour them economically.[123] However, it favours the human smugglers and traffickers, and they reap the benefits and profits of globalisation by exploiting these vulnerable people looking for a better opportunity by working in countries like Malaysia. These groups of criminals wait for their victims to fall and pretend to give a helping hand only to shove them further into debt and despair.

Opening up national borders for the purpose of economic growth and political ties has driven the criminals to be more sophisticated with their business crimes. Globalisation not only contributed to the economic development of a country but has led to the intensification of transnational organised crimes. Accordingly, numerous IOs and INGOs have vehemently voiced their concern for global security and have urged states to respond to the threat of global poverty which comes in the form of drugs, HIV/AIDS, climate change, illegal migration and terrorism[124] including organised crimes like drug cartels, human trafficking, human smuggling and illegal arms trading.

Equipped with wide and sophisticated network and rapid globalisation, human trafficking has challenged the security of states and the sanctuary of people. The United Nations Officer for Drugs and Crime (UNODC) views the crime of human trafficking and smuggling of migrant very seriously as both crimes directly involve people from all walks of life in the world. The major concern of this offence is the forced movement of

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[123] Ibid.; Also see Ray Kiely and Phil Marfleet (eds.), *Globalisation and the Third World*, London: Routledge, 1998; Jane H. Bayes, Mary E. Hawkesworth, and Rita Mae Kelly, "Globalisation, Democratization, and Gender Regimes," in Rita Mae Kelly, Jane H. Bayes, Mary E. Hawkesworth and Brigitte Young (eds.), *Gender, Globalisation and Democratization,* Maryland: Rowman and Littlefield, 2001, pp. 1-14; Lourdes Benería, Günseli Berik, and Maria Floro, *Gender, Development, and Globalisation: Economics as If All People Mattered*, New York: Routledge, 2003; Anthony McGrew and Nana K Poku (eds.), *Globalisation, Development and Human Security*, Cambridge: Polity, 2007; Jan Nederveen Pieterse and Boike Rehbein, *Globalisation and Emerging Societies: Development and Inequality*, London: Palgrave Macmillan, 2009.
[124]*Human Development Report*, United Nations Development Program, 1994, p. 24; Sagarika Dutt, "Human Security in South Asia and the Role of the UN and Its Agencies," 2012, p. 197.

people for labour and sexual exploitation, and it is repulsive when it also involves under-aged children.

The crime is a challenge to a state and its neighbours as the movement involves legal border crossing via land, air and sea. Moreover, the impact of this crime on the state and its economy and society is alarming, and it is indeed disturbing to know that the traffickers are both aggressive and strategic in this business dealing in human beings, and it challenges the sovereignty of the state and the security of the people.

4.8 Political Impact

4.8.1 National and Border Security

The common pertinent question to destination states which encounter human trafficking frequently is how safe and secure is the border? Regardless of effective measures placed at various at the airports, international highway roads and along the coastal, human traffickers and smugglers can invade and trespass these borders. Thus, how effective is our border security?

When national security is the key agenda of a country, and it is threatened by criminals of organised crime such as human trafficking, it necessitates the government to be more vigilant on security issues especially at the many cross borders in the country.[125] Human trafficking activities reflect negatively on a country, and it implicates security measures on borders, the effectiveness of the law, affecting the tourism industry and infuses politics and economics instability of a country. Such negative impressions may impinge on bilateral relations with foreign investors and subsequently impede future

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[125] Interview with Hafez Halim, Royal Malaysian Police, 19 October 2012; Interview with Professor Dr. Azizah Kassim, Principal Research Fellow of Institute of Malaysian & International Studies (IKMAS), 13 January 2014.

investments. Apart from that, a state necessitates spending an enormous amount to prevent this crime, for rescue missions as well as to prosecute. Plus, the possibility for bribery to take place is high as traffickers' approach cross borders using this method. This is one of the reasons for this crime to protract globally thereby requiring collective involvement from various actors at the state and international levels.

The definition of national security clearly signifies the safety of a state and the power it entails with military forces and influence. National security symbolises the authority of a state and the power and strength of its defence artilleries when the state is facing a significant threat within as well as from foreign invasion. National security determines if a state or its people are free from threats and not under any foreign control or occupation. When the situation is clear and safe, convinced that both the state and the people are free from outside domination, only then do the decisions on what would be the social or political priorities take precedent over other issues. This is to ensure the preservation of national independence. Human trafficking affects the reputation and image of a country, particularly when the state's borders are trespassed illegally.

It is imperative to address the security of the borders when it involves the movement of goods, capital, people and technology. With rapid globalisation and development, countries have taken the initiative to go global with their products. Similarly, human traffickers have pursued their business globally across borders both lawfully and unlawfully.

One of the main factors for the increase in human trafficking is due to the impact of globalisation where the world has become more borderless[126] making it easier for traffickers and smugglers to transport their victims. Mass movements with tourism,

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[126] Leslie Holmes, *Trafficking and Human Rights: European and Asia-Pacific Perspectives*, Cheltenham: Edward Elgar Publishing, 2010, p. 8.

business, temporary residence or multiple residences in foreign lands give access for human traffickers to legally travel with their victims.[127] For that reason, the UN Protocols initiate the actors in the states to strengthen their border security and enhance their security measures to stop if not prohibit the perpetrators.

Since human trafficking is a transnational organised crime, it involves border crossing at the international level as well as within the states. Professional criminals function by forging legal documents such as travel documents and personal documents by undermining the border surveillance of a state. It is imperative for a state to be vigilant in guarding the borders of the country, especially when if it is feasible to transport commodities such as human beings, drugs and weapons into the country. It has to be more guarded if those commodities are illegal but can enter the country with proper counterfeit documents.

In the case of human trafficking including migrant smuggling, often border authorities are bribed by the perpetrators as they need to cross borders to desired destinations. These perpetrators are efficient in their operations and always look for loop-holes and corrupted officers to ease their movement across borders.[128] Bribing officers at the embassies for counterfeiting visas enables the professional perpetrators to move freely around the world. Corrupted enforcement officers tarnish the image of a nation when they are supposed to uphold and safeguard the borders from the invasion of human traffickers.

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[127] Raimo Väyrynen, "Illegal Immigration, Human Trafficking, and Organised Crime," WIDER Discussion Papers//World Institute for Development Economics (UNU-WIDER), 2003.
[128] See Atanas Rusev, "Human Trafficking, Border Security and Related Corruption in the EU," Geneva, DCAF Centre for Security, Development and the Rule of Law 2013, available at: <http://www.dcaf.ch/> (accessed 11 November 2014).

There are cases where the traffickers travel by road and rivers as well as track the jungle to avoid any confrontation with the border authorities. These seasoned traffickers travel by truck or car and then ditch these vehicles to continue their journey by foot using the small paths and roads. They force their victims to walk for hours to reach their destinations. Since these victims have paid their travel fees they have no choice but to follow the instructions from their 'agents'. Some of these victims may not have any documentation so they are smuggled and then they become the victims of trafficking.

In Malaysia, there are many *jalan tikus* which means illegal routes and paths for illegal movements to take place. These routes are identified in states in the north namely Perak, Kedah, Penang, Kelantan and Selangor, whereas in the south Johor and Malacca are prominent for traffickers to use such illegal paths. Philippines and Indonesians in Sabah and Sarawak use the small illegal paths along the forest and coastal line to traffic and smuggle into the country. Places like Bukit Tinggi, Teluk Intan, Johor Bahru, and Kota Kinabalu are famous for ports, therefore, the perpetrators are well aware of these locations to transport in their victims.[129] These inroads have no patrol borders or enforcement officers to safeguard making it feasible for traffickers to transfer their victims and for illegal migrants to enter the country.

Many victims of human trafficking were trafficked from the Southern Thailand border into Malaysia. These victims are stateless people from Myanmar; the Muslim Rohingya, who flee from political suppression. They travel the porous state borders from Thailand into the country with the traffickers and many camps outside the borders before

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[129] Interview with Professor Dr. Azizah Kassim, Principal Research Fellow of Institute of Malaysian & International Studies (IKMAS), 13 January 2014.

entering into Malaysia from Penang and Kedah. These traffickers abuse, torture and threaten these victims to get a ransom from their families in Myanmar.[130]

The current Home Minister of Malaysia, Datuk Seri Dr. Ahmad Zahid Hamidi notified and acknowledged that the smugglers and other criminals such as traffickers are utilising a complex network of cross-border syndicates to operate.[131] Therefore, it is essential for inter-agencies to exchange information and intelligence while personnel to be geared up all the time. With such statements, border patrols and coastline marines are vigilant hence when illegal immigrants are detained, immediate deportation takes place without investigation. When unidentified victims are repatriated immediately without interviews and investigations, this will hinder catching the real perpetrators.

In Malaysia, the Malaysian Maritime Enforcement Agency (MEMA) operates differently when they arrest boat people trespassing the coastline, the officers interview the illegal immigrants first and identify them as smuggling migrants whether they have proper documents or fake documents and victims of human trafficking. Once they identify the detainees, the victims of human trafficking will be handed over to the police authority for further investigation, and the smuggled migrants to the Immigration Department for action.[132]

The perpetrators have been in the industry for so long that they are aware of the porous borders surrounding Malaysia. People from the neighbouring states eye Malaysia because of its economic stability and the vast job opportunities which the locals do not consider doing. Malaysia is a developing nation with a lot of construction taking place.

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[130] Stuart Grudgings, "Exclusive - Trafficking Abuse of Myanmar Rohingya Spreads to Malaysia," *Swiss Info*, 6 March 2014, <http://www.swissinfo.ch/eng/news/international/Exclusive_-_Trafficking_abuse_of_Myanmar_Rohingya_spreads_to_Malaysia.html?cid=38099884> (accessed 11April 2013).
[131] "Complex Network of Cross-Border Syndicates," *theSun*, 28 January 2014, p. 5.
[132] Telephone interview, Commando Nurul Hizam, Malaysian Maritime Enforcement Agency (MEMA), 15 August 2013; Telephone and email interview, Lt Siti Khairunnisak binti Abdul Aziz, Malaysian Maritime Enforcement Agency (MEMA), 12 September 2013.

Perpetrators act as agents in luring and coaxing people from the poor countries around Malaysia such as Cambodia, Myanmar, Thailand, Laos, India, Bangladesh and Indonesia about the job opportunities available. Because of their abject poverty and a family to support, these people are easily attracted and fail to see the risks that lie ahead. Some either have proper travelling papers or forged documents or none at all. Hence, the agents will prepare fake travel documents in case they are stopped at border patrols.

Regardless of vigilant marine patrols around the coastal line, illegal migrants from neighbouring countries cross the ocean to enter Malaysia, and if these illegal immigrants successfully reach their destinations, then their agents will hand them over to traffickers to be transported to various towns in Malaysia.

Often these immigrants do not realise that they have become victims of human trafficking and they have been cheated of their monies and face false promises of jobs with good wages. Traffickers lured these victims into paying a hefty sum to bribe the border police if they are caught. At the airports, especially Kuala Lumpur International Airport (KLIA) and Low Cost Carrier Terminal (LCCT) the agents wait at the gate with proper documents to receive these foreigners without any problems.[133] Few cases have been reported in borders or airports or ports because it is difficult to identify the victims and victims may not know that their fate would change once they reach their destinations. For this reason, the enforcement authorities such as the border police, port enforcement officers and immigration officers as well the customs officers are unable to recognise victims of human trafficking.

An investigative reporter of the local newspaper found that senior lecturers from local colleges prepare student visas and documentations to receive Bangladeshi

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[133] Nelson Benjamin, "Influx of Workers Posing as Students: Thousands of Bangladeshis Aided by Institutions Working with Human Traffickers," *Sunday Star*, 3 November 2013.

foreigners into the country at the KLIA.[134] Once these foreigners arrive at the airport, these lecturers produce proper documentations including student visas at the immigration counters. These foreigners have been duped into believing that they are in Malaysia to work at decent places with lucrative pay. Unfortunately, the changeover happens after they leave the airport as another agent will take them to different locations in Selangor, Perak and as far as Johor to work in the plantations and construction sites for hard labour with less pay or none at all.

The perpetrators are knowledgeable in their operations and with experience of transporting people leading them to change their working patterns when necessary.[135] They prepare valid documents for the victims and encourage them to travel alone so they manage to cross the border with legitimate documents. Once these victims meet the other business partner or agents or middlemen or employers, their documents are confiscated, and these agents will not renew their passports where these victims eventually become illegal migrants. With this method, these perpetrators would threaten them that the police would arrest them if they try to escape or run away because of their illegitimate status in the country. The victims are blackmailed to work harder without pay, and they go through the ordeal of abuse at the hands of their employers.

It is an immense challenge for enforcement officers to control the borders especially when agents travel with the victims with proper documents to enter the country.[136] The victims are also provided with proper documentation to deceive the officers to avoid trouble at the border. This inevitably encourages the traffickers to be active in their efforts in deceiving, luring and trapping their victims, by all means, to cross the tight security borders even by bribing some of the enforcement authorities.

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[134] Ibid.
[135] Interview with Professor Dr. Azizah Kassim, Principal Research Fellow of Institute of Malaysian & International Studies (IKMAS), 13 January 2014.
[136] Interview with Saravana Kumar, Deputy Director, Malaysian Immigration Department, 22 August 2013.

The challenge for the authorities is also in identifying the victims of human trafficking.[137] It is complicated as the enforcement authorities are unable to determine the victims during raids on pubs, karaoke lounges, massage and beauty parlours or arrests made due to complaints received on domestic abuse in households. Victims are only identified during the investigation as the victims are interviewed and the enforcement officers would be able to distinguish the victims of human trafficking from illegal migrants.[138]

Though the government respond by reinforcing anti-fraud measures to detect fake travel documents and identification at various entrance points, enhancing the application procedures of passports and visa documents around the country with sophisticated identification technology still it is not sufficient to combat human trafficking as well as illegal entries of migrant smugglers. The traffickers and smugglers are always one step ahead of the enforcement authorities in successfully transporting their potential victims to multiple destinations within the country and around the world because of the high turnover.

4.9 Social Impact

4.9.1 Human and Health Security

Human security has two aspects, 'freedom from want and freedom from fear.'[139] On every humanitarian ground, when forced and imposing fear violates a person's rights thus the person's security is threatened to the utmost. Therefore, human security is about

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[137] Ibid.
[138] Interview with Hafez Halim, Royal Malaysian Police, 19 October 2012.
[139] Amitav Acharya, "Human Security: East Versus West," *International Journal*, Vol. 56, No. 3, 2001, pp. 442-460.

protecting the people from the violence around them, and from threats in social, economic and political life.

Human trafficking violates the human rights of the vulnerable populations and exposes them to dangerous liaison with disguised criminals. The security of the people is at stake when human rights meekly constitute the juridical aspect of human security. The security of the community may hold greater importance than the security of its individual members as they are not mutually exclusive.[140] However, by guaranteeing the human rights' which is the human security of its people could enhance the security of the state.[141]

Human trafficking affects the security of a person from the day he or she is approached by a disguised perpetrator enticing them with big money, promising jobs, comfortable lifestyle and dreams of luxury living. Poor communities in the rural areas especially those in rural villages in Malaysia including Sabah and Sarawak are bogged down with abject poverty and unemployment. With rising prices of staple products from food to fuel and clothing, people are finding it hard to cope with everyday living. Because of such extreme situations, young men and women are leaving their villages to go to the city to look for jobs for survival especially those with young children and elderly parents to care for.

They are easy prey for traffickers or agents with false promises and willing to pay for all the travelling expenses. Later, the victims are forced to repay every cent spent on them with added interest and these victims become bonded until they pay back all the money owed to the agents. Apart from that, these victims are forced to live in deplorable

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[140] Herman Joseph S. Kraft, "Human Rights, Security, and Development in Southeast Asia: An Overview," in David B. Dewitt and Carolina G. Hernandez (eds.), *Development and Security in Southeast Asia Volume III: Globalisation*, Ashgate, 2003, p. 117.
[141] Ibid.

conditions. For example, many are crammed up in a small room and given only one meal per day. Household maids were forced to eat leftover food from their employers' or children's plates. They were abused beyond recognition, and the unlucky ones have died due to internal injuries and malnourished as well as starved.

There are situations where parents are willing to sell their young children especially girls to these agents. Their own parents threaten the security and well-being of the child. In poor countries such as Myanmar, Cambodia, Laos and Vietnam parents are willing to trade their young children to traffickers due to accumulated debts, unable to fend for their children and to make fast money.[142] Once the agents buy these children, the parents have no rights to their children, and they may never get to see them. This is because these children are trafficked into the big cities in other countries to work as sex slaves, or domestic works, or in industrial and manufacturing sites.[143] In Malaysia, babies and under-aged children are kidnapped to be trafficked for illegal adoption as well as for sexual and labour exploitation.

The impact of this crime on the children, women and men is so immense that the victims are traumatised due to horrendous physical and emotional abuse. Despite experiencing freedom after being rescued, these victims go through psychological torments in their lives, and it takes a long time for the healing process to work. Some of these women and children who were forced into sexual entertainments and into the streets to beg are deliberately disabled with physical injuries, and most are inflicted with HIV/AIDS for life. Since these victims are coerced and manipulated by their money and bonded with debt, at home their families receive neither money nor news from their children. The families have no idea of their whereabouts leaving them in distress.

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[142] Interview with Chua Khai Yan and Ooi Jilian, Officers, International Organisation for Migration (IOM) Malaysia, 7 November 2013.
[143] *Trafficking in Persons Report*, Washington DC: United States, Department of State, 2013, p. 34.

Human trafficking activities contribute to social challenges including various health issues in Southeast Asia. The nexus between human trafficking especially sex trafficking and poverty and transmittable diseases within and across borders have caused many fatalities. In 2011, there were around 8,400 adults (11 per cent) in Malaysia living with HIV and 21 per cent were women and girls compared to ten years ago where only 5 per cent of HIV patients were reported.

There is a thin line that disconnects prostitution from sexual exploitation. As there is such a term as voluntary prostitution and in some parts of the world, it is legal[144] to prostitute compare to many other countries, the risks to the health and well-being of migrants' especially trafficking victims are clearly high. There are many kinds of exploitation in the sex industry where women and children become victims of sex trafficking are forced into prostitution, sex slaves, for pornographic movies, to serve as guest relations officers (GROs) or people's relations officers (PROs), as child bearers for adoption purposes and other sadistic reasons are exposed to contagious diseases. Many are shanghaied and forced to perform involuntary sexual acts. Because of this, these victims become addicts and rely on drugs and alcohol to hide their shame and guilt.

Victims of sex trafficking are vulnerable and exposed to sexually transmitted diseases (STDs) which increase the risk to contract HIV/AIDS, infections (STIs) such as hepatitis, and other sexual health problems as they are forced to entertain clients repeatedly without any protection. Due to their age and vulnerability, under-aged children and young women may even face death when they are faced with aggressive clients.[145]

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[144] For example, in Singapore prostitution is legal.
[145] Interview with Chua Khai Yan and Ooi Jilian, IOM officers, 7 November 2013.

Victims are also exposed to unwanted pregnancy and are forced into unsafe self-abortion by their pimps, and many die from abortion-related complications. Also, victims go through a period of mental and health problems like nightmares, insomnia, suicidal attempts, addiction on drugs and alcohol, and even murder.[146] To gain control over the women and to inflict fear, the perpetrators murder the girls who try to escape to serve as a lesson for others from running away.

The impact of health is not only on the victims but also for the clients who visit the brothels. They may not know the health status of the girls and women in the brothels and are prone to be transmitted by any of the STDs or infected by STIs. The irony is the victims may not know of their health conditions and that they could be carriers of such diseases and infections. In rural areas in the poor regions, the health care system is not for everyone especially for those who cannot afford it, and it is discriminatory as it does not offer the same quality of service to all. Some may not have a healthcare service in their area of living and by the time the disease becomes fatal it is too late to respond. This vulnerable population are deprived of health security because of the high costs and lack of knowledge of their health conditions.

Children who are victims of child sex trafficking has traumatising consequences including long-lasting physical and psychological impact, HIV/AIDS disease, drug addiction, unwanted pregnancy, malnutrition, social isolation and some of them even face death eventually.[147] Whereas those children who are forced into child marriage, hard labour in factories, plantations, housing industries, involuntary domestic servitude are abused to the extent of being raped. The scars from numerous beatings and abuses remain physically on them and emotionally it takes years of rehabilitation for these young

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[146] Sigma Huda, "Sex Trafficking in South Asia," *International Journal of Gynecology & Obstetrics*, Vol. 94, No. 3, 2006, pp. 374-381; Also see *Trafficking in Persons Report*, 2005.
[147] *Trafficking in Persons Report*, 2013, p. 31.

children to recover. Children separated from their families coerced into becoming child soldiers are treated aggressively and trained to combat and even persuaded as suicidal bombers.

For instance, on a global platform in many African countries, children are trafficked to become child soldiers. In India, children are trafficked to work in the plantation and rice fields. In the West and Europe, children are forced into prostitution child pornography. At the same time, babies and children are kidnapped to be trafficked for adoption especially from Asian countries. Many rich childless couples are willing to adopt, and though they had to go through adoption agencies formalities, some of these agencies might be dealing with international trafficking syndicates.

In the case of organ harvesting, victims are kidnapped and killed for their organs. Although there are instances where people are willing to give up their organs for some money the scar remains forever, and their health is jeopardised especially when the operation of removing the organs is done without proper sanitation and safety. People have died due to dangerous surgery procedures performed by non-medical practitioners.

When human trafficking victims become vulnerable due to their unfortunate circumstances, the impact endured is so immense that it is crucial to help them to overcome the traumatising events. The former UN Secretary-General Kofi Annan stated that the human development is imperative when they face calamities. He stressed that by empowering people during difficult times ensure the 'freedom of future generations to inherit a healthy natural environment.'[148]

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[148] *Human Development Report*, United Nations Development Program, New York: United Nations, 1994.

4.10 Economic and Societal Impact

In Malaysia, low skilled jobs are mainly offered to foreign workers because they are willing to accept low wages. Malaysians in general demand a high salary and are selective over their work and such attitude forces employers to seek foreign workers and this results in unemployment among locals. Besides that, globalisation influences the economic growth of a state, and when a state goes through the development process which involves building the nation's infrastructure, it needs a huge labour force. The economic demand for the labour force to work in the construction sites is high because local citizens are not interested in working in hard and hot conditions.

Malaysians shy away from blue collar jobs in the construction sites, industrial fields, plantations and fisheries. As a result, the construction companies have to hire workers from Indonesia, Bangladesh, Thailand, Myanmar, India, China, and other neighbouring states. The outcome is obvious when the salary paid to the foreign workers flows out of the country. When the estimated figure of 2,320,034 foreign workers are registered in Malaysia,[149] one can only conclude the amount of money flowing out of Malaysia into the economics of foreign countries.

Human trafficking syndicates use the demand for cheap labour to traffic willing foreigners into Malaysia. It disrupts the global economy as it pushes source country to lose part of their labour supplies whereas the transit and destination states are forced to face illegal immigration flows and costs in dealing and managing these unauthorised migrants. Moreover, the transit and destination countries have to deal with the cost incurred for victims' protection and security, providing shelter facilities and provisions for their well-being as well as prosecution costs and finally deportation.

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[149] More than 2.3 million foreigners registered under 6P programme, *Bernama*, 5 September 2011, <http://mapo.bernama.com/news.php?id=611630> (accessed 4 April 2012).

Therefore, "human trafficking tears apart the structure of local economies, adds to the bureaucratic and law enforcement burden at all levels of government and destroys people's lives".[150] During these ordeals, the human traffickers are often acquitted from their crimes to continue their trafficking activities by preying on vulnerable individuals.

The societal impact upon the country is when the people are faced with atrocious crimes performed by the foreigners. The enforcement authorities especially the police are confronted with notorious robbery, snatch, murder, kidnapping, and rape cases masterminded by the migrants in the country. Furthermore, there is fighting and murder among them due to conflicts and misunderstanding. Locals have become extra cautious when among foreigners in public and secluded places. The public is very concerned about their safety, and this indirectly affects them emotionally because of the fear of being around foreigners.

When young girls and women return home after the terrible ordeal, most feel ashamed, and guilt overcomes them. Most victims of sex trafficking and those forced to be sex slaves have to undergo rehabilitation to enter into the society. These women were traumatised, and the humiliation for doing unimaginable things is hard to forget, and they need the community's and family's help to survive.

Society often blames the victims for the misfortunes and looks down on them. By doing so, they are not helping these victims to overcome the years of abuse, torture, rape and forced prostitution that they had to endure. Men and women who lose all their savings and money at the hands of the agents and human traffickers should not feel guilty because they were tricked, manipulated and trapped in becoming a victim of forced labour, sex slave, forced prostitution and involuntary domestic servitude.

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[150] Elizabeth M. Wheaton, "Economics of Human Trafficking," *International Migration*, Vol. 48, No. 4, 2010, pp. 114-141.

Parents who gave up their children to agents with an intention for the child to have a better life find that they end up as beggars on the street with amputated limbs, victims of child sex trafficking and pornography, forced to become child soldiers and are engaged in hard labour in plantations, factories, and heavy industries. When some of these children are saved and returned home, they should be cared for tenderly as the scars of human trafficking may remain with them for the remainder of their lives.

4.11 Impact on the Victims

The impact of human trafficking on victims is complicated, and it is not easy to comprehend. Many of the rescued victims especially those from the clutches of sex traffickers, pimps, brothels and sex slavery are thankful for their freedom. However, there is another group of victims who cling to their captors. This is due to the intimate relationships some of the victims had with their pimps and involvement is deeper when the victims are pregnant and manage to give birth. Hence, the pimps have emotional control over the victims, and the victims prefer to remain enslaved.[151] Such a condition results from Stockholm syndrome which is a psychological situation where the victims experience and express empathy as well as positive feelings towards their captors.[152] Children are expected to develop such attachment compared to adults especially if they have been with their captors since their childhood.

Given the fact that these victims do not want to be free from their captors and traffickers, they continue to stay with the perpetrators. To survive and earn a living, these children and women help the traffickers by becoming a recruiter manipulating young children, women and girls into being trafficked and then forcing them into prostitution

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[151] *Trafficking in Persons Report*, 2013, p. 29.
[152] Mary C. Burke, *Human Trafficking: Interdisciplinary Perspective*, London: Routledge, p. 9.

and slavery. Unfortunately, the trafficking chain could not be broken, and it continues to hunt vulnerable and innocent individuals.

Meanwhile, in labour trafficking cases, often the traffickers are characteristically well respected in the community such as professional doctors, lawyers and educators.[153] They attract in their distant relatives from the villages and rural areas to the city by promising them job opportunities in the city. Once they are in the city and away from their families, these individuals are forced into hard labour especially into domestic work without pay. For instance, girls are forced to work in their households and then in other relatives and friends' homes without payment. These girls are forced to work endlessly and often without proper meals and forced to sleep in constrained spaces. Some unfortunate ones face sexual abuses and violence in the hands of their employers and relatives. There is no way to escape unless they are rescued or helped by someone.

A similar situation occurs in men especially if they are young and healthy where they are forced into farms and plantations and some men work in the households as gardeners, drivers, and so on without wages. Relationship ties between families bind them thus these men are unable to voice their dissatisfaction and do not realise they are victims of forced labour. The difficulties to communicate with authorities due to language barriers often prevent them back from seeking help.

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[153] Interview with Chua Khai Yan and Ooi Jilian, IOM officers, 7 November 2013; Nelson Benjamin, "Influx of Workers Posing as Students: Thousands of Bangladeshis Aided by Institutions Working with Human Traffickers," *Sunday Star*, 3 November 2013.

4.12 Conclusion

The motivating factors between the push and pull factors contribute to the root causes of human trafficking from the origin point to the destination country. By addressing these factors effectively, state actors and non-state actors would be able to curb the operation at the grass root level. However, such action is impossible if foreign states are not working together. It is imperative for the government to work in close collaboration with local NGOs in combating human trafficking at state as well as global levels.

The impact of human trafficking on the state and its actors and non-state actors are grave as the dreadful crime violates the freedom and human rights of vulnerable individuals, disrupts the socioeconomic of a country and reflects a bad image on the country regardless of its efforts in combating this crime.[154]

Rescued victims of human trafficking are impacted with deep emotional and psychological effect, and they endure years of rehabilitation. Most of the victims are traumatised with the violence and rape inflicted upon them, and they live in fear even when they are no longer under the slavery. The injury they have endured from the abuses and rape, leave eternal scars, and some are inflicted with health problems such diseases like STDs, HIV/AIDS and psychological effects like depression.

Human trafficking impacts the families of the victims deeply because they are not aware of the deception, kidnapping and the forced ordeals their children or family members endure. Many of the victims are unable to contact their families back at home to seek help and because of the threats the traffickers impose upon them, the victims do not attempt to get in touch with their families. Besides, the traffickers would have

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[154] Interview with James Nayagam, Commissioner of Human Rights Commission of Malaysia (SUHAKAM), 9 September 2013.

threatened to harm their families if the victims try to escape or seek the authorities or public assistance. Their lives and their families' lives would not be the same again once they fall into the clutches of human traffickers.

The society is indirectly affected by the crime of human trafficking because of the wide exposure of the innocent individuals to the various techniques and methods used by the syndicates, agents and networks of human trafficking.[155] Young women and men are easy targets when they are out in the society to look for job opportunities. Some would have the desire to further their education in overseas. Those without proper education are gullible in believing fake job ads and trusting people who promise wealthy career. These people who are not aware of modern-day slavery, debt bondage, forced labour and forced prostitution feasibly fall as victims.

Human trafficking affects the economics of a country. The crime generates profits for the syndicates, pimps, brothels and corrupted employment agencies and increases the level of corruption among enforcement authorities and officials. Moreover, the government has to spend heftily on the shelter facilities for the rescued victims, deportation, and rehabilitation as well as on educating the public in creating awareness on the crime of human trafficking.

In some instances, the crime also impacts the good relationships among the countries in the region and may affect political ties and bilateral affairs. Therefore, it is essential to curtail human trafficking due to the political, economic and social impact it has on a country. With significant efforts and the collaboration with government agencies and local NGOs and support from IOs, the crime of human trafficking can be stopped.

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[155] Ibid.; Interview with Professor Dr. Azizah Kassim, Principal Research Fellow of Institute of Malaysian & International Studies (IKMAS), 13 January 2014; Interview with Saravana Kumar, Deputy Director, Malaysian Immigration Department, 22 August 2013.

The role of the local community is crucial for rehabilitation. International organisations play their respective roles in rescuing the victims and providing them with proper rehabilitation before sending them back to their respective countries.[156] Local NGOs in the source countries should also educate their communities especially in the rural areas on the issue of human trafficking and for them to be aware of individuals who come as employment agents promising job opportunities with lucrative pay and false promises of dream lives in foreign lands. Parents need to be enlightened that by selling off their children they are ending up in the hands of monstrous beings who would rip away their childhood by exploiting them for profit.

Public awareness is imperative as they are not aware of human trafficking and if it happens to one of them, they have to be tutored on how to help others who have been rescued and survived for the victims to feel safe in the community. It is because often when victims are shunned away by their people in the community, they fall prey to the perpetrators and re-trafficked to different destinations to be exploited again.

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[156] Interview with Chua Khai Yan and Ooi Jilian, IOM, Malaysia, 7 November 2013.

CHAPTER 5

HUMAN TRAFFICKING IN MALAYSIA: SECURITISATION AND RESPONSES

5.1 Introduction

This chapter critically explores and analyses the responses from state actors to non-state actors, International Organisations (IOs), regional bodies and associations and finally on Malaysia and its secretariat council including the local non-government organisations (NGOs) in addressing the transnational organised crime of human trafficking. It discusses the significant efforts rendered by the Malaysian government and the local NGOs to combat this terrible crime of the current century.

The significance of highlighting securitisation and responses from the international level down to the regional then Malaysia due to the gravity of human trafficking was given due importance only in the year 2000 at the United Nations' Palermo Protocol.[1] From then onwards guidelines and frameworks were set, and the Trafficking Victims Protection Act (TVPA) were introduced for governments to ratify and pursue to combat human trafficking in their respective states. It has been less than two decades since the Palermo Protocol addressed human trafficking and some countries have responded well while some are still trying to cope. It is pertinent to address and discuss the international reports along with securitisation and responses from various countries at regional level followed by Malaysia.

It is essential to understand the purpose of securitisation and in Malaysia, the human trafficking problem is a state concern. Human trafficking does not only affect the

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[1] United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, signed in December 2000 in Palermo City, Italy.

sovereignty of the country by damaging its image at international level, but it can also erode confidence in the state and affect bilateral relations negatively.

5.2 Securitisation of Human Trafficking: An Introduction

The urgency to securitise a transnational organised crime such as human trafficking has become an important discourse among international actors and non-state actors. The perpetrators of human trafficking see neither gender, age, colour nor have compassion towards their victims. The act of human trafficking is a gross violation of human rights, a criminal act and a threat to national sovereignty and security.[2] It is a complicated phenomenon and a growing problem for the developed and developing nations.[3] At the global level, IOs have essentially tackled the issues of human trafficking along with state governments by initiating efforts to securitise the act of human trafficking.

The perpetrators of human trafficking see neither gender, age, colour nor have compassion towards their victims. The act of human trafficking is a gross violation of human rights, a criminal offence and a threat to national sovereignty and security.[4] It is a complicated phenomenon and a growing problem for the developed and developing nations.[5] As a non-traditional security (NTS) issue, human trafficking is recognised as a

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[2] Fiona B. Adamson, "Crossing Borders: International Migration and National Security," *International Security*, Vol. 31, No. 1, 2006, pp. 165-199; Jyoti Sanghera, "Unpacking the Trafficking Discourse," in Kamala Kempadoo (ed.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm, 2005, p. 14.

[3] Louise Shelley, *Human Trafficking: A Global Perspective*, New York: Cambridge University Press, 2010, p. 7.

[4] Fiona B. Adamson, "Crossing Borders: International Migration and National Security," *International Security*, Vol. 31, No. 1, 2006, pp. 165-199; Sanghera, "Unpacking the Trafficking Discourse," p. 14.

[5] Shelley, *Human Trafficking: A Global Perspective*, 2010, p. 7.

threat to a state's political, societal, economic and environmental security.[6] Furthermore, the clandestine movement of human trafficking as well as smuggling of migrants (some falling into the hands of human traffickers) undermines the security of states and international borders. Hence, it is viewed as a threat to the national sovereignty of a country (political security).

Realists like Carr, Butterfield and Morgenthau,[7] have written extensively on these concepts and highlighted that when a state is in danger, military action is necessary to protect the security of the state. Classic realists believed in the virtue of humanity, and it eventually widened the concept of community beyond the nation-state. Apart from the realist, there are the idealists whose approach it through peace and argued that they view the national security problem and the motive behind a war more holistically. The involvement of people in gross situations such as war urges idealists to look at things more amicably rather than through force.

Moreover, "an array military, political, societal, economic and ecological threat does not constitute a static agenda for national security".[8] The interdependence of these threats is central, and the vulnerability of population is critical making it a threat to national security. Hence, when the people in the state are in danger and at risk not only from military attacks or power intervention but in the form of violating the human rights of the people, the concept of national security has gone beyond the traditional definition.

After the end of the Cold War, new thinking in the international relations, security and development studies have emerged and influenced international agendas. Traditional

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[6] Nana Poku and David T Graham, *Redefining Security: Population Movements and National Security*, Westport: Greenwood Publishing Group, 1998.

[7] Edward Halle Carr, "The Twenty Years Crisis, 1919-1939; An Introduction to the Study of International Relations," *International Relations between the Two World Wars*, 1939; Herbert Butterfield, *The Balance of Power,* Allen & Unwin, 1966; and Hans Morgenthau, "Politics among Nations: The Struggle for Power and Peace," New York: Knopf, 1973.

[8] Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, London: Pearson Longman, 1991, p. 133.

security views were taken to a new level with the birth of NTS and human security. NTS issues concern the actors in the state, the environment they live in, the social and economic problems they struggle with such as illegal migration, refugee, human trafficking and human smuggling, the outbreak of deadly diseases, famine and poverty, unemployment, and the list goes on. All of these issues associate with human security and their development, hence the discourse of human security was articulated in the 1994 UN Human Development Report.[9] With the enunciation of human security in the UN, the welfare of people in any dire situation has become the focus of dialogue at international levels. Violations and exploitations against men, women and children are given critical response by IOs, and more voices are heard to prevent this horrible cruelty.

Human trafficking contravenes the fundamental rights of individuals and curtails the freedom of the persons to say NO to forced slavery, forced prostitution, forced labour, forced begging and forced adoption, forced abortion, forced abduction, forced manipulation of others and forced recruitment for the purpose of exploitation. Human trafficking is an organised crime and "organised crimes threatens states and exploit states". It undermines the legality of the states by utilising its power by bribing the officials and eventually generates its revenue.[10]

In most situations, the interest of the state is paramount and its people's well-being is secondary. This does not only happen in European countries as many scholars have expressed disappointment in their respective governments and the European Union

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[9] United Nations Development Programme, *Human Development Report, 1994.* Human security has following categories; economic security, food security, health security, environmental security, personal security, community security and political security.

[10] Phil Williams, "Transnational Organised Crime and the State," in R. B. Hall and T. J. Biersteker (eds.), *The Emergence of Private Authority in Global Governance*, Cambridge: Cambridge University Press, 2008, pp. 161-182.

(EU) for doing little to combat human trafficking.[11] Similarly, though there are many projects undertaken with the support from IOs and local governments as well as in partnerships with neighbouring states in the region, the crime of trafficking people is nevertheless on the rise.

Governments affected by the indiscernible crime of human trafficking should and must play vital roles when national security is at stake, and its people are endangered. As much as the state sovereignty is important, its citizens' lives must be considered equally significant when their freedom and lives are not only threatened but exploited as desired. Human security should be given similar emphasis to national security.

The states need to comprehend that 'freedom from want, freedom from fear and the freedom of future generations to inherit a healthy natural environment' are the 'interrelated blocks of human and, therefore, national security.[12] It is crucial for states to step up efforts as human trafficking is increasing and the impact of the government's efforts seems marginal. The perpetrators undermine the national security. For this very reason, the need for extraordinary measures is pertinent.

The Copenhagen School (CS) addresses the threat to NTS issues such as human trafficking through securitisation and desecuritisation models. The process of securitisation is not a question of an objective threat as well as a subjective perception of a threat. It is *inter-subjective* where securitisation is very much related to its acceptance

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[11] Helga Konrad, "The Fight against Trafficking in Human Beings from the European Perspective," in Sally Cameron and Edward Newman (eds.), *Trafficking in Human: Social, Cultural and Political Dimensions*, New York: United Nations University, 2008, p. 162; Sanja Milivojevic and Marie Segrave, "Responses to Sex Trafficking: Gender, Borders and 'Home'," in Leslie Holmes (ed.), *Trafficking and Human Rights: European and Asia-Pacific Perspectives*, New York: Edward Elgar, 2010, p. 37.
[12] Sagarika Dutt, "Human Security in South Asia and the Role of the UN and Its Agencies," in Sagarika Dutt and Alok Bansal (eds.), *South Asian Security 21st Century Discourses*, Routledge, 2012, p. 196; Commission on Human Security, *Human Security Now*, New York, 2003, p. 4.

by an audience. For the process of securitisation to work, the essence of 'speech act' is essential[13] and it has to be articulated as an existential threat.[14]

To reiterate, the methodology of 'speech act' is to define when an issue becomes a security issue,[15] and securitising actors use this method to voice a problem to persuade the relevant audience to act. Securitisation is accepted as a successful speech act, yet it is argued that it does not utter the word security.[16] "It is by labelling something a security that it becomes one".[17] Hence, the actual threat to security is recognised, and actors are accountable to respond to the process of securitisation. This is a measure taken to ensure the safety of the referent objects when they are recognised as threatened. In the case of human trafficking, the people are the threatened object and the impact would eventually reflect upon a state's security.

Subsequently, the CS raises the following questions of 'who and what are the referent objects'; and 'who are the securitising actors'. In human trafficking, securitisation concept that the referent objects are individuals and groups of the vulnerable people who have fallen preys to trafficking and whose existence is ostensibly threatened and the impact of the crime on national sovereignty. Securitising actors including the state government, policymakers, local NGOs, activist, political elites, IOs, can securitise an issue by articulating the existence of threats to the survival of specific referent objects.

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[13] Mely Caballero-Anthony and Ralf Emmers (eds.), *Understanding the Dynamics of Securitizing Non-Traditional Security* Non-Traditional Security in Asia: Dilemmas in Securitisation, Singapore: Ashgate, 2006, p. 4; Rita Taureck, "Securitization Theory and Securitization Studies," *International Relations & Development*, No. 9, 2006, pp. 53-61; Ole Waever, "Securitization and Desecuritization", 1995, p. 55.

[14] Ibid.; Barry Buzan, Jaap deWilde and Ole Weaver, *Security: A New Framework for Analysis,* Boulder, CO: Lynne Rienner, 1998, p. 24.

[15] Peter Hough, *Understanding Global Security,* London: Routledge, 2008, p. 16.

[16] Buzan et al. *Security: A New Framework for Analysis* (1998). It further explains that in securitization it is necessary "the designation of an existential threat in need of emergency action or special measures and the acceptance of that designation by a significant audience", p. 27.

[17] Ole Wæver, "Aberystwyth, Paris, Copenhagen. New schools' in Security Theory and Their Origins between Core and Periphery," Paper presented at the annual meeting of the International Studies Association, Montreal, 2004, p. 13.

Therefore, there are three major referent objects. The first is the official documents released by the international securitising actors, the victims of human trafficking are understood to be under threat principally in terms of their human rights and dignity. The next referent object under threat is international peace and security which is considered to be existentially threatened by the existence of the organised criminal syndicates involved in the trading of human beings. Human trafficking is not often discussed in official documents without reference to such criminal organisations. Last but not least, the sovereignty of the state as a referent object is considered to be endangered by the illegal movement of peoples across borders.[18] Unregulated migration is perceived to be a threat to state sovereignty for numerous reasons due to economic concerns, terrorism, and destabilisation of societal.[19]

Though an issue is securitised, it still does not ensure the survival of a given state. It has formed an essential problem successfully through speech acts. Moreover, by acknowledging securitisation as a successful speech act infers the language of security is more fundamental than the actions of actors. Additionally, each actor has no similar authority over securitising an issue as it is related to the status given to an actor.[20]

Based on the framework provided by the CS, influential international key players such as the UN and the U.S. and to a lesser extent the International Organisation for Migration (IOM) and the European Union (EU) are the major securitising actors at this level. These actors project their securitisation message outward, and specifically target policymakers within individual states, and to a lesser extent, within regional organisations.

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[18] Skeldon, "Trafficking: A Perspective from Asia," p. 21.

[19] Anne Gallagher, "Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis," *Human Rights Quarterly*, Vol. 23, No. 4, 2001, pp. 975-1004.

[20] Barry Buzan, Jaap de Wilde and Ole Waever, *Security: A New Framework for Analysis*, 1998, pp. 23-24.

Though the criminalisation of human trafficking is accepted by the numerous active IOs and INGOs, it is considered to be the least securitised NTS issue both at regional and national levels in Southeast Asia.[21] However, transnational crimes, infectious diseases, natural disasters, migration and maritime issues and piracy are of interest in securitisation studies. Conversely, it is different from the drug trade,[22] piracy and maritime,[23] and people smuggling[24] as the urgency to curb was greater compared to human trafficking. A similar situation ensued in Central Europe whereby narcotic crimes were securitised as actors and had a broad common understanding of evolving geopolitics and the new security environment amid perceived financial benefits.[25]

5.2.1 Securitisation of Human Trafficking at the Global Level

The IOs namely the United Nations (UN), ILO, International Organisation for Migration (IOM), the United States and the European Council (EU) have embarked on the process of securitisation since the early 1990s and subsequently adapted to the language of security.[26] The urgency to securitise organised crime such as human trafficking has become a critical discourse among international actors and non-state actors.

The UN adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention against

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[21] Rizal Sukma, *The Securitization of Human Trafficking in Indonesia*, Singapore: S. Rajaratnam School of International Studies, Nanyang Technological University, 2008.

[22] Ralf Emmers, *Non-Traditional Security in the Asia-Pacific, the Dynamics of Securitization*: Eastern Universities Press, Marshall Cavendish, 2004, pp. 9-29.

[23] Ibid., pp. 35-55.

[24] Ibid., pp. 61-78.

[25] Nicole J. Jackson, "International Organisations, Security Dichotomies and the Trafficking of Persons and Narcotics in Post-Soviet Central Asia: A Critique of the Securitization Framework," *Security Dialogue*, Vol. 37, No. 3, 2006, 299-317.

[26] Jackson, "International Organisations, Security Dichotomies and the Trafficking of Persons and Narcotics in Post-Soviet Central Asia," *Security Dialogue*, Vol. 37, No. 3, 2006, 299-317.

Transnational Organised Crime in the year 2000 at the Palermo Protocol Convention in Italy. It is also known as the Trafficking Protocol (TP) or UN Trafficking in Persons (TIP) Protocol which entered into force in 2003 and since then 170 countries thus far have ratified the TP and criminalised most forms of human trafficking in their legislations.[27] It is one of the three Palermo Protocols including Protocol against the Smuggling of Migrants by Land, Sea and Air as well as Protocol against the Illicit Manufacturing and Trafficking in Firearms.[28] The United Nations Interagency Project on Human Trafficking (UNIAP) stated that at least 117 countries globally had passed a specific legislation addressing human trafficking issues.

TP is the first legal tool for governments in combating human trafficking, to protect and assist victims of trafficking, prosecute and punish perpetrators as well as promote collaboration among states. The core principles of the PP are outlined in the "three P paradigm" of Prevention, Protection and Prosecution and later the fourth P was introduced which is Partnerships.[29] The United Nations Office on Drugs and Crime (UNDOC) implemented the PP and offered practical help to governments with drafting laws, creating comprehensive national anti-trafficking strategies and assist with resources to implement in their respective states. To raise awareness and educate the public, in March 2009 UNDOC launched the Blue Heart Campaign to combat human trafficking globally.

On 16 May 2005, the Council of Europe Convention on Action against Trafficking in Human Beings was established in Warsaw for accession. During the

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[27] *General Assembly Reviews Efforts to Combat Human Trafficking*, New York, United Nations Office on Drugs and Crime, 13 May 2013, available at: <http://www.unodc.org/unodc/en/frontpage/2013/May/general-assembly-reviews-efforts-to-combat-human-trafficking.html> (accessed 20 June 2013).

[28] *United Nations Convention Against Transnational Organised Crime and the Protocols Thereto*, New York, United Nations Office on Drugs and Crime, available at: <http://www.unodc.org/unodc/treaties/CTOC/> (accessed 10 July 2014).

[29] See *Trafficking in Persons Report*, 2010.

convention, a Group of Experts on Action against Trafficking in Human Beings (GRETA) was set up to monitor the implementation of the Convention through country reports. Thus far, a total of 43 European states has ratified the convention.[30]

Subsequently, on 25 October 2007, the Council of Europe set up a multilateral treaty known as the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.[31] It is the first international treaty whereby a total of 36 states have agreed to criminalise several forms of sexual abuse against children. Moreover, the convention also mandates the criminalisation of child prostitution and pornography by outlining measures to prevent child exploitation and ill-treatment. The convention is critical in combating child sex tourism, therefore, it firmly established that individuals could be prosecuted for some offences even when the act is committed abroad. With the goal to eradicate human trafficking at the global level, the Council of Europe works in close cooperation with UN and other IOs.

Apart from the TP, the U.S. implemented the *Victims of Trafficking and Violence Protection Act 2000* (TVPA) to combat human trafficking especially into the sex trade, slavery, and involuntary servitude, to reauthorise certain Federal programs to prevent violence against women, and for other purposes of exploitations. Subsequently, there were several law enforcement tools executed namely *Trafficking Victims Protection Reauthorization Act of 2003*, the *Trafficking Victims Protection Reauthorization Act of 2005*, and the *Trafficking Victims Protection Reauthorization Act of 2008*. These are instruments provided to combat human trafficking both globally and domestically. The

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[30] See Council of Europe Convention on Action against Trafficking in Human Beings, available at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=&CL=ENG> (accessed 15 December 2014).
[31] See Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, available at: <http://conventions.coe.int/Treaty/EN/Summaries/Html/201.htm>; Explanatory Report is accessible at <http://conventions.coe.int/Treaty/EN/Reports/Html/201.htm> (accessed 15 December 2014).

acts authorised the establishment of Global Trafficking in Persons and the President's Interagency Task Force to Monitor and Combat Trafficking in Persons to assist in the coordination of anti-trafficking efforts.

The TVPA is monitored and coordinated by the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons whereby it coordinates with foreign governments to protect human trafficking victims, prevent trafficking and prosecute the traffickers. The foreign governments are mandated and accountable to submit their TVPA reports annually and the governments are placed on tier rankings (Tier 1, Tier 2, Tier 2 Watch List and Tier 3) based on their reports along with other reports from NGOs, news articles, published reports, academic studies and research trips in their respective countries. The analyses of the TVPA are based on the extent of governments' efforts to reach compliance with the TVPA's minimum standards for the elimination of human trafficking which are consistent with the Palermo Protocol.[32]

At the ASEAN level, governments have played important roles in combating human trafficking such as the establishment of the Bali Process[33] and several memoranda of understandings (MoUs) signed with the Australian government with neighbouring counterparts like Jakarta, Singapore and Malaysia.

Influential international actors in their efforts to securitise human trafficking have developed a diverse range of rhetorical strategies. Though there is a lack of reliable data on human trafficking, actors from various regions repeatedly emphasise and to a certain extent exaggerate the numbers of people being trafficked.[34] Furthermore, it has become common to report that up to twice as many people experience the conditions of human

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[32] *Trafficking in Persons Report*, 2013, p. 41.
[33] Michael Barchelard, "Bali Process Pledge against 'Vile Trade'," *Political News*, 3 April 2013, <http://www.smh.com.au/opinion/political-news/bali-process-pledge-against-vile-trade-20130402-2h58s.html> (accessed 10 May 2014).
[34] Sukma, "The Securitization of Human Trafficking in Indonesia," p. 10.

trafficking such as forced labour at present compared to during the slave trade in many parts of the world. By doing so, huge statistics are portrayed to express urgent action and thus remove the issue from political debate.

The urgency to combat human trafficking was exhibited during the ASEAN Declaration against Trafficking in Persons Particularly Women and Children when the heads of member countries of ASEAN gave their commitments on 29 November 2004.[35] During this declaration, the heads of respective ASEAN members affirmed the Ha Noi Declaration of 1998 and Ha Noi Plan of Action by pledging to intensify individual and collective efforts to address transnational crime including trafficking in persons, especially against women and children.

Besides acknowledging factors contributing to migration and the vulnerable situation for trafficking to occur, the ASEAN members reaffirm their commitment to achieving the elements of this Declaration through maximum efforts by utilising appropriate tools and undertake measures in respective of national laws and policies.[36] The ASEAN member countries also expressed their constant support in the ASEAN Declaration against Transnational Crime, the ASEAN Vision 2020 and some members endorsed the UN Convention against Transnational Crime and the UN Trafficking Protocol.[37] Recognising the threat of human trafficking as a security problem within ASEAN indicates a positive response towards the process of securitisation at international level. However, more efficient initiatives are required to combat the proliferation of human trafficking networks especially in the identified targeted susceptible states by the traffickers.

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[35] *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children*, November 2004.
[36] Ibid. Also see "ASEAN Declaration Against Trafficking in Persons Particularly Women and Children," *Council on Foreign Relations*, 29 November 2004, available at: <http://www.cfr.org/women/asean-declaration-against-trafficking-persons-particularly-women-children/p26362#> (accessed 10 May 2014).
[37] *ASEAN and Trafficking in Persons: Using Data as a Tool to Combat Trafficking in Person*, Geneva, International Organisation for Migration, 2006. (accessed 10 May 2014).

**5.2.2 The Act of Securitisation of Human Trafficking in Malaysia**

Securitisation of human trafficking in Malaysia is significant since the impact of the organised crime posits existential threats. Thus, it requires critical measures from actors and non-actors in the state particularly in criminalising it. Malaysia has been facing issues on human trafficking episodically, and the crime is a mounting national security concerns as much as it a global distress. When Malaysia is known as a lucrative destination and transit point for the traffickers, it shows the weaknesses of the government's security structure, the integrity of the law enforcements officers and authorities, the porous coastal line and the vulnerability state of the country as it is seen as an easy passage.

Human trafficking is a threat not only to mankind but also to a state where the concern for national security is paramount. Therefore, the criminalisation of human trafficking is vital in a securitisation process in addition to the 'speech act'. The problem of human trafficking was articulated by ministers and NGOs in the language of security on numerous occasions. The Prime Minister of Malaysia, YAB Dato' Seri Mohd Najib Tun Razak expressed that the security agenda is no longer constrained to issues on traditional security alone whereas it encompassed the whole range of issues like human trafficking and articulated in the language of security of the severity of human trafficking on national security.[38] Whether the speech act by the Prime Minister is a political will or concern over security and humanity is debatable, but it is an essential move to show the seriousness of human trafficking in the country.

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[38] The Malaysian Prime Minister, YAB Dato' Seri Mohd. Najib Tun Razak's speech at Malaysia-US Relations: *Melihat Tunggak-tunggak Utama Ke Arah Kerjasama* an event jointly organised by CSIS and the Institute of Strategic and International Studies (ISIS) Malaysia, Washington, 16 April 2010.

Figure 5.1: Malaysia Trafficking in Persons' Tier Ranking by Year
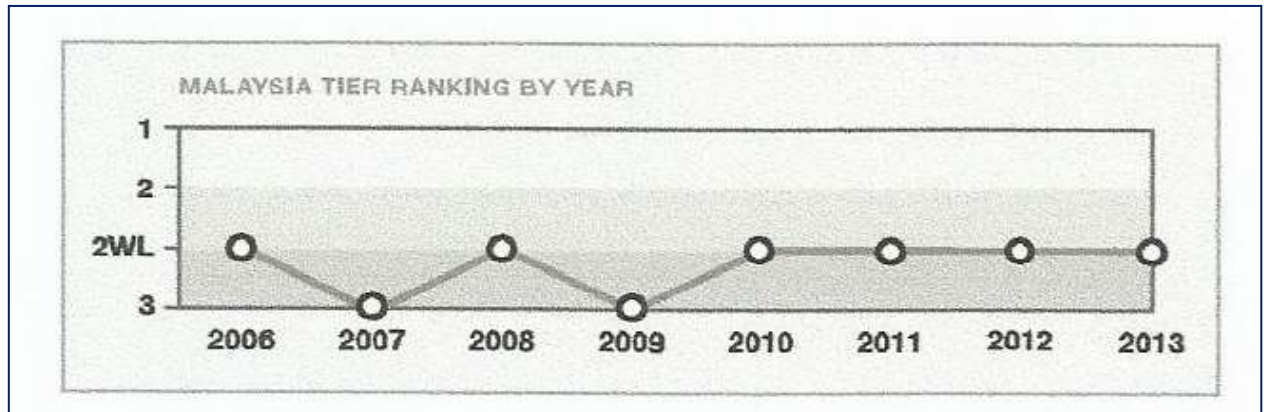
Source: Trafficking in Persons Report (June 2013), Washington DC: U.S State Department, p. 250.

Apart from the state leaders articulating their concern over the security of the state and the people are being threatened due to the myriad forms of human trafficking activities, local NGOs like Tenaganita has been voicing their concern over vulnerable populations affected in the hands of traffickers.[39] The late Irene Fernandez and her team in Tenaganita have been critically vocal in addressing the plight of migrants and refugees in Malaysia for more than two decades. One of the reasons for local NGOs such as Tenaganita to be verbal on such an issue is because most of the identified victims of human trafficking in Malaysia have been migrants.[40]

Therefore, along with other local NGOs such as Coalition to Abolish Modern-Day Slavery (CAMSA), Human Rights Commission of Malaysia (SUHAKAM), JUMP (Jaringan Utara Migrasi dan Pelarian), Suara Kanak-Kanak Society (SUKA) and National Council of Women's Organisation Malaysia (NCWO), these non-state actors

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[39] Irene Fernandez, "Human Trafficking: Raise Transparency to Ensure Effective Prosecution," *Malaysia Chronicle* 28 June 2012; "Government Must End Slavery, Forced Labour in Malaysia", *Malaysiakini*, 18 December 2011, <http://www.malaysiakini.com/letters/184447> (accessed 10 September 2013).
[40] Ibid.

have been urging the government to step up their efforts to curb this organised crime in Malaysia and the region.

To curtail human trafficking in Malaysia, the government ratified the United Nations Convention Against Transnational Organised Crime (UNTOC) Palermo Protocol, in particular, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (TIP Protocol) and Protocol Against the Smuggling of Migrants by Land, Sea and Air. Moreover, the government's initiative to combat human trafficking was in tandem with the ASEAN Declaration against Trafficking in Persons Particularly Women and Children, United Nations Declaration on Human Rights (UDHR) 1949, Convention of the Elimination of All Forms Discrimination against Women (CEDAW) 1979 and Convention on the Rights of the Child (CRC) 1989.

In 2008, the Malaysian government launched the Anti-Trafficking in Persons Council and in the Malay language it is known as *Majlis Anti-Pemerdagangan Orang (MAPO)* under the purview of the Ministry of Home Affairs. Simultaneously, the Anti-Trafficking in Persons (ATIP) Act 2007 (Act 670) was passed in 2007 and enforced a year later. Due to rampant activities of human trafficking and smuggling of migrants, the act was amended in 2010 and is known as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. Consequently, the MAPO Council was renamed as the Secretariat of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM).

ATIPSOM council members consist of 11 ministries, departments and agencies including five NGOs, and the chairman is the Secretary-General, Ministry of Home Affairs. Its objective is to realise a Malaysia free from organised crimes in connection

with human trafficking and smuggling of migrants. The council's core function is to prevent and combat human trafficking along with migrant smuggling crimes by utilising and applying the essential instrument of the law - the ATIP Act 2010.

The Attorney General from the Attorney General's Chamber of Malaysia (AGC) advocates the legal and implementation of acts, caring for the victims' protection and their rehabilitation is managed by the Chief Secretary of the Ministry of Women, Family and Community Development whereas the Royal Malaysian Police administers the law and enforcement of the ATIP Act in the country. The Ministry of Human Resources gives its attention on labour trafficking while to manage media, and public relations is the Ministry of Communications and Multimedia's responsibility.

With these new developments, the next step was for the Secretariat to come up with a written plan. Hence, the Malaysian government and its agencies have been proactive and in open discussion as well as bridging the gap between NGOs and states in implementing the National Action Plan against Trafficking in Persons (2010-2015). This action plan is a strategic direction for the next five years, and the primary objective is to combat human trafficking and enrich support programmes as well as to ensure the effective implementation of the strategic goals.[41] It is discussed in detail in chapter five of this thesis.

At the ASEAN level, three out of ten members; Vietnam, Singapore and Myanmar are yet to enact specific legislation to combat human trafficking.[42] Whereas,

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[41] See *National Action Plan Against Trafficking in Persons (2010-2015),* Ministry of Home Affairs Malaysia. (accessed 2 June 2012).

[42] Daniel Lo, "Investigations: What Are the Key Elements in a Trafficking in Persons Case?," in *The 15th Malaysian Law Conference*. Kuala Lumpur Convention Centre: The Law Review: iMalaysiana 2010, 29 – 31 July 2010.

Malaysia developed the Anti-Trafficking in Persons Act in 2007 after being listed on Tier 3[43] and this is the lowest category by the U.S. TIP in 2006.

Again in 2009, Malaysia was blacklisted by the U.S. Department of State for not complying with the TVPA and as a result was placed back on Tier 3 and among 16 other countries for a bad record in handling this pertinent issue. This was a thwarting drop for the government since 2007 as in 2008 the ranking improved to Tier 2. Malaysia recurrence on the blacklist spot has sparked a heated debate that it is yet to tackle human trafficking fully.

Nevertheless, in 2010 due to efforts that were undertaken to prevent and combat human trafficking, Malaysia was on the Tier 2 Watch List and remained there for three consecutive years. The UNHCR World Report 2011 on Malaysia stated that the Malaysian government does not fully comply with the minimum standards to eliminate trafficking, nonetheless reported that the government is making significant efforts to curtail human trafficking.[44] The first initiative was by setting up the ATIPSOM secretariat in 2008 to combat human trafficking. Such a move exhibited Malaysia's positive response towards the critical issue and had shown that the government is serious especially when it involved its enforcement officers.

Some cases have been reported against government officials for their direct involvement in human trafficking, but so far only one offender was prosecuted in December 2008 after the implementation of the Anti-Trafficking in Persons Act 2007. In 2009, the U.S. Senate Foreign Relations Committee made a formal report stating that Malaysian Immigration officials were involved in trafficking and extorting Burmese

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[43] *Trafficking In Persons Report*, 2013, p. 22.
[44] *United Nations High Commissioner for Refugees (UNHCR) Report*, available at: <www.unhcr.org/refworld/country> (accessed 10 June 2013).

refugees to the Malaysia-Thai border. Upon arrival at the border, the traffickers take possession of the migrants and demand ransom.

Freedom is possible only when the money demands are met. The Royal Malaysian Police Force investigated the allegations with the assistance of the Immigration Department, however, no officials were arrested, prosecuted or convicted for involvement in trafficking. This indicates that the government is yet to develop mechanisms to screen victims of trafficking effectively let alone officers.[45]

However, in 2010, eight immigration officials under the jurisdiction of the Ministry of Home Affairs Malaysia were involved in human trafficking activities in the country.[46] The accused together with two foreigners were detained under the Internal Security Act (ISA) for indefinite detention without trial[47] and in 2011 they were pardoned for repenting[48] and later sacked from their job.[49] Though they were sacked, these government staff were not sentenced to prison for misconduct. This soft punishment indicates that the government needs a critical response to perpetrators including government personnel.

Over the years, the Malaysian government has been exhibiting significant efforts to combat human trafficking locally and regionally. These efforts are discussed in detail in the following chapter. The Malaysian government's approach in tackling human trafficking issues in the country is commendable as it recognises the existential threat incurred by the offenders. When the 'speech act' was administered by the Prime Minister and the Minister of Home Affairs and government officials along with NGOs in their

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[45] *Trafficking in Person Report*, 2009.
[46] "Malaysia Accuses Immigration Officials of Human Trafficking," *Global Nation Inquirer*, 13 October 2010, <http://globalnation.inquirer.net/news/breakingnews/view/20101013-297563/Malaysia-accuses-immigration-officials-of-human-trafficking> (accessed 2 June 2012).
[47] Ibid.
[48] Pauline Wong, "Ramadan Blessing for Eight Isa Detainees," *theSun*, 2 August 2011.
[49] Azril Annuar, "Eight Officers Were Sacked: Immigration Dg," *theSun*, 9 August 2011.

respective work and agendas, it shows the commitment of each actor in addressing the heinous problem of human trafficking.

The movement of the human traffickers in and out of the country seems natural and effortless incriminating the tight security of the borders and the enforcement agencies resulting in a negative image of the country. It pressures the state actors especially the enforcement authorities to step up their efforts in managing and combating the problem.

5.3 Combating Human Trafficking

Securitisation of human trafficking is an extraordinary measure taken by the IOs, INGOs, NGOs as well as countries which have acknowledged and recognised the issue as a threat not only to vulnerable groups but the security of a state. Securitisation is a response of a government to tackle human trafficking in the country. However, some nations have yet to perceive human trafficking as a threat. They see it as a problem but not as severe as a threat. Such is the case of countries which have legalised prostitution. This is because traffickers have the advantage by manipulating a state's legal standing by trafficking for commercial sexual exploitation.

It has been more than a decade since the establishment of the United Nations Convention Against Transnational Organised Crime (UNTOC) and the Trafficking in Persons Protocol (TIP) and three years since the adoption of the Global Plan of Action to combat human trafficking.[50] Prior to that, little effort was made to address this appalling crime. This is because of the nature of human trafficking crime being clandestine.

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[50] Policymakers gathered in New York on 13 May 2013 to review the progress and to discuss strategy to combat human trafficking. This event was attended by policymakers and 85 states of UNODC Goodwill Ambassadors to Combat Trafficking in Persons as they have prioritised human trafficking at a High-Level Meeting of the General Assembly chaired by the President of the GA Vuk Jeremic with the presence of the

It is crucial to deal critically with human trafficking as it does not only have harmful effects on the victims' human security but also concerns declining public health and social order and in chorus encourage the growth of other organised crimes.[51] Transnational organised crimes impose security threats not only to humans but also to national as well as international security. It is a global problem that manifests in many regions in various ways.[52] In addition to the primary threats, the crime also imposes negatively on innocent victims and the security of states and borders. It significantly implicates the safety and health of the public, democratic institutions as well as economic and social stability.

The need for positive responses from state and non-state actors at international and regional levels with the involvement of various organisations, human rights bodies and associations, civil right activists and at societal level with the participation of people on the street and neighbourhood, would help stop human trafficking from escalating. The human trafficking syndicates have taken their business to a new level by using the social networks and information technologies to lure their victims via job campaigns and posing fake identities to trap young women into love and modelling jobs. Young men and women are very gullible and easily manipulated by the range of bogus attractive job advertisements, fake talent search recruitment agencies and overseas employment opportunities without doing any prior research on the authenticity of such campaigns.

Secretary-General Ban Ki-moon. For further reading see General Assembly reviews efforts to combat human trafficking, available at: <http://www.unodc.org/unodc/en/frontpage/2013/May/general-assembly-reviews-efforts-to-combat-human-trafficking.html> (accessed 30 May 2013).
[51] Stephen Hoadley, "Irregular Migration as a Security Issue," in Stephen Hoadley and Jurgen Ruland (eds.), *Asian Security Reassessed*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2006, pp. 257.
[52] See *Transnational Organised Crime: A Growing Threat to National and International Security*, Washington DC, National Security Council, available at: <http://www.whitehouse.gov/administration/eop/nsc/transnational-crime/threat> (accessed 30 May 2013).

5.3.1 International Responses

In December 2003, the United Nations (UN) enforced the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organised Crime. Hence, as of May 2013, there are 170 State Members of the UN, who have pledged their commitments in ending human trafficking and ratified the Protocol.[53]

After the formation of the Global Plan, 83 per cent of countries which adopted this action plan have implemented proper legislation in combating human trafficking compared to 60 per cent before being adopted in 2009, especially in Africa and the Middle East where the figure has doubled in three years. At the event, the United Nations Office on Drugs and Crimes (UNODC) Executive Director Yury Fedotov also stated that human trafficking is an adaptive, cynical, sophisticated crime of the 21st century and faces the challenges of low overall conviction rates, collating data, support and assistance to victims inadequate.[54]

In addition to introducing specific anti-trafficking legislation to curb human trafficking, many countries have criminalised human trafficking activities through offences related to sexual exploitation, child labour, slavery, forced labour and immigration. The UNODC in 2009 drew up the International Framework for Action to Implement the Trafficking in Persons Protocol with an aim "*to help Member States in need to develop effective and multidisciplinary anti-trafficking strategies alongside build*

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[53] See *General Assembly Reviews Efforts to Combat Human Trafficking*, New York, United Nations Office on Drugs and Crime, 13 May 2013, available at: <http://www.unodc.org/unodc/en/frontpage/2013/May/general-assembly-reviews-efforts-to-combat-human-trafficking.html> (accessed 20 June 2013).
[54] Ibid.

dedicated and sustainable resources to implement such strategies".[55] The developed framework is based on the objectives of the Trafficking Protocol (TP) as it contains operational measures with other international instruments, political commitments, guidelines and good practices, and encourages conformity with international standards.

During the same period, the UNODC developed the Model Law against Trafficking in Persons to assist member states to be involved and implement the provisions contained in the TP. The Model Law is planned to facilitate the review and amendment of existing state legislation and the adoption of new legislation. This Model Law includes all of the provisions that states are required, or recommended by the protocol, to be introduced in their domestic legislation. Apart from that, it is also designed for states to adapt according to its needs in areas concerning legal tradition, social, economic, cultural, and geographical conditions.[56]

Various international organisations and numerous human rights bodies have introduced initiatives in the fight against human trafficking. This is a perilous crime in need of forceful state and government responses in assisting and protecting the victims, implementing and practising a rigorous criminal justice system in prosecuting the offenders with sound migration policy and firm regulation of the labour markets in tackling human trafficking in respective states. Between 2007 and 2010, from the 132 countries covered in the TIP Report in the year 2012, only 16 per cent did not prosecute

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[55] See *International Framework for Action to Implement the Trafficking in Persons Protocol*, New York, United Nations Office on Drugs and Crime, 2009, available at: <http://www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuside> (accessed 20 June 2013); Also see Jacqueline Joudo Larsen, Lauren Renshaw, Samantha Gray-Barry, Hannah Andrevski, and Toby Corsbie, *Trafficking in Persons Report: January 2009 - June 2011*, Canberra, Australian Institute of Criminology (AIC), 2012.
[56] Ibid.

any convictions. Nevertheless, more countries have reported additional human trafficking cases during that period.[57]

Actors in the state representing the governments, policymakers, authorities and enforcement agencies in collaboration with non-state actors from the NGOs, activists and the public are responsible for working effectively at detecting and punishing the perpetrators of this heinous crime while rescuing victims.

In the quest to combat this criminal activity, the international community has created the tools known as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children amid 134 countries have criminalised trafficking by adopting and sanctioning these tools. The Global Action Plan of Action to Combat Trafficking in Persons strongly supports the Protocol and to assist the victims, it has also established the Trust Fund for Victims of Trafficking in Persons, Especially Women and Children. These support tools are successful in some of these countries in preventing this crime from escalating further, yet there is a lack of knowledge among member states on this crime which includes the challenges in capacity building and development and monitoring and evaluation.[58]

States in conflict situations like war and extreme poverty are weak and fragile thus they are vulnerable to various organised crimes especially human trafficking and drugs trafficking. The UNODC Executive Director, Yury Fedotov acknowledged this problem and stated that organised crimes such as human trafficking alongside fraudulent medicines, terrorism and the illegal trade in wildlife, small arms and cultural artefacts are

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[57] See *Global Report on Trafficking in Persons*, New York, United Nations Office on Drugs and Crime, December 2012, (accessed 20 June 2013).
[58] Ibid.

on the rise undermining sustainable development subsequently hinder access to education and employment, and impede the flow of foreign and domestic investments.[59]

In the 2013 UN General Assembly, one of the main discussions to combat human trafficking was to focus the states' efforts on four pillars specifically; preventing trafficking, prosecuting offenders, protecting victims and forming partnerships to fight trafficking.[60] Top UN officials were stressing their concerns and urging the State Members to implement key anti-human trafficking treaties fully as well as to collaborate closely to curb the crime. To achieve justice, a sound and strong foundation is crucial for the rule of law thus it is essential to strengthen the judicial system and aid the governments to earn the trust of their people.[61] It is imperative for a government to protect its people from the threats of organised crime syndicates preying on innocent and vulnerable individuals.

Therefore, law enforcement and comprehensive policies[62] along with corporations between the major stakeholders like the public, corporate sectors and the media should share the best practices with mutual legal aid, enhancing joint operations across borders, strengthening national security on human trafficking with regional and national approaches. The fundamental framework designed to combat human trafficking and used by governments around the world is known as the "3P" paradigm which stands for

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[59] "Fighting International Crime Is Key to Sustainable Development, UN Official Says," *UN News Centre*, 22 April 2013,
<http://www.un.org/apps/news/story.asp?NewsID=44717&Cr=unodc&Cr1=&Kw1=human+trafficking&Kw2=&Kw3=#.UZmkuKKw1Jm> (accessed 20 June 2013).

[60] "UN Member States Appraise Global Action Plan to Combat Human Trafficking," *UN News Centre*, 13 May 2013, <http://www.un.org/apps/news/story.asp?NewsID=44885&Cr=trafficking&Cr1=#> (accessed 20 June 2013).

[61] Ibid.; Also as mentioned by Ban Ki-moon the eight and current Secretary-General of United Nations at the UN General Assembly on 13 May 2013.

[62] See report on *Law Enforcement and Comprehensive Policies Key to Fight Asia Migrant Smuggling*, UNODC, 31 May 2013; Also read report on *Transnational Organised Crime in East Asia and the Pacific – A Threat Assessment*, which extensively written on migrants smuggling mainly from Myanmar, Cambodia and Lao PDR smuggled into Thailand whilst China and Vietnam are source countries for migrants to be smuggled to the U.S and EU.

Prosecution, Protection and Prevention[63] and the fourth "P" was introduced for Partnership, which serves as a bridge in achieving the success of the 3Ps structure in ending modern-day slavery worldwide. The fourth P in the framework was announced by the former Secretary of State Hillary Rodham Clinton in 2009.

This framework not only acts as a guideline but is an essential tool for governments to utilise it to the maximum and by partnering with neighbouring nations' significant efforts in curbing human trafficking as well as in combating other odious organised crimes.

5.3.2 Regional Responses

At the ASEAN level, Laos and Singapore have shown initiatives to curb human trafficking but have yet to enact any specific legislation to implement an act to combat human trafficking.[64] Nonetheless, there is a high-level initiative and memorandum of understandings (MoUs) between state members, but there is disrupt in cooperation and lack of trust due to past conflicts between Cambodia and Thailand as well as Cambodia and Vietnam.[65] These governments have to sort out their differences and opinions to come to a mutual understanding when facing transnational issue such as human trafficking. However, MoUs are not sealed agreements unlike bilateral contracts. Hence it is not a strong commitment to tackling the issue.

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[63] The United States follow this approach which was reflected in the Palermo Protocol, United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and in the United States' Trafficking Victims Protection Act (TVPA). The U.S Department of State Office to Monitor and Combat Trafficking in Persons utilises diplomatic, economic, political, legal and cultural tools to exhibit the '3P' paradigm globally.

[64] "Analysis: Southeast Asia's Human Trafficking Conundrum," *Irin News*, 6 May 2013, <http://www.irinnews.org/Report/97979/Analysis-Southeast-Asia-s-human-trafficking-conundrum> (accessed 20 June 2013); See *Trafficking in Persons Report*, Washington DC: United States, Department of State, June 2013.

[65] Ibid.

In Southeast Asia, the Greater Mekong Sub-region (GMS) is a popular source destination for human trafficking activities, yet it is also considered a world leader in combating this issue. It was reported that some 500,000 migrants are smuggled into Thailand every year, and these migrants are unaware of the risks awaiting them such as abuse, exploitation and becoming easy prey for human traffickers.[66] Due to these circumstances, some of the initiatives aim to raise awareness and understanding not only on human trafficking issues but also human or migrant smuggling.

More than a year ago, the UNODC released a report which dedicates the happenings of human trafficking and migrant smuggling within the Greater Mekong Sub-region from East and Southeast Asia to Europe and the United States, and from Southeast Asia to Australia and Canada.[67] These efforts boost protective factors, mitigate risks and vulnerabilities and demonstrate best practices in bilateral and multilateral cooperation.

Cooperation is essential for international bodies, individual nations, regions, NGOs as well as the private sector for the prevention, protection, detection and prosecution; with the implementation of domestic legislation; enforcing the law; investigation on various elements such as cross borders; raising awareness from grass roots to schools and public; and implementing international legal instruments. Though these measures are in place, countries and regions have to strengthen them on an operational level.

These international instruments and tools designed and developed in addressing human trafficking problem may work for some countries and may not work for another. Hence, these international measures have to be adaptable and complement to be successful in other countries and regions as well. Therefore, it is important for

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[66] Ibid.
[67] See *Transnational Organised Crime in East Asia and the Pacific - A Threat Assessment*, New York, United Nations Office on Drugs and Crime, April 2013 (accessed 20 June 2013).

governments to be involved in talks and discussions to combat human trafficking and other transnational organised crimes.

In Southeast Asia, the GMS region is a highly travelled destination and a source region for human trafficking activities; nonetheless, the government has evidently shown its commitment to confronting and combating this issue.[68] With several regional organisations such as the ASEAN, the Asia Regional Trafficking in Persons Project (ARTIP), the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process), and the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), countries have joined hands in adapting and implementing the numerous measures designed and developed to combat human trafficking in the region.

ARTIP is a regional initiative funded by the Australian Government through Australian Agency for International Development (AusAID), commenced in 2006[69] and ended in August 2011. Its goal was to facilitate a more efficient and coordinated approach curbing trafficking via criminal justice systems of participating national governments in the prevention of human trafficking in the Asia region. ARTIP works in Cambodia, Indonesia, Lao PDR, Burma (Myanmar), Philippines, Thailand and Vietnam to reinforce the criminal justice response to trafficking by strengthening specialist and general law enforcement responses to trafficking; enhancing judicial and prosecutorial responses to trafficking, and reinforcing the legal and policy framework.[70]

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[68] "Reversing the Trend", in *Child Trafficking in East and Southeast Asia*, UNICEF, August 2009. It is a UNICEF EAPRO 2009 project, available at: <http://www.unicef.org/eapro/> (accessed 20 June 2013).
[69] The project was a follow-up from Asia Regional Cooperation to Prevent People Trafficking (ARCPPT, 2003-2006). See more of the efforts available at: <http://www.artiproject.org> (accessed 20 June 2013).
[70] Ibid. Note that the ARTIP project ended in Aug 2011 and was continued by the ARTIP Transition Phase which officially ended on 30 March, 2013. The successor programme is the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP).

After the end of the transition phase of ARTIP, the Australian government was continuously involved in tackling human trafficking crime in the region and initiated the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP) which commenced in June 2013 and will run for five years. This program will operate at a regional and national level and provide support to ASEAN and individual partner countries Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand and Vietnam. It desired to reduce the incentives and opportunities for human trafficking in the ASEAN region and established seven outcome objectives which will operate at regional and national levels.[71]

On February 2000, the Bali Process was initiated following the first Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime. It is an international framework agreement to manage the massive incursion of asylum seekers and to tackle human trafficking. The government of Indonesia co-chaired with the Australian government and in that meeting, more than 50 countries and various international organisations participated.[72]

In a recent ministerial conference meeting of the Bali Process on April 2013, which was attended by 37 nations, it was agreed that people smuggling and human trafficking will be 'more thoroughly criminalised' across the Asia-Pacific region.[73] Though there were some debates on the ineffectiveness the 10 years meeting by the Bali Process countries, year 2012 showed an 'unprecedented migratory movements on all

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[71] Three of the seven objectives operate at regional level and the rest at national level with additional supportive objectives, available at: <http://www.ausaid.gov.au/apps/businessnotifications/Pages/notification20022013-2.aspx> (accessed 10 September 2013).

[72] The Bali Process framework can be obtained at: <http://thebaliprocess.net> (accessed 10 September 2013).

[73] Michael Barchelard, "Bali Process Pledge against 'Vile Trade'," *The Sydney Morning Herald*, 3 April 2013, <http://www.smh.com.au/opinion/political-news/bali-process-pledge-against-vile-trade-20130402-2h58s.html> (accessed 10 July 2013). In this report, the Australian foreign minister Bob Carr said that the 37 nations agreed to put in place "more effective law enforcement" across the region to attack the 'vile trade'. It means that these nations are committed to take more effective control at airports and more effective border protection to curb people smuggling and human trafficking.

maritime routes in the Asia-Pacific region'[74] however it was disputed by the Indonesian foreign minister Marty Natalegawa that without the formation of the Bali Process, things could have been worse than before.[75]

The Bali Process was not only formed to manage asylum seekers from flooding specific countries especially Australia, but it was also a preventive method undertaken to criminalise and enhance enforcement agencies along with policy guides for member nations to create new laws and implement them to combat human trafficking and people smuggling in the region.

5.4 The Malaysian Government's Responses

With the implementation of the 'UN Protocol to Prevent, Punish and Suppress Trafficking in Persons, Especially Women and Children', it became the focal constituent for the world to confront human trafficking as a crime against humanity. Henceforth, in Malaysia numerous state and non-state actors from government bodies, non-government organisations and agencies were involved in the fight against human trafficking.

This part of the thesis would reveal the nexus between securitisation and responses because securitisation is an extraordinary respond towards a pertinent issue such as human trafficking.

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[74] Ibid.

[75] Ibid. Note: The Jakarta Centre for Law Enforcement Cooperation was set up between Australian and Indonesian police in 2004 after the first Bali bombing in 2002, with a strong focus on counter-terrorism.

5.4.1 Criminalisation of Human Trafficking and the Legal Framework

The first step of the Malaysian government's response is with the criminalisation of human trafficking crime through the creation of Anti-Trafficking in Persons (ATIP) Act 2007 and which was amended in 2010. In addition to this Act, several domestic legislations were implemented before the ATIP Act to tackle the issues of illegal migrants in Malaysia. Nonetheless, these domestic regulations are aptly in place as a support to eliminate human trafficking including migrant smuggling such as the Immigration Act 1959/63 [Act 155], the Malaysian Maritime Enforcement Agency Act 2004 [Act 633], the Customs Act, 1967 [Act 235], the Evidence Act 1950 [Act 56], Court of Judiciary Act 1964 [Act 91], Child Act 2001 [Act 611], the Penal Code [Act 574], Restricted Residence Act 1933 [Act 377] and the Emergency Ordinance 5/69.

Malaysia ratified the Palermo Protocol in 2007, seven years later and similarly many governments did not recognise the human trafficking crime in the beginning. Therefore, there are more international reports compared to the academic literature on states and NGOs' responses to manage and combat human trafficking in their respective countries. According to Malaysia's current Home Minister, Datuk Seri Dr. Ahmad Zahid Hamidi, around 752 human trafficking cases had been investigated under the ATIPSOM Act 2007 between 28 February 2008 and 31 December 2014.[76] The ATIPSOM Act is a significant legal instrument essentially implemented to curb human trafficking and below is a table describing the offences and penalties imposed on the atrocious crime in Malaysia.

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[76] Azura Abas, "Malaysia committed to fight human trafficking: Zahid Hamidi," *New Straits Times Online*, 23 February 2015, <http://www.nst.com.my/node/73715> (accessed 5 March 2015).

Table 5.1: Trafficking in Persons Offences

Section	Offence	Penalty
12	**Offence of trafficking in persons** Any person, who traffics in persons not being a child, for the purpose of exploitation, commits an offence.	On conviction, be punished with imprisonment for a term not exceeding 15 years, and shall also be liable to a fine.
13	**Offence of trafficking in persons by means of threat, force, etc.** Any person, who traffics in persons not being a child, for the purpose of exploitation, by one or more of the following means: (a) threat; (b) use of force or other forms of coercion; (c) abduction; (d) fraud; (e) deception; (f) abuse of power; (g) abuse of the position of vulnerability of a person to an act of trafficking in persons; or (h) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person, commits an offence.	On conviction, be punished with imprisonment for a term not less than three years but not exceeding 20 years, and shall also be liable to a fine.
14	**Offence of trafficking in children** Any person, who traffics in persons being a child, for the purpose of exploitation, commits an offence.	On conviction, be punished with imprisonment for a term not less than three years but not exceeding 20 years, and shall also be liable to a fine.
15	**Offence of profiting from exploitation of a trafficked person** Any person who profits from the exploitation of a trafficked person commits an offence.	On conviction, be punished with imprisonment for a term not exceeding 15 years, and shall also be liable to a fine of five hundred thousand ringgit but not exceeding one million ringgit and
15A	**Offence leads the transit of trafficked persons** through Malaysia (land, sea and air) or arranges or facilitates the act commits an offence.	On conviction, be punished with imprisonment for a term not exceeding 7 years, and shall also be liable to a fine.

Source: Anti-Trafficking in Persons Act 2007. 26 July 2007 and *Amended Anti-Trafficking in Persons Act 2010*.

According to the newly amended law, the Anti-Trafficking in Persons Act 2010 prohibits all forms of human trafficking, and the punishments are similar to other grave offences. If accused is found guilty, the minimum fine for profiting from trafficking people has been increased by tenfold. The enacted new law[77] penalties include the acquiring or maintaining the labour or services of an individual through oppression. With the inclusion of smuggling of migrants in the ATIP Act, hinder efforts to tackle and combat human trafficking effectively. This is because the frontline enforcement officials may treat actual trafficking victims as undocumented migrants (due to the absence of valid documents which would have been confiscated by the agents or pimps or syndicates or employers) and therefore face immediate deportation without bringing the perpetrators for trial.

Meanwhile, the amendment on the ATIP Act 2010 received several criticisms from International Non-Governmental Organisations (INGOs) especially the Human Rights Watch (HRW). A letter written by the Human Rights Watch Deputy Director Phil Robertson to the Malaysian Prime Minister Datuk Seri Najib Razak stated that the changes made to Malaysia's anti-trafficking law would weaken efforts in curbing human trafficking and at the same time reduce protections for undocumented migrants.[78] The concern was by conflating both human trafficking and smuggling of migrants would infringe immigration violations of human smuggling. Human trafficking victims would be mistaken for people smuggling therefore without proper investigation from the frontline enforcement officials would end up being deported if they were to be treated as

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[77] The government of Malaysia enacted amendments to the law which gave a broad definition on trafficking and revised the penalties to be more severe. It was amended in November 2010.

[78] Phil Robertson, "Malaysia: Letter to the Prime Minister Regarding Amendments to the Anti-Trafficking in Persons Act," Human Rights Watch, 8 September 2010. The letter was written by Phil Robertson, Deputy Director of Human Rights Watch Asia Division expressing concern over the amendments on the Anti-Trafficking in Persons Act 2007 which was approved by the parliament, available at: <http://www.hrw.org/news/2010/09/08/malaysia-revised-law-threatens-anti-trafficking-efforts> (accessed 10 September 2013).

undocumented migrants. Besides that, the amended law does not include any mechanisms to protect the rights of migrants controlled by the 'people smugglers'.[79]

The letter further suggested that the Malaysian government should separate the framework for human trafficking from people smuggling as the international law and practice are unrelated and in need of different strategies to function as set by the UN. There are two distinct protocols which serve for human trafficking; the (UN Trafficking Protocol) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which Malaysia has ratified and for people smuggling is the Protocol against the Smuggling of Migrants by Land, Sea and Air which Malaysia did not sanction.

After the implementation of the ATIP Act 2007, the following step was the formation of relevant bodies and enforcement agencies to combat human trafficking in the country.

5.4.2 The Creation of the ATIPSOM, ATIP Enforcement Agencies and NGOs

In 2008, to assist the Council for Anti-Trafficking in Persons as provided under Section 6 [1] of the Anti-Trafficking in Persons Act 2007 [Act 670], the Secretariat of the Council for Anti-Trafficking in Persons (MAPO)[80] was created, and the act was passed in 2007 and enforced a year later. The secretariat council was renamed the Secretariat of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM)

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[79] Ibid.
[80] In Bahasa Malaysia language it is termed as MAPO or Majlis Anti Permerdagangan Orang. Later when it was amended in 2010 with smuggling of migrants as an addition and the new term is known as Majlis Anti-Pemerdagangan Orang dan Anti-Penyeludupan Migran or Anti-Trafficking in Persons and Smuggling of Migrants (ATIPSOM).

with its mission to prevent and curb human trafficking crime and smuggling of migrants with systematic and consistent law enforcement.

The Malaysian government and its agencies have been proactive and in open discussion as well as bridging the gap with selective NGOs[81] and states in implementing the National Action Plan against Trafficking in Persons (2010-2015). This action plan is a strategic direction for five years, and the primary objective is to combat human trafficking and enrich support programmes as well as to ensure the effective implementation of the strategic goals[82].

The National Action Plan against Trafficking in Persons is the first official document outlining the government's commitment to tackling human trafficking activities in the country. This National Action Plan serves as a guideline to overcome the problem of trafficking in persons as well as complement the existing Anti-Trafficking in Persons Act 2007. Moreover, the ATIPSOM secretariat has its role-play and function to support the Anti-Trafficking in Persons Act 2010 with a clear vision to be recognised globally as a nation free from human trafficking and migrants smuggling.

The National Action Plan has been developed to identify the direction clearly and focus in achieving national goals for preventing and combating trafficking in persons in Malaysia. The National Action Plan outlines the following objectives:[83]

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[81] Some NGOs who have been advocating the fight against human trafficking before the implementation of ATIP and the establishment of the MAPO council were not included in the government's policy discussions. During the interview with the MAPO council Secretary, when the question of why only selected NGOs chosen to be in the Council, the answer was that some NGOs are very criticising. Thus, only few were selected to be in the discussion and government policy. However, the Attorney General's office and the Women's Ministry invited certain NGOs for meetings to discuss forced labour issues and victims protection.

[82] See *National Action Plan Against Trafficking in Persons (2010-2015)*, Ministry of Home Affairs, available at: <http://www.moha.gov.my/images/maklumat_bahagian/MAPO/NAP_ANTIPEMERDAGANGAN_ORANG_2010_2015.pdf> (accessed 20 June 2012).

[83] See *Anti-Trafficking in Persons and Anti-Smuggling of Migrant*, Ministry of Home Affairs, available at: <http://www.moha.gov.my> (accessed 3 June 2012).

a) To ensure the strategic direction for the next five years;

b) To determine strategic goals that will guide and drive national efforts to combat people smuggling;

c) To establish program areas to support and ascertain the effective implementation of the strategic goals.

With a clear mission and innovative vision, the ATIPSOM council planned to set up mini councils in all the states in Malaysia to coordinate human trafficking cases.[84] These mini ATIPSOM will be headed by the respective state's chief police with members including officers from enforcement agencies like the police, immigration, customs, maritime, women development department, welfare department and a representative from NGOs. Court directors, state chief prosecuting unit and shelter home operators are also included as members of mini ATIPSOM to enhance the line-up in the states.

To achieve its mission, ATIPSOM functions with 11 members from the ministries departments namely Foreign Ministry; Women, Family and Community Development Ministry; Transport Ministry; Human Resources Ministry as well as Communications and Multimedia Ministry alongside five NGOs who meet on a monthly basis to discuss updates and happenings of human trafficking activities in Malaysia. This meeting is chaired by the Chairman cum Secretary-General of the Ministry of Home Affairs Datuk Seri Mohamad Khalid Shariff.

Among many issues discussed, a pertinent decision was made on setting up a high-level committee to deal with human trafficking issues in Malaysia.[85] It was a way forward for the government in addressing recommendations made by the U.S. TIP Report 2014. One of the proposals is to allow the trafficking victims to stay outside the shelter

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[84] Karen Arukesamy, "Mini Mapo in All States," *theSun*, 11 August 2011.
[85] "Malaysia to set up high-level panel to tackle human trafficking," *Thai PBS*, 11 July 2014, <http://englishnews.thaipbs.or.th/malaysia-set-high-level-panel-tackle-human-trafficking> (accessed 5 November 2014).

homes, and the freedom to move and to work. The suggestion is considered since Malaysia was downgraded to Tier 3 of the TVPA after remaining on the Tier 2 Watch List for four years.

Meanwhile, the Attorney General from the Attorney General Chambers' Malaysia (AGC) advocates the legal and implementation of acts. To care for the victims' protection and their rehabilitation is managed by the Chief Secretary of the Ministry of Women, Family and Community Development; the Royal Malaysian Police (RMP) administers the law and enforcement of the ATIP Act in the country. The Ministry of Human Resources gives its attention on labour trafficking whereas the Ministry of Communications and Multimedia is responsible for managing media and public relations.

Five agencies were given the authority to combat human trafficking in Malaysia to uphold the enforcement of laws. They are the Malaysian Police, the Immigration Department of Malaysia (IMI), Royal Malaysian Customs (RMC), Malaysian Maritime Enforcement Agency (MEMA) and the Labour Department (JTK)[86] to investigate, raid and nab human trafficking cases. In 2011, for the first time, JTK was given the authority to convict suspected human trafficking cases.

The Malaysian law enforcement agencies work with their respective counterparts in the region, for instance, the Malaysian police, Immigration Department and Customs have close relationships with numerous immigration and customs agencies in the Asia-Pacific. The international partnerships and the working relationship among other agencies in the region are strong, especially when dealing with transnational crimes such

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[86] JTK in Bahasa Malaysia is Jabatan Tenaga Kerja and in English is Labour Department.

as human trafficking and migrant smuggling apart from drug and weapons trading, and various other crimes.[87]

Each of the TIP enforcement agencies conducts their operations or raids. For instance, MEMA carries out its air and coastal surveillance, IMI and JTK on illegal migrant entries and RMP conduct their raids as well. Sometimes the raids are based on scoops and tips on suspicious happenings or abuse and mistreatments. Between 2008 and 2012, the RMP rescued 438 victims more than any other agency followed by IMI with 112. Meanwhile, JTK has rescued nine and MEMA six victims of human trafficking. As for the RCM, its TIP unit did not make any arrest during the period.[88]

Emphasis on prevention measures on illegal migrants is a priority. When the enforcement agencies such as the IMI with the aid of The People's Volunteer Corps (RELA) conduct major raids on illegal migrants, they successfully capture and detain thousands of illegal migrants from various nationalities. Often, the officers are unable to identify the victims of trafficking to smuggling because their top priority is to curb illegal migrant smuggling.

The lack of knowledge on the issue of trafficking human beings is a key factor in failing to identify the victims. However, these enforcement personnel are not to be blamed because of the insufficient exposure on the characteristics of human trafficking victims and only a small unit of officers at respective enforcement agencies and departments oversee and manage issues pertaining to human trafficking.[89] Because of such circumstances, victims of trafficking are seen as illegal immigrants thus are detained in the detention centres before being deported to their countries. The chances of these

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[87] Interview with Saravana Kumar, Malaysian Immigration Department, 22 August 2013; Email interview with Habsah Harun, Royal Malaysian Customs, 13 September 2013.
[88] Statistics obtained from the Royal Malaysian Police with permission. Data shown from 2008 to 2012.
[89] Interview with Shahrul, Immigration Department of Malaysia, 22 August 2013.

victims falling into the hands of perpetrators in their home country are high and would cause them to be re-trafficked to different destinations.

Despite having the ATIPSOM council to tackle human trafficking issues in the country, there is a lack of collaboration between various enforcement agencies in handling this matter. Due to the requests for confidentiality during interviews, names and agencies will not be disclosed in discussing the challenges faced by the enforcement agencies. Some of the concerns were insufficient exposure and training on the subject matter; the same officer does not remain in the anti-trafficking unit in some agencies thus the new officers had to learn and be educated only to be replaced again and inadequate funding and tools to operate during raids.

Figure 5.2: Secretariat of Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM)

Source: Anti-Trafficking in Persons Booklet, Putrajaya: Majlis Anti-Pemerdagangan Orang (MAPO), 2010.

While ATIPSOM is established under the Federal government, at the state level, especially in Selangor the state government has its Council to address the human trafficking crime known as the Selangor Anti-Human Trafficking Council (MAPMAS). MAPMAS is actively engaged in combating human trafficking issues and championing

migrant workers plight by partnering with a local NGO Tenaganita.[90] There are some

NGOs which advocate human trafficking issues in Malaysia however they are not part of

the ATIPSOM council. These NGOs will be discussed under the local NGOs' response.

MAPMAS is not in the ATIPSOM council, and it was stated in the 2013 U.S. TIP

Report that MAPO and MAPMAS do not coordinate their anti-trafficking activities

which shows that there is a lack of correspondence between state governments.

Significant to say that to tackle an organised crime such as human trafficking it is

imperative for state governments to collaborate regardless of political interest to handle

and manage an issue which concerns national security.

5.4.3 Responses from Local NGOs

The local NGOs are the non-state actors who actively respond to a cause to the

betterment of all living things including human beings, nature and the environment.

NGOs can do almost anything in world politics from feeding famine victims and

protecting endangered species to eradicating nuclear weapons and epidemic diseases

such as AIDs, bird flu and to democratise some countries.[91] NGOs are the movers and

shakers actively engaged at both the top and the bottom of a country and are responsible

for championing human rights causes, environmental issues as well as speaking up the

injustice done in conflict nations. In Malaysia, there is a list of NGOs who engage in

various causes but on the human trafficking issue, there is a prominent number of local

NGOs who advocate the plights of vulnerable individuals. Although there are several

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[90] Gan Pei Ling, "Anti-Human Trafficking Units," *Selangor Times*, 8 April 2011, <http://www.selangortimes.com/index.php?section=news&permalink=20111125133032-anti-human-trafficking-units> (accessed 10 September 2013).
[91] William E. DeMars, *NGOs and Transnational Networks: Wild Cards in World Politics*, London: Pluto Press, 2005, p. 1.

NGOs who are non-affiliated members of ATIPSOM, they have equally contributed in combating human trafficking hence both parties will be discussed.

There are five local NGOs who are affiliate members of the ATIPSOM. They are the Human Rights Commission of Malaysia (SUHAKAM), National Council of Women's Organisation Malaysia (NCWO), Coalition to Abolish Modern-Day Slavery (CAMSA), Children Welfare Society and Institute of Malaysian and International Studies (IKMAS). These NGOs are committed to combating the menace of human trafficking in Malaysia. Some have also sheltered victims of human trafficking in their facilities.

SUHAKAM was initiated due to Malaysia's active participation in the United Nations Commission on Human Rights, and its main focus is on human rights advocacy. It is very much involved in combating human trafficking by bridging the gap between complainants and enforcement agencies for immediate and proper action. According to James Nayagam, one of the commissioners, SUHAKAM supports the Malaysian government's efforts to eliminate human trafficking in the country. As an ATIPSOM member, it is involved in numerous dialogue and roundtable discussions. Apart from that, SUHAKAM conducts visits to shelter facilities provided for victims of human trafficking and ensures that the rescued human trafficking victims' rights are assured from the rescued stage through the rehabilitation process up till they are confident to return to the society.

The NCWO acts as an advisory board to champion women's cause and raises the status of women at large in national development. One of the objectives of NCWO is to create awareness on the issue of human trafficking especially on women and children to the public and to prevent Malaysians from falling victim to human trafficking and

becoming a statistic.[92] NCWO is represented by Dato' Faridah Khalid and her team have carried out state-level campaigns and training for trainers in the government agencies as well as other NGOs throughout the country. NCWO plays an essential role in prevention by conducting various educational programmes at the state and district levels across Malaysia.

CAMSA is a coalition of INGO working closely with international partners to combat the atrocious crime of human trafficking in Asia. The coalition members and partners operate in the U.S., Canada, Germany, Taiwan, Thailand, Vietnam and Malaysia. According to CAMSA's Country Manager, Daniel Lo, since its inception in 2008, CAMSA has rescued more than 4,000 victims of human trafficking all over the world. CAMSA's approach is victims centric and transnational and it collaborates with ATIPSOM as an affiliate member and other enforcement agencies and NGOs locally and globally to curb human trafficking.

The non-affiliates NGOs of ATIPSPOM are Tenaganita, JUMP (Jaringan Utara Migrasi dan Pelarian), Suara Kanak-Kanak Society (SUKA), the Good Shepherd Welfare and an IO, United Nations Interagency Project on Human Trafficking (UNIAP) have significantly put in their efforts in combating human trafficking in Malaysia.

Tenaganita is a legal and advocacy NGO committed to defending the rights of migrants, refugees and human trafficking victims in Malaysia. It provides shelter for the victims of human trafficking and conducts an ongoing project named Esther Project[93] which addresses the issue on human trafficking in the country. The late Irene Fernandez,[94] Tenaganita's chairman, voiced out vehemently that the government has to

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[92] An email interview with Dato' Faridah Khalid, NCWO, 9 September 2013.
[93] A spontaneous chat with Glorene Dass, Programme Director of Tenaganita, 2012.
[94] In *Trafficking In Persons Report*, 2014, the late Irene Fernandez was hailed as a TIP Hero in the 2006 TIP Report, p. 51.

step up its efforts to combat the various forms of human trafficking in Malaysia. Tenaganita collaborates with the Selangor state government's anti-human trafficking unit MAPMAS by working on the case management of victims. MAPMAS would revoke the licences of business premises found to harbouring human trafficking victims. CAMSA sits on the council board as a task force member to aid the council in identifying the victims of human trafficking. This would enable the council to distinguish the victims from smuggled migrants or illegal immigrants and to treat them rightfully.[95]

In the state of Penang, an organisation called JUMP (Jaringan Utara Migrasi dan Pelarian) in Bahasa Malaysia or Northern Network for Migration and Refugees is a network of groups and individuals who advocate the human rights of migrants, refuges, and also victims of human trafficking.[96] JUMP joins forces with NCWO in Penang anti-trafficking campaign awareness at state level along with various NGOs to advocate.[97]

Meanwhile, the SUKA Society puts children as their priority, including those victims of human trafficking as well as domestic violence and sexual abuse. This NGO advocates the protection, survival, participation and development of children including women by conducting programmes with the help of volunteers in the government and NGOs' shelters for the victims of trafficking.[98]

IOs such as the United Nations Interagency Project on Human Trafficking (UNIAP) a consultant of UNDP and IOM develop programmes and coordinate those programmes for government agency officials and NGOs to enhance their skills in identifying cases of human trafficking during raids and interrogation process. With the

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[95] Gan Pei Ling, "Anti-Human Trafficking Units," 8 April 2011.

[96] Meena Lakshana, "Saying 'No' to Human Trafficking," *JUMP Penang*, 17 September 2012, <http://www.jump-penang.org/from-news/sayingnotohumantrafficking> (accessed 11 September 2013).

[97] "Freedom Saturday," *JUMP Penang*, 20 October 2012, <http://www.jump-penang.org/jump-in-action/20thoctober2012freedomsaturday> (accessed 11 September 2013); "NCWO Anti Trafficking Campaign," *JUMP Penang*, 13 October 2012, <http://www.jump-penang.org/jump-in-action/13thoctoberncwoantitraffickingcampaign> (accessed 11 September 2013).

[98] Interview with Anderson, SUKA Society, 1 October 2013.

presence of IOs, the government can come up with effective efforts in combating this crime but often there is a preference in choosing whom it wants to partner with seem to conflict with the objective of the National Action Plan to combat human trafficking.

On a different note, UNIAP has voiced out that several attempts to forge a partnership with ATIPSOM secretariat members on the issue of human trafficking appeared to be unfruitful.[99] UNIAP has responded to human trafficking in the GMS region by coordinating successful programmes to combat human trafficking. The GMS is known for its human trafficking issues, and the IOs with the collaboration among state governments and local NGOs have tackled the crime and also create awareness through campaigns and education programmes.

The local NGOs and activists in Malaysia agree that the government is responding well in handling the issue and managing the critiques, yet they are in the similar wavelength that the government could do more in its actions to combat human trafficking in the country. During interviews, both NGOs and government agencies agreed that the involvement of the society as a whole is lacking, and this is due to lack of awareness and knowledge on human trafficking issues. Therefore, more than ever there is an urgent need to educate the society. Realising this, local NGOs collaborate with corporate organisations with additional support from ATIPSOM in organising awareness campaigns in schools, higher learning institutes and in numerous public spots such as shopping malls throughout the country.

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[99] Interview with Nguyen Hoa Adam, of United Nations Inter Agency Project, 2 October 2013.

5.4.4 Malaysia and Regional Co-operation

Effective partnerships are critical to combat human trafficking, and a government is not able to tackle this problem by itself especially when the crime involves neighbouring countries.[100] Hence, the Malaysian government has forged partnerships with Indonesia, Philippines, Bangladesh and Cambodia.

For a better understanding of domestic workers' issues and as a preventive measure, the Malaysian and Indonesian governments signed a bilateral memorandum of understanding (MoU) with new agreements on the provisions. On May 2011, both Indonesia and Malaysia signed amendments to a bilateral MoU on domestic workers which include provisions prohibiting employers from taking away the passports of domestic workers unless consented by the workers, allowing the workers to have a weekly rest day, payments have to be made directly into the workers' bank account, limiting the pay deduction for recruitment fees and requiring the employers with their workers to attend a seminar to understand their rights and responsibilities.

This MoU marks a new agreement between both governments since the ban in 2009 when Indonesia prohibited its people especially women from working as maids in Malaysia. Nevertheless, many have been deceived by promises of well-paid jobs so they enter the country illegally often smuggled or trafficked and exploited to work in vulnerable situations.

To prevent mistreatment from the employers and for the workers to have a better understanding of their responsibilities, both employers and workers are urged to attend a seminar at the agency. Despite signing a MoU, some employers fail to adhere to the signed agreement by confiscating the workers' passport and as a result, the agreed MoU

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[100] Interview with Prof. Dr. Azizah Kassim, IKMAS, 13 January 2014. Seminar, Awareness Campaign on Human Trafficking and Migrant Smuggling, University Malaya, 20 September 2012.

is unable to protect the domestic workers. The employers were not charged or fined for taking away their employees' passports or important travelling document though it is prohibited. Some of the workers are confined to their workplace and do not have the freedom to go anywhere or do anything. They were not fed sufficiently nor given a rest day, and their wages were withheld. By withholding the wages of domestic workers and forcing the workers to work without proper food and rest are actions of human trafficking. Exploiting them into forced working conditions constitutes trafficking in persons. [101]

With the Philippine government, the MoU agreement sufficiently protects their workers and the government with due diligence it continues to negotiate with other governments such as Cambodia to protect and govern their people employed in Malaysia. However, under the Malaysian labour law, foreign domestic workers are not totally protected.[102] The term used in Malaysia is labour exploitation and not forced labour as practised in the U.S.

Foreign workers from Bangladesh are also entering the country in big numbers annually, and these labourers are focused at construction sites, plantations and farming sectors. During their stay in Malaysia, some of the employees were abused and treated badly by Malaysian employers causing the channel to recruit Bangladeshi labourers was suspended in 2009. Henceforth, to re-establish the official channel both governments signed a bilateral MoU in November 2012. However, it is dubious to implement the agreement without the involvement of private employment agencies when these agents

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[101] To ascertain whether a particular circumstance constitutes trafficking in persons, consider the definition of trafficking in the Trafficking in Persons Protocol and the constituent elements of the offense, as defined by relevant domestic legislation, see <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (accessed 3 June 2012).
[102] Though the Malaysian government amended its Employment Act for employers to have a better understanding on the definition of 'contractor for labour', however to what extend these amendments may have effect government regulation of contractor-based arrangements which may incur vulnerabilities to forced labour.

are the culprits in recruiting Bangladeshis into the country and forcing them into jobs they did not foresee. If these workers retaliate, then, the agents will traffic them into other parts of the country to do other hard labour or beat them up and starve them until they give in.

Besides abuse cases on Bangladeshi workers, there were reports of Malaysian employers mistreating their Cambodian domestic helpers.[103] With numerous reports, cases and deaths, the Malaysian government is yet to finalise any MoU to govern Cambodian domestic workers since the ban on Cambodian women's emigration in 2011. The negotiation on the document is delayed because the Malaysian government rejected 90 per cent of the suggested recommendations to protect Cambodian workers' rights.[104] The Malaysian government dismissed the request of Cambodia that the workers should keep their passports instead of the employers, they should be able to view and sign the contract agreement before leaving Cambodia to Malaysia for work and have three meals per day with annual leave. Due to these rejections and other issues, the Cambodian Prime Minister Hun Sen indefinitely suspended the sending of their women as domestic workers in Malaysia.[105]

According to human rights organisations, nine domestic workers died that same year due to horrendous abuse by their employers as well as the recruitment agencies in Cambodia.[106] Because of the ban the prospect to traffic Cambodians into Malaysia is

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[103] Lindsay Murdoch, "Maid in Malaysia: A Stroy of Beatings, Abuse," *Sydney Morning Herald*, 18 January 2012, <http://www.smh.com.au/world/maid-in-malaysia-a-story-of-beatings-abuse-20120117-1q4ml.html> (accessed 10 September 2013).
[104] Matt Blomberg and Khy Sovuthy. "Malaysia Fails to Guarantee Cambodian Maids' Human Rights," *Cambodia Daily*, 24 December 2013, <http://www.cambodiadaily.com/archives/malaysia-fails-to-guarantee-cambodian-maids-human-rights-49629/> (accessed 15 January 2014).
[105] Ibid.
[106] Ibid.; Julia Zappei, "Malaysian Couple Jailed for Starving Maid to Death," *Singapore News Yahoo*, 17 May 2013, <http://sg.news.yahoo.com/malaysian-couple-jailed-starving-maid-death-075534528.html> (accessed 10 September 2013).

high as the human trafficking syndicates would want to 'help' those Cambodians who want to escape the country's poverty and socioeconomic imbalance.

5.4.5 Public Perception and Awareness

It is a norm for people in the neighbourhood to shun away from the beatings of employers over their domestic maids; people drop their faces when they walk away when a man beats up a woman in the back alley or the pub or motel, or a man is knocked down for not doing a job properly. The community closes their ears when they hear children and women being raped or tortured or beaten up insanely by their neighbours or someone in the next flat or apartment and the public avert their eyes when a woman pleads with her sombre eyes for help.

This is because in Asia it is disrespectful to nose around on what is happening in the neighbourhood. The Asian community, however, are helpful citizens, but there is a sense of respecting neighbours' privacy as that is the value taught by the elders. If there is a quarrel between a husband and wife, the neighbours will not interfere because it is a family matter and it is private. When a mother beats up her children to discipline them, the community does not interfere as it is a family affair and the mother has the right to discipline her children. The same practice is applied when a domestic maid is beaten up regularly.

There is a lack of knowledge on the issue of human trafficking among Malaysians.[107] Global citizens, especially in the developed nations, would be very much exposed to the issues and crimes on human trafficking compared to the poorer countries in Asia, Africa and the Middle East. People are not aware of the vulnerable populations

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[107] Interview with Nguyen Hoa Adam, of United Nations Inter Agency Project, 2 October 2013.

around them simply because they do not know anything about human trafficking and the characteristics of the crime. Nevertheless, the local NGOs collaborate with each other and with government agencies by conducting awareness campaign and public education on human trafficking.

5.4.6 Corporate Social Responsibility (CSR)

At national and state levels, the affiliate members of ATIPSOM organised events to raise awareness campaigns via print media, television programmes and radio as well as social networks.[108] There were 5,500 public service announcements on human trafficking on national and state radio networks.[109] Posters on human trafficking and migrant smugglings are found in higher learning institutions and the public as well as launching road campaigns around states in Malaysia.

In 2012, a series of training events were conducted for 514 domestic workers, 532 employers and 93 private recruitment agents. The Ministry of Human Resources reported that it continues to monitor 42 suspected outsourcing companies that recruit foreign workers into Malaysia. The licenses of these companies have been suspended for committing offences by falsifying documents or listing false employers. They were not charged with criminal prosecutions.

In 2011, 136 employers were imposed administrative sanctions, but vaguely nothing was reported specifically on human trafficking violations. During the same year, the Home Ministry first claimed to investigate the allegation on recruitment agencies

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[108] In November 2011, the Human Resource Ministry's official gave a talk on a prime time news program on the new provisions of an agreement signed with Indonesia and also on exercising the ATIP law by criminally prosecuting exploitative employers besides encouraging the public to be alert on abuses and to report them. In 2012 the members of the council appeared on Bella programme on NTV7 and then on Radio Era. In 2013 on BFM Radio and CAMSA an NGO and a MAPO council member CAMSA has a page on Facebook where it updates the activities and events on human trafficking efforts.
[109] *Trafficking in Persons Report*, 2013, p. 252.

charging high fees on migrant workers during registration program. However no actions were taken to look into the allegations.[110]

5.5 The '3P' Paradigm

The UN Protocol's '3P' approach is the fundamental component of the TVPA's minimum standards determining a state's efforts in combating human trafficking. '3P' stands for prosecution, protection and prevention with an additional component partnership which does not reflect in the TIP Report nonetheless crucial in eliminating the crime in the states and at the global level. The assessment on Malaysia by the U.S. States Department reflects on poor governance, an unwillingness to build genuine and collaborative partnerships with civil society and a lack of political will to collectively, systematically and holistically combat modern-day slavery and human trafficking.

In the 2013 U.S. TIP Report, Malaysia was enlisted for the third time in a row on the Tier 2 Watch List[111] whereby Malaysia was granted a waiver from Tier 3 because it government had a written action plan that, if implemented, would constitute significant efforts to meet minimum standards to eliminate trafficking and devote sufficient resources to implement that mentioned plan. It was also reported that the government was continuing with confining foreign victims to inadequate facilities and failed to provide these helpless victims with legal aid, translation and psychological resources as well as government certified victims cannot choose to reside outside these inadequate facilities.

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[110] Some members of the civil society suggest that the government should be more prudent and responsible in handling issues on domestic workers. Allegations made by the workers through the NGOs are not investigated with due diligence. As the Home Ministry agreed to investigate the exploitative recruitment fees incurred during the government's migrant worker registration program sadly no response from the Ministry.

[111] Third consecutive year because compared to previous years, the Malaysian government did not show evidence of increasing efforts to address human trafficking. However, the MAPO council disagrees with this claim during a phone interview conducted on September 2012.

At the same time, another report by the UNHCR World Report 2011 on Malaysia[112] stated that the government does not fully comply with the minimum standards to eliminate trafficking.

The efforts of the governments are assessed based on the enactment of laws forbidding ruthless forms of human trafficking as described by the TVPA and the stipulation of criminal penalties for trafficking offences. Also, the severity of the criminal penalties is taken into consideration or at least a maximum of four years imprisonment. The success of prosecution through the implementation of human trafficking laws prevents human trafficking in the country. Apart from that, it is essential to have a proactive victim identification measures with systematic procedures to guide the enforcement of law and other government agencies' frontline officers responding to the crime by processing the identification of human trafficking victims.

Simultaneously, the Malaysian government should partner with all NGOs advocating to eliminate human trafficking (not only selected NGOs) and provide victims with access to primary healthcare, counselling and shelter facilities. By doing so, victims can recount their trafficking encounters to professional and trained social counsellors and law enforcement in an environment of minimal pressure.

Countries are also evaluated by the extent of victim protection efforts which include access to services and shelters without detention and with legal alternatives to extradite to countries that they might face adversities. At the same time, the efforts of the government in providing legal aid and other assistance consistent with the domestic law are not damaging to victim's rights, dignity or psychological well-being. It is also to ensure the safe and humane voluntary repatriation and reintegration of victims.

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[112] *World Report 2011 - Malaysia*, New York, Human Rights Watch, 24 January 2011, see <http://www.refworld.org/docid/4d3e80201c.html> (accessed 30 May 2013).

Finally, the extent of governmental steps in preventing human trafficking including the efforts to curb practices is a contributing factor to human trafficking such as confiscation of foreign workers' passports by employers and allowing labour recruiters and employment agencies to charge prospective migrants recruitment or placement fees.

It was also mentioned that the Tier ranking and narratives are not affected by the efforts of the NGOs in the country such as public campaign awareness events or government sponsored and the lack of tangible ties to the prosecution of traffickers, protection of victims or prevention of trafficking as well as broad-based law enforcement or developmental initiatives.[113] The TVPA evaluation on governments' efforts emphasises the protection facilitated for the victim of human trafficking as well as on the conviction rate against the perpetrators by the AG office.

5.5.1 Prosecution

The first 'P' in the TVPA is prosecution which exhibits a country's minimal efforts to investigate and prosecute human trafficking offences during the reporting period. It is the summary of the government's efforts in legal structure and enforcement of the law against human trafficking activities.

The Malaysian government has shown immense initiative in addressing and highlighting human trafficking throughout the country to create awareness among the public, however in enforcing the law, it is regarded as modest and insufficient.[114] This is because only sex traffickers are convicted compared to those who have exploited men and women alongside under-aged children into forced labour. The overall conviction rate

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[113] *Trafficking in Persons Report*, 2013, p. 44.
[114] Ibid., p. 250.

has improved since the amendment of the ATIP Act in 2010. Though in 2009, the U.S. TIP Report condemned the government for disregarding labour violations by several Malaysian employment companies and failed to respond to criminal investigations.

In spite of the critiques from IOs and in the U.S. TIP Report on the inefficiency of the police and Labour Department to investigate complaints on employers and agencies on confiscating passports and travelling documents, for withholding workers' salaries specifically maids and for treating trafficking cases as immigration violations, the Labour Department has designated 13 specialised enforcement officers for labour trafficking throughout the country.[115] However, these authorities have limited experience in the anti-trafficking procedures and are given added responsibilities besides their regular working task.

One of the challenges faced by the Labour Department is being understaffed and being the youngest unit in ATIPSOM; they are not exposed to various anti-trafficking training.[116] This department faces logistic problems such as insufficient transport to commute for operations and the enforcement officers have to make use of their own vehicles and often investigations are ineffective due to lack of evidence. On top of that, they are exposed to danger and risk if they were to face the perpetrators because the labour enforcement officers do not carry weapons like the police.[117]

Before the introduction and implementation of the ATIP Act in 2007, Malaysia did not criminalise debt bondage or labour practices that promote involuntary domestic servitude, and there were no judicial cases prosecuting traffickers.[118] Due to political

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[115] Ibid.

[116] Phone interview with a Labour Department officer from the Selangor State Labour Department, 27 August 2013.

[117] Ibid.

[118] Pooja Terasha Stanslas, "The Human Trafficking Problem in US-Malaysia Relations," no. 88 (15 December 2010), see <www.eastwestcenter.org/download/3729/32464/apb088.pdf> (accessed 10 September 2013).

pressure which may impede the relationship between the U.S. and Malaysia as well other nations, the Tier ranking of TVPA implies the absence of significant efforts from the government of Malaysia in addressing human trafficking problems.

Even with the new amendments, convictions are seldom imposed on perpetrators of forced labour. This is clearly seen when in 2011 the government of Malaysia prosecuted 17 sex trafficking offenders but did not indict any delinquents of forced labour whereas, in 2010, about 14 convictions were prosecuted for both sex and labour trafficking.[119] Judgments sentenced upon offenders are incarceration from two to 30 years.

During the same year, based on police and immigration investigations, 97 suspected trafficking cases were reported of which 45 were labour trafficking cases. Hence, 16 cases were prosecuted with 13 engaged in sex trafficking and three for forced labour.[120] However, the figure compared to the previous year's conviction was a total of 231 and was ongoing but no matter the number of prosecutions, the acquittals seem to be equally high.

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[119] Data obtained from Attorney General Chamber's Office and used with permission. Also see *Trafficking in Persons Report 2012*, June 2013.
[120] Ibid; Irene Fernandez, "Human Trafficking: Raise Transparency to Ensure Effective Prosecution", *Malaysia Chronicle*, 28 June 2012, <http://www.malaysia-chronicle.com/index.php?option=com_k2&view=item&id=35607:human-trafficking-raise-transparency-to-ensure-effective-prosecution-irene-tells-govt&Itemid=2.> (accessed 10 September 2013).

Table 5.2: Malaysia: Cases of Prosecution of Human Traffickers, 2008-2013

CASES CATEGORY	2008	2009	2010	2011	2012	2013	TOTAL
CASES CHARGED	8	142	192	22	63	113	**540**
CASES PENDING TRIAL	0	27	109	7	15	107	**265**
CASES DISCHARGE (ACQUITTAL)	2	50	41	10	19	2	**124**
CASES DISCHARGED NOT AMOUNTING TO ACQUITTAL (DNAA)	3	18	2	1	10	0	**34**
CONVICTION	3	47	40	4	19	4	**117**

Source: Statistics Obtained from Attorney General Chambers Office, Malaysia (various years)

One of the components of the 3Ps framework is prosecution where an imposed sentence on trafficking offenders should include significant maximum jail terms based on the severity of a person's involvement in the crime. The U.S. Department of States evaluates the governments' involvement in prosecuting alleged perpetrators. Based on the TVPA report, Malaysia has not shown favourable convictions on offenders caught and prosecuted on human trafficking cases. A similar sentiment was voiced out by Tenaganita and being a non-affiliate member of ATIPSOM Tenaganita was accused of being very critical and judgmental of the government's efforts.

Since the Labour Department was also given the mandate to convict suspected human trafficking cases, in 2011 it filed three suspected labour trafficking perpetrators who were the owners of a media company GSS Agency forcing five Indian nationals into

forced labour by distributing and selling newspapers.[121] During the arrest, the five workers did not produce any relevant documents and as a result, they were detained for violating immigration law. The employers who had confiscated their workers' personal and travelling documents were not charged resulting in dissatisfaction among the members of the civil society. Not only that, there were no reliable witnesses prepared to prosecute the employers when the case was produced with elements of labour trafficking. Due to the pressure from the public and NGOs, the Labour Department was forced to investigate the case but till now it is an ongoing case.

This clearly shows that there is an ignorant attitude in convicting the employers possibly due to their position in the public and as a member of a media company. When there is a lack of collaboration between NGOs and the prosecution team to bring those violating the ATIP law to justice, it will be a hurdle for the nation to combat human trafficking.

Apart from that, some cases have been reported against government officials for their direct involvement in human trafficking but so far only one offender was prosecuted in December 2008 under the 2007 anti-trafficking law. In 2009, the U.S. Senate Foreign Relations Committee made a formal report stating that Malaysian immigration officials were involved in trafficking and extorting Burmese refugees to the Malaysia-Thai border.[122] Upon arrival at the border, the traffickers take possessions of the migrants and demand ransom.

The Royal Malaysian Police investigated the allegations with the assistance of the Immigration Department, however, no officials were arrested, prosecuted or convicted

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[121] Irene Fernandez, "Human Trafficking: Raise Transparency to Ensure Effective Prosecution," *Malaysia Chronicle* 28 June 2012; "Government Must End Slavery, Forced Labour in Malaysia," *Malaysiakini*, 18 December 2011, <http://www.malaysiakini.com/letters/184447> (accessed 10 September 2013).
[122] Ibid.

for the involvement in trafficking. This indicates that the is government yet to develop mechanisms to screen victims of trafficking effectively.[123] Even now, with insufficient training and proper investigation, the frontline officers like the police, immigration and labour officials failed to recognise and identify actual victims of human trafficking during raids or after detaining and further necessary assistance.

In 2010, it was reported that seven Immigration Department officials were involved in human trafficking activities.[124] The accused together with two Indonesians were detained under the Internal Security Act (ISA)[125] for indefinite detention without trial and were later pardoned for repenting.[126]

According to the former Home Minister of Malaysia Datuk Seri Hishammuddin Hussein "the suspected officials of human trafficking were detained under the ISA was in line with the government's stand to defend safety and stability of the country whilst also enabling better and comprehensive investigations into the case, especially in syndicates involving the trafficking of the foreigners. This is also in line with the government's

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[123] *Trafficking in Person Report*, June 2009.

[124] "Malaysia Accuses Immigration Officials of Human Trafficking," *Inquirer Global Nation*, 13 October 2010, <http://globalnation.inquirer.net/news/breakingnews/view/20101013-297563/Malaysia-accuses-immigration-officials-of-human-trafficking> (accessed 10 September 2013); "Nine Arrested under Isa," *theSun*, 13 October 2010, <http://www.thesundaily.my/node/137345> (accessed 10 September 2013); Irene Fernandez, "Human Trafficking: Raise Transparency to Ensure Effective Prosecution," *Malaysia Chronicle*, 28 June 2012; "Five Immigration Officers Nabbed for Human Trafficking," *theSun*, 20 July 2009, <http://www.thesundaily.my/node/153237> (accessed 10 September 2013); "Indian National Charged with Human Trafficking," *theSun*, 29 December 2011, <http://www.thesundaily.my/news/252155> (accessed 10 September 2013).

[125] The Internal Security Act 1960 ('ISA 1960') was replaced on 31 July 2012 with Security Offences (Security Measures) Act 2012 ('SOSMA 2012') which has a wide definition of what constitutes a 'security offence'. Under this new Act a detainee can be denied of legal aid for 48 hours after an arrest.

[126] By using the ISA to hold offenders of human trafficking has weakened the prosecution cases and it does not only defeat the purpose of implementing the ATIP law but raises concern over the government's motive and intention in not convicting the perpetrators in an open court. It denies human rights to an open, fair and just trial. However, according to Malaysian Human Rights Commission (SUHAKAM) ISA should not be used on human trafficking offenders as it was ineffective in elimination the root cause of the issue. Besides the use of ISA reflect false impression on the actual trafficking activities in the country and once they are released from detention without trial, they could continue with the offense.

intention to prove to the people of the country and the international community that Malaysia is very committed to fighting human trafficking." [127]

Based on the statistic provided by the MAPO Council of the Home Ministry, the number of cases of trafficking in persons from the year 2008 to 2012 was a total of 591, and the total number of arrests made was 797.[128] In 2013, a total of 113 human trafficking cases were charged and four convictions during the period of writing this thesis. From 2008 to 2013, the prosecution team from the AGC office has successfully convicted a total of 117 cases of human trafficking.[129] It shows a slight improvement from 64 human trafficking cases with 78 successful convictions from 412 cases brought to the court for prosecution since 2008 to 2012.[130]

It was also reported that there were two foreigners suspected of human trafficking and were detained without trial in Kamunting Detention Centre.[131] One of them is a Sri Lankan detained since 2009, and another suspect is an Iraqi locked up since 2011. Both arrests have been extended to 2013.[132] Both detainees were on hunger strike as they disagreed with their detention without trial. This action inflicted a bad image on the

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[127] Irene Fernandez, "Human Trafficking: Raise Transparency to Ensure Effective Prosecution," *Malaysia Chronicle*, 28 June 2012; Karen Arukesamy, "Mini Mapo in All States," *the Sun*, 11 August 2011, reports Malaysia's commitment by setting up mini enforcement agencies in the states across Malaysia.

[128] See *Statistic Cases for Trafficking in Persons from 28 February 2008 to 30 November 2012*, Anti-Trafficking in Persons Unit (MAPO), available at: <http://www.moha.gov.my/index.php/en/sekretariat-statistik> (accessed 12 December 2012).

[129] Interview with DPP Adilla Hj. Ahmad, AGC Office, 16 October 2013. Statistic is on Overall Human Trafficking Prosecution in Malaysia with permission from the Attorney General Chamber's Office.

[130] Ibid.; Interview with DPP Kalmizah Salleh, AGC Office, during Seminar, Awareness Campaign on Human Trafficking and Migrant Smuggling, 20 September 2012.

[131] Farrah Naz Karim and Alang Bendahara, "Making Millions from Behind Bars," *New Straits Times*, 10 September 2012; Farrah Naz Karim and Alang Bendahara, "Undeclared Millionaires", *New Straits Times*, 11 September 2012. In both articles, the journalists descriptively have written on how the perpetrators were still making money and running their business from detention centres in Kamunting.

[132] Lawyers for Liberty representing both detainees stated that they were tortured for the first 60 days by the authorities to extract confessions from them however, both did not confess and were on hunger strike to demand for release. Also for further reading see *World Report 2011 - Malaysia*, New York, Human Rights Watch, 24 January 2011, available at: <http://www.hrw.org/world-report-2011/malaysia>; *World Report 2012 - Malaysia*, New York, Human Rights Watch, January 2012, available at: <http://www.hrw.org/world-report-2012/world-report-2012-malaysia> (accessed 15 October 2013).

Malaysian government as an ineffective and inconsistent screening system of alleged human traffickers.

In 2008 and 2011, two individuals were convicted under the ATIP Act for labour trafficking, and each was imposed an eight-year incarceration. However, when eight immigration officials were detained for the same offence they were detained for ten months without trial and were released as they all claimed regret and repented for their mistakes.[133] In another case, 11 Uighurs from China were suspected of their involvement in human trafficking and were deported to China without being charged.[134]

Since the state did not show consistency in conviction and prosecution and reflected prejudices for being inconsistent in the penalties for different offenders from 2008 to 2011, the Malaysian Human Rights Commission (SUHAKAM) questioned the government on its criteria and rationale for prosecuting and punishing human trafficking perpetrators.[135] At the time of writing this thesis, 16 people are still detained under the 'ISA 1960' for human trafficking crimes.[136]

Despite amended legislation, the anti-trafficking law failed to include sufficient provision for the security of victims and the freedom for these victims to reside outside the government shelters and for those in closed shelter facilities resembling detention centres. The implemented new amendments conflate trafficking victims with smuggled migrant workers while reducing protection for both groups thereby preventing the

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[133] Azril Annuar, "Eight Officers Were Sacked: Immigration DG," *theSun*, 9 August 2011. These eight immigration officers were sacked after their release not only from their department but from any other government body or agency. Though some human rights groups and NGOs wanted them to be charged and prosecuted.

[134] SUHAKAM filed this in its Annual Report 2011 in Parliament on 26 March 2012; Also see, *Annual Report 2012*, *The state of the world's human rights*, Amnesty International, 2012.

[135] Despite the protest by UNHCR and civil society to stop the deportation as the Uighurs would face persecution in China, the Malaysian government deported them immediately fulfilling the request of the Chinese government.

[136] "Submission of Bar Council Malaysia for the Universal Periodic Review of Malaysia 2013," Kuala Lumpur, Bar Council Malaysia, 11 March 2013. Accessed from an interview with the Minister of Home Affairs published on 18 February 2013. (accessed 10 September 2013).

victims to cooperate in identifying the perpetrators. However, the AGC with the collaboration of relevant enforcement agencies is in the midst of implementing the ATIP Act and therefore in the near future there will be a more successful number of prosecutions for human trafficking. Such an action indicates that the MAPO council and its members are making significant efforts to combat human trafficking.

To dispute such a statement from international organisations and civil society, the secretariat of the MAPO within the Home Ministry was not forthcoming when requested for an interview. Nevertheless, with persuasion an interview was conducted via phone and feedback was complacent.[137] Responses were mainly on programs carried out by the council to create awareness among schools and public on human trafficking and migrant smuggling in different states which would fall under the prevention stage.

One of the challenges faced by the prosecution team is to have a successful conviction when the victim of human trafficking fails to be a fruitful witness due to lack of cooperation.[138] They are silent when put on trial especially when they have to face the convict. Often they refuse to be a witness even though they were prepared beforehand and willing to testify. These victims become vulnerable when they meet the offender in the court because of the threats imposed when they were enslaved. Usually, the threats are not made to them but towards their families. As a result, these victims become too afraid to testify.

Another hurdle is the duration of the trial which forces the victims to stay in the shelter homes without paying jobs. Hence, the victims face emotional dilemma such as

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[137] Phone interview was conducted on September 2012 with the Secretary of the MAPO council with the former Secretary of MAPO responsible on the function of the council and conduct programmes at various levels. Prior to the interview, an official letter was sent upon request but still did not get a satisfactory interview.

[138] Interview with DPP Adilla Hj. Ahmad, Attorney General Chamber's Office, 16 October 2013.

depression and anxiety as they cannot work due to trial and have no means of sending money to their poor families.

As shared by the prosecutor during the interview, one error during the investigation was the victim was questioned alongside perpetrators causing the victims to be non-corporative. Even with proper interview sessions, the victims are not forthcoming during the trial. They are traumatised, and all they want to do is go home to their families and get back on their feet to earn a living.[139]

Apart from that, victims feel threatened by the presence of syndicates during the trial. Hence, the AGC office has come up with a solution where the victim can stand trial via earlier recording or video-trial where they do not have to face the perpetrators.[140] The team has also expedited the trials to avoid a prolonged stay at the shelter, and the victims can return to their original country because they want to earn for their families. It is also to prevent further trauma on the victims and conflicts among the victims in the shelters.

To ensure a successful prosecution, the AGC works in close cooperation with NGOs especially when it involves foreign victims who only speak their native language. Usually, the prosecutors seek the help of CAMSA who aid Vietnamese victims due to language barriers. Besides CAMSA, the International Organisation for Migration (IOM) have helped some of the victims to return to their respective countries[141] and has collaborated with various government agencies to combat human trafficking in Malaysia as well as at the regional level. Local NGOs like Tenaganita, although not a member of ATIPSOM, have rescued victims with local enforcement officers and assisted them in

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[139] Interview with Ooi Jilien and Chua Khai Yan, Officers, International Organisation of Migration (IOM), 7 November 2013; Interview with Daniel Lo, Country Manager of CAMSA, 21 October 2013; Interview with DPP Adilla Hj. Ahmad, AGC, 16 October 2013; Interview with Hafez, RMP 19 October 2012; Interview with Azizah Kassim, IKMAS, 13 January 2014.
[140] Interview with DPP Adilla Hj. Ahmad, AGC.
[141] Interview with Daniel Lo, Country Manager of CAMSA, 21 October 2013; Interview with Chua Khai Yan and Ooi Jilian, IOM officers, 7 November 2013.

identifying, interviewing as well as in providing emotional support to the victims. Before deportation, the NGOs have sheltered the victims and helped them in their recovery and rehabilitation process.

5.5.2 Protection

Protection is the second key component of the 3Ps framework of the TIP Protocol and it is a victim-centric approach developed by the U.S. and the international community to combat human trafficking. It is the summary of the government's efforts in ensuring that the human trafficking victims are identified and provided sufficient safety. The elements in the protection efforts consist of 3Rs that are; rescue, rehabilitation and reintegration.

One of the reasons for Malaysia to be on the Tier 3 spot in 2014, was its less than compassionate response to its many victims of human trafficking. Luis CdeBaca, Ambassador-at-Large to Monitor and Combat Trafficking in Persons at the U.S. Department of State mentioned that Malaysia utilised detention centres for people especially young women identified as having been trafficked into the country for illegal purposes.[142] He further pointed out that the government strongly focuses on purging illegal migrants rather than a progressive compassion towards the victims of human trafficking. Due to lack of knowledge on human trafficking, society fails to identify the victims of human trafficking. According to the U.S. TIP Report, actors and non-actors could play vital roles in identifying victims of human trafficking.

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[142] "US penalises Malaysia for shameful human trafficking record," *The* Guardian, 20 June 2014, <www.theguardian.com/global-development/2014/jun/20/malaysia-us-human-trafficking-persons-report> (accessed 11 November 2014).

To protect the victims of human trafficking, the government has established five shelter homes under the purview of the Ministry of Women, Family and Community Development and other local NGOs with four facilities established for women and children victims of trafficking and one for men. For men, a shelter facility is run by the Ministry of Home Affairs in Malacca, which accommodates suspected and confirmed victims of human trafficking.

These victims are protected under the Interim Protection Order (IPO) and Protection Order (PO). The MAPO Council presents a statistic from the year 2008 until 2012 indicating a total of 3363 victims under IPO and a total of 1235 victims under PO.[143] From this figure, during the seminar, it was highlighted that 428 victims are of sex exploitation, 25 victims of human trafficking and migrant smuggling, ten babies and 33 abuse cases. However, the researcher did not comprehend the reason for the amalgamation of different situations in the shelter facilities.[144]

The IPOs are entitled to suspected victims of human trafficking for 14 days and once confirmed as a victim then they are placed under PO. Victims consist of local citizens are sheltered for not more than two years and foreigners not more than three years. Though the government has made sufficient progress in protecting the human trafficking victims, its efforts remain inadequate.[145] It is reported that the victims are locked inside the facilities and are only allowed to leave for hospital visits or court appearances under police protection. The male victims of human trafficking are mostly

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[143] Statistic obtained from the Ministry of Home Affairs Malaysia's website, available at: <http://www.moha.gov.my/index.php/en/sekretariat-statistik> (accessed 22 September 2012).
[144] This figure was gathered during the seminar Awareness Campaign on Human Trafficking and Migrant Smuggling, 20 September 2012. Pn Noor Aznida from the Shelter Facility Service for Human Trafficking and Migrant Smuggling.
[145] *Trafficking in Persons Report*, June 2013.

confined to their rooms and do not have the freedom to move. Even within the facilities, their movements are limited.

There is a lack of legal aid and psychological or counselling support rendered to the victims by the government or NGOs. Instead, the government has used substantial funding in building the shelters with barbed wires as well as installing high-security alarms to prevent the victims from running away.[146] This method contradicts the 3P protocol where a government is required to look into the needs of a victim and the priority to protect them is paramount and to restore their dignity is crucial and to provide an opportunity for a safe and productive life.

Several NGOs criticised such an atmosphere such as SUHAKAM, CAMSA and SUKA as well as IOM and UNIAP. During a friendly chat with an officer from Tenaganita, the same reaction was voiced, and they opined that it is not the way to shelter human trafficking victims who have already endured awful incidents during their involuntary stay with their employers or pimps or agents. However, the government's enforcement agencies beg to differ by stating that the barbed wire shelters are for the protection of the victims from being kidnapped by human trafficking syndicates especially during court hearings.

SUHAKAM came up with eight recommendations in the provision to better protect victims. The Chairperson, Tan Sri Hasmy Agam suggested that victims be provided with immediate medical examination upon their arrival at the shelters while medical personnel pay regular visits to the shelters to check on the victims' wellbeing.[147]

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[146] Interview with Daniel Lo, Country Manager of CAMSA, 21 October 2013; Interview with James Nayagam, SUHAKAM's Commissioner, 9 September 2013.
[147] "HT: SUHAKAM Makes 8 Recommendations on Better Protection", *The Malaysian Insider*, 22 June 2013, <www.themalaysianinsider.com> (accessed 10 September 2013).

He also suggested amending the ATIP law to allow victims to receive compensation and work while waiting for their court cases. The government agreed to this.

The government prefers to confine the victims of human trafficking to its shelter facilities even though some NGOs have the resources to serve and provide a safe and comfortable environment in undisclosed locations. Some foreign embassies shelter their victims rather than sending them to Malaysian shelters to expedite the process of repatriation. It is also to protect the victims from staying longer in the country for criminal proceedings. This is not the case for victims whose passports and relevant documents were confiscated by their employers and as a result, they were processed as illegal migrants and held in prisons or immigration detention camps before deportation.

For the Malaysian government to effectively implement the "3Rs", it should allow the human trafficking victims to stay in the country to work without having the fear of detention or deportation for lack of legal status or crimes that they were forced to commit by their traffickers.[148] Accordingly, in January 2012 the Malaysian government granted some of the victims to work temporarily in the country following the expiration of their PO. Two months later, the government granted three-year work and residency permits to 32 victims of labour trafficking whose lives were believed to be in danger if returned to their home country. Prior to the three-year permit, these victims had already stayed more than one and a half years in the government shelter. However, this offer is only for victims who had entered Malaysia legally and their lives are in danger if they were to return home.

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[148] Interview with James Nayagam, SUHAKAM's Commissioner, 9 September 2013.

As of March 2014, the Chairman of the ATIPSOM gave a media statement that permission is granted for victims of labour trafficking to work with conditions.[149] This permission is for men and women not in need of care and protection with PO. Initially victims with PO are not allowed to work until the completion of their PO. An initiative based on the recommendation gathered in the TIP Report and with a high anticipation that Malaysia's tier ranking would improve in the next report which would be released in June 2014. Malaysia tier ranking did improve by moving up to Tier 2 Watch List and remained in that position in 2015 TIP report.

5.5.3 Prevention

The third 'P' is a summary of the government's efforts to prevent human trafficking such as by hosting workshops and programmes with numerous stakeholders to combat the crime. According to the U.S. Department of State, the prevention efforts are a key element of the global movement in monitoring and curbing human trafficking. Efforts such as developing public awareness in educating the people of all walks of life on the happenings of human trafficking activities and how they can be involved in identifying the victims and seeking help in guiding them to safety. The preventive efforts are not only for the public but also to the many migrants out there and especially to those in vulnerable situations.

In certain working sectors where exploitation is prominent especially at construction sites, plantations, fish farms and fishing villages, prevention measures are

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[149] "Permission to Work for Labour Trafficking," *Ministry of Home Affairs*, 5 March 2014, <http://www.moha.gov.my/index.php/en/kenyataan-media-akhbar/1470-chairman-of-the-council-for-anti-trafficking-in-persons-and-anti-smuggling-of-migrant-mapo-cum-secretary-general-of-the-ministry-of-home-affairs-datuk-seri-mohamad-khalid-shariff-permission-to-work-for-labour-trafficking-victims> (accessed 10 April 2014).

essential to protect workers who may fall into the category of trafficking victims, therefore, law enforcement in particular key sectors is crucial. Prudent labour recruitment programs should be in place not only for protection but to prevent exploitation from occurring at the hands of immoral perpetrators. Hence, a governing body is significant in overseeing the efforts in developing good partnerships with civil society in curbing the root causes of human trafficking. The effort to prevent human trafficking goes hand in hand with protection and prosecution measures. In ensuring strong prevention policies, effective law enforcement and protection practices are essential to avoid the occurrence of human trafficking in any states.

It is also very challenging at this prevention stage as the act of human trafficking is complicated thus identifying and distinguishing the crime is rather tricky because the operation is run smoothly and sophisticatedly by the offenders with a strong chain of network and supported by international cartels and syndicates. Some of these syndicates run human trafficking business despite being detained in Malaysia and it is the second highest earning trade after drug trafficking.[150] Even drug trafficking ring leaders are involved in the human trade because of the lucrative income garnered from selling and purchasing people. Ethics and humanity are not in their vocabulary and for these syndicates profit is everything, and they do anything to traffic a person. The Malaysian government realised the depth of this crime when it gained global attention as a serious cross-border crime similar to smuggling of weapons and drugs. Following the huge profits earned in billions as a result of illegal activity, vulnerable people become the victims of human trafficking.

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[150] Farrah Naz Karim and Alang Bendahara, "Making Millions from Behind Bars," *New Straits Times*, 10 September 2012; Farrah Naz Karim and Alang Bendahara, "Undeclared Millionaires," *New Straits Times*, 11 September 2012.

Among factors contributing to the rise in human trafficking activities are poverty, illiteracy, economic crisis, domestic and regional conflicts, political instability and displacement as well as aspects of migration which closely related to trafficking in persons. An increase in global migration estimated a total of 240 million people fall prey to human trafficking syndicates.

The Malaysian government recognises the importance of creating Anti-Trafficking in Persons Act 2007 [Act 670] and the action plan as an instrument for addressing crime, in particular on the areas of prevention, rehabilitation and protection of trafficking victims, including prosecution.

A key reference in establishing the Anti-Trafficking in Persons Act 2007 is based on international instruments namely, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (TIP Protocol) and Protocol Against the Smuggling of Migrants by Land, Sea and Air. Both protocols are tools that support the United Nations Convention Against Transnational Organised Crime (UNTOC), and Malaysia has signed and consented the convention and join hands with TIP Protocol in fighting human trafficking.

Employers with foreign workers confiscate their employees' passports and personal documents to prevent them from running away. According to all the NGOs and IOs interviewed in Malaysia, it is against the labour law to confiscate personal belongings especially the travelling documents of their employees.[151] Based on the TIP Report and interviews with AGC and the Labour Department, there is no action against employers or employment agencies who have confiscated the passports of their workers.

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[151] Interviews with Daniel Lo of CAMSA, James Nayagam of SUHAKAM, Anderson of SUKA, Jilien of IOM.

Regardless of mutual understanding between these governments, the violence upon maids from Indonesia, Philippines and Cambodia continues. Employment agencies are still treating their maids inhumanely by locking them up in confined space after working in the houses against their will. These maids were forced to work in domestic households without pay as the money goes into the agents' pocket rather than the maids.[152] In 2012, enforcement authorities rescued 95 Indonesians, six Philippines and four Cambodians who worked as domestic maids by day and were locked inside a building near Kuala Lumpur at night.[153] They were freed during a nationwide raid.

While government agencies continue with their preventive measures by conducting training and workshops for their incumbent officials in combating human trafficking in Malaysia, there is a lack of knowledge and understanding of the crisis of human trafficking by the frontline officials like the police, marine, immigration, labour officials which continue to be a challenge to the government. This may hinder the process of identifying and investigating trafficking cases and in assisting the victims.

5.5.4 Partnership

Another approach used by the Malaysian government to combat the menace of human trafficking is partnerships. Through the partnership the Malaysian government has forged strong affiliations with the U.S. and neighbouring countries like Australia to curb transnational organised crimes such as human trafficking and people smuggling. Former Deputy Prime Minister, Tan Sri Muhyiddin and the former Australian Prime Minister

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[152] Agence France-Presse, "Abused Filipino, Indonesian, Cambodian Maids Rescued in Malaysia; Jakarta Issues Advisory: Stay Away," *Interaksyon*, 4 December 2012, <http://www.interaksyon.com/article/49588/abused-filipino-indonesian-cambodian-maids-rescued-in-malaysia-jakarta-issues-advisory-stay-away> (accessed 10 September 2013).
[153] Ibid.

Julia Gillard met in November 2012 to discuss effective partnership and steps to ensure security between both countries.[154] It exhibits that the government is stepping up its national efforts in meeting the objective of the 5-year National Action Plan to combat human trafficking in Malaysia strategically.

Malaysia as an ASEAN member has bilateral and multilateral partnerships with other nations especially Indonesia, Thailand, Myanmar to combat transnational organised crime. It is also committed to the Colombo Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin and the ASEAN Senior Officials Meeting on Transnational Crime.

An effective partnership is also pertinent between law enforcement and service providers as well as with NGOs and IOs who are experts in caring for the victims of human trafficking due to their expertise in victim protection. Hence, they would be able to provide counselling and assistance services to the victims of human trafficking. For instance, detained victims were asked to recount their trafficking experience on numerous accounts to different officials and during the trial proceedings, victims were not separated from the traffickers or recruitment agents resulting in threats and pressure on the victims and their families for cooperating with the police and prosecutors.

Some NGOs not affiliated with ATIPSOM have claimed that they were not allowed to visit the victims at the shelters or offer services. Furthermore, the government does not provide financial assistance to some of the NGOs in providing services to the victims at their shelters. Rehabilitation efforts are to afford emergency assistance and services, effective placement in stable, long-term situations, and access to educational, vocational and economic opportunities. Besides that, reintegration efforts are voluntary

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[154] "Pemerdagangan Orang Dan Penyeludupan Migran (Human Trafficking and Migrant Smuggling)," Secretariat of Anti-Trafficking in Persons and Smuggling of Migrant, Kuala Lumpur: Ministry of Home Affairs Department of Information, 25 June 2011, p. 23.

repatriation for trafficking victims and assistance in their home communities which would be a motivation to build their lives.

At the shelter facilities, there are challenges for the service providers who oversee day-to-day events. With limited staff, space and infrastructure for the victims, the caretaker finds it a huge challenge to keep things moving. Some victims are confined to their rooms and lack of manpower prevent them from offering sufficient services. The shelter homes were able to accommodate 60 to 80 victims and at times when there is an urgent need, the enforcement officers have to place the victims in the shelters regardless of limited capacity.

It is important to protect the victims during identification, interview and referring trafficking victims. However, according to the country report from the U.S. States Department, but there was no evidence of formal procedures to follow for the proactive identification of victims.[155]

The Malaysian government is improving its ability to combat human trafficking. However, there is room for improvement. The government should consider working with other NGOs besides its MAPO affiliates in preventing this crime and in protecting the victims of human trafficking. It is imperative for the government to forge strong partnerships with law enforcement and immigration agencies, IOs, NGOs and civil society in identifying victims of human trafficking. Besides these actors, government officials, private sector professionals, community workers and individuals may come across human trafficking victims. Thus, it is essential to educate the public on this crime so they could identify trafficking victims.

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[155] Ibid.

5.6 Challenges to an Effective Criminal Justice Response

Associating a variety of exploitations with human trafficking is certainly not new, but it is only less than a decade that national criminal justice agencies all around the globe have been called upon to play an active role in identifying and protecting victims and investigate the crime and prosecute the perpetrators. While some progress has been made in Malaysia, the challenges to a truly effective criminal justice response to trafficking are substantial, and it is being improved with new amendments to the already implemented TIP act.

In every part of the world, prosecutions for trafficking-related crimes are very low when measured against the size of the actual problem. Similar situations occur in the Malaysian justice system. Victims are too often misidentified as illegal migrants, illegal workers, asylum seekers, or not identified at all. Despite being the key to successful prosecutions, victims are almost never brought into the criminal justice process as witnesses because the victims are terrified, do not show up, or are silent when going to trial. Because of these challenges, the prosecutors are unable to detain the perpetrators.

Such incidents continue to favour the criminals, and the reasons are not difficult to grasp. These traffickers operate around industries and sectors that are poorly regulated and poorly policed. They prey on the marginalised and the powerless such as the poor migrant workers, vulnerable women escaping from poverty and violent households and innocent children. The trafficking process is typically structured to aggravate vulnerability.

Human trafficking victims are subjected to various physical and psychological abuses such as they are forced to pay off huge and unfair debts, their families are threatened, their passports and identity documents are confiscated to prevent them from

seeking help or reporting to the authority. Hence, from the law enforcement's perspective, the practical obstacles to an effective criminal justice response to trafficking are significant. They include:

(i)   **The nature of the complex crime:** human trafficking is a difficult, time-consuming and resource-intensive crime to both investigate and prosecute at the state and national levels.

(ii) **Relying solely on the victim(s) testimony:** Sometimes, rescued victims want to get on with their lives as they have a family to support. So, they are a willing witness if the case is resolved fast and if they are to be sheltered for a longer period than they become uncooperative. Unless in cases of proactive, intelligence-led investigations, victims are usually the only witnesses able to give a full account of the crime. They are therefore essential to proving a human trafficking case.

(iii) **Lack of experience:** No governments can claim to have experience in dealing with human trafficking cases as a criminal incident. This is due to trafficking, and the forms of exploitation with which it is most commonly associated are essentially "new" crimes. Most countries are developing and adapting and amending their criminal justice responses through trial and error.

(iv) **Lack of cooperation across borders:** There is a limitation among regions across borders on human trafficking. Successful projects in some parts of the countries or across regions are not shared widely, and if it is highlighted, it is rather late. Human trafficking is caught up in some of the most sensitive issues including labour migration, prostitution and discrimination against vulnerable minorities. There are some countries whose governments have a vested interest in

maintaining an unprotected migrant labour force – or a sex industry comprised of compliant foreign workers. It is also important to acknowledge the highly charged political and social environment around this issue. Therefore, criminal justice agencies can find themselves caught up in debates and controversies that affect their ability to address trafficking diligently and professionally.

Table 5.3: Tier Placement of Trafficking in Persons among ASEAN Countries

ASEAN Countries	Tier Placements 2013	Tier Placements in 2014	Tier Placements 2015
Malaysia	2 WL	3 (Auto downgrade from 2WL)	2 WL
Thailand	2WL	3 (Auto downgrade from 2WL)	3
Cambodia	2WL	2WL	2 WL
Myanmar	2WL	2WL	2WL
Vietnam	2	2	2
Indonesia	2	2	2
Brunei	2	2	2
Laos	2	2WL	2 WL
Singapore	2	2	2
Philippines	2	2	2

Source: Trafficking in Persons Report, 2013-2015, Washington DC: U.S State Department.

Malaysia and Thailand were auto relegated in 2013. However, Malaysia was upgraded to the Tier 2 Watch List due to its efforts in combating human trafficking whereas Thailand retained its ranking.

Table 5.4: Tier Placement of Trafficking in Persons among Asian Countries

Asian Countries	Tier Placements 2013	Tier Placements 2014	Tier Placements 2015
Australia	1	1	1
Taiwan	1	1	1
South Korea	1	1	1
Bangladesh	2	2	2
Macau	2	2	2
Mongolia	2	2	2
Nepal	2	2	2
Pakistan	2	2WL	2WL
Hong Kong	2	2	2
India	2	2	2
Japan	2	2	2
North Korea	3	3	3
China	3 (Auto downgrade from 2WL)	2WL	2WL

Source: Trafficking in Persons Report, 2013-2015, Washington DC: U.S State Department.

In 2013, China was downgraded to Tier 3 as it failed to show significant efforts in combating human trafficking. However, China improved its ranking the following years. Australia, Taiwan and South Korea have been on Tier 1 and these countries significantly showcased their efforts to curb human trafficking activities. Several Asian countries that are not states party to the Palermo Protocol, namely Bangladesh, Brunei, Japan, North Korea, South Korea, Nepal, Pakistan, Singapore, Sri Lanka and Thailand.[156]

5.7 Conclusion

Human trafficking is also about the protection of human rights and the security of human beings. It is relevant to tackle the human trafficking crime in Malaysia and

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[156] *Trafficking in Persons Report*, 2013, p. 23.

demystify the notion that the government is ignorant and doing little. It was reported that the Malaysian government failed to provide basic protection to migrant workers and instead it has created a weak system for unscrupulous labour brokers, corrupted enforcement officers and abusive employers.[157] Malaysia has been practising the 3P framework designed by the U.S. State Department to monitor the efforts of the government. In tandem with international protocol, the government has been proactive and making significant efforts in the areas of protection, prosecution and prevention as well as in a partnership. This action shows that the government is playing a crucial role in combating the atrocious human trafficking in Malaysia.

In 2014, Malaysia was relegated to Tier 3 from Tier 2 Watch List by the TVPA. It is considered to be the worst placing, especially among many global nations. Malaysia was placed along with neighbour Thailand as well as Zimbabwe, North Korea and Saudi Arabia, which faced the same auto-downgrading situation. To reiterate TIP Report, Tier 3 is countries whose governments do not fully comply with the minimum standards of the TVPA and are not making significant efforts to do so. For example, Malaysia has promised future action however there were no signs of anything happening on the ground to deal with their major problem.[158]

Countries ranked in Tier 3 of the TVPA possibly subjected to certain penalties including certain limitations on bilateral assistance from the U.S. government namely on humanitarian and non-trade related foreign assistance, financial funding from international financial institutions such as the International Monetary Fund (IMF) and the World Bank as well as the government employees may not be funded to participate in

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[157] "US penalises Malaysia for shameful human trafficking record," *The Guardian*, 20 June 2014, <www.theguardian.com/global-development/2014/jun/20/malaysia-us-human-trafficking-persons-report> (accessed 11 November 2014).

[158] As stated by Luis CdeBaca, Ambassador-at-Large-to Monitor and Combat Trafficking in Persons, U.S Department of State, in "US penalises Malaysia for shameful human trafficking record," 20 June 2014, *The Guardian*, (accessed 11 November 2014).

any educational and cultural exchange programmes.[159] The possibilities of Malaysia facing some of these penalties are high but yet to affirm if any of the sanctions was imposed on Malaysia.

Although the U.S. TIP Report often reflects upon the feedback of NGOs in its report, the government agencies opined that the report should not only be based on NGOs' responses. To combat a transnational organised crime such as human trafficking requires strong partnerships not only with government agencies but also with NGOs and IOs. It is essential to building relationships in addressing human trafficking as it is relevant to other components at the prosecution stage, prevention area and in protecting the victims. It is also pertinent to protect the vulnerable people from falling as victims into the hands of trafficking syndicates.

As much as tier ranking is important for a government, it is equally important to identify trafficking victims. Identifying the human trafficking victims certainly is a challenge for every government across borders and trained authorities are trained to identify human trafficking victims especially for female victims. Often the authorities overlook in the identification of the male victims especially victims of sex trafficking. The U.S. has identified male sex trafficking victims exploited into forced prostitution. When the frontline authorities and government officials who inspect and have access to establishments where trafficking may occur would position themselves to identify trafficking victims. Training is essential for labour inspectors, port inspectors, factory inspectors, food industry inspectors, consular officers, agricultural inspectors, housing inspectors, tax authorities and postal workers to enable government officials to be able to identify victims of trafficking.

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[159] *Trafficking in Persons Report*, 2014, p. 44.

Apart from government officials, private sector employees may also encounter trafficking victims in the places in which they work such as employees of hotels, karaoke lounges, restaurants, bars, beauty parlours and massage parlours and grocery stores. Health care professionals often deal with trafficking victims including doctors, nurses, emergency room personnel, staff at HIV/AIDS clinic and so on. Professionals on the road such as drivers of trucks, taxis, buses, trains may encounter victims of trafficking as various transportation are used to transports them including flight attendants. Educating officials who have a special role in identifying exploited children and victims can assist in identifying human trafficking victims. School principals, guidance counsellors, teachers and school nurses can identify trafficking victims if they are given the proper training.

Some of the frontline officers especially the law enforcement authorities such as border police and immigration officers fail to identify male victims. The risk of treating the victims as irregular migrants is high instead of exploited individuals are would face deportation or be charged with crimes committed such as visa violations. Similarly, the male victims are dismissed as labour encroachment instead of investigated as criminal cases.

The government has a strong partnership with other state governments in enforcing the rules and legislation, but the prerogative is when the state and national borders are invaded by clandestine movements of human traffickers. Therefore, partnerships between police borders, especially at national borders and coastal lines, are in need of tight security and invigilation from numerous enforcement agencies. Moreover, it is essential to have a strong bond between NGOs and government agencies to tackle this crime. Significant efforts from both parties would ensure the realisation of the National Action Plan to combat human trafficking in Malaysia.

The partnership is also significant between government and NGOs and IOs as well as civil society in identifying victims of human trafficking. The TVPA report is critical when it comes to governments' efforts especially in protecting the security of trafficking victims especially after they have been rescued and are sheltered in the facilities. This is because the safety of the victims is paramount. These trafficking victims should be able to seek assistance from available institutions and individuals including religious institutions, faith leaders, officials in organisations who work in close collaboration with immigrants, children, the homeless, refugees and other vulnerable populations such as social workers and NGOs.

The efforts of the Malaysian government are not judged on how much the government is doing but on the improvement shown through the recommendations suggested in the TVPA report by the U.S. Department.[160] Malaysia is doing significantly well in addressing the crime in the country, but it needs to step it up in areas of prosecution and protection. With the five-year National Action Plan in place, it would be interesting to see the status of human trafficking in Malaysia after the completion of reforms.

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[160] Interview with an officer from the Northern Hemisphere embassy in Malaysia, 16 October 2013.

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CONCLUSION

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1. Research Findings

To combat human trafficking from global to local level is a huge task especially when the scope and magnitude of the crime vary according to regions and states. Due to its clandestine movement and incoherent estimates on victims trapped in the myriad forms of human trafficking are inconsistent and questionable. It is indeed challenging for states to manage this menace and at the same time to combat it.

Nonetheless, the response from the state and non-sate actors in addressing the problem of human trafficking has been proactive and their role play in tackling this issue is received well by global partners. In addition to the International Organisations' (IOs) responses in launching anti-human trafficking efforts, interfaith leaders from various religions namely Christian, Muslim and Buddhist have shown immense responsibility by launching an anti-human trafficking network to eradicate the crime through the mobilization of religious communities by the year 2020.[1] Such initiative is highly motivating as the leaders of interfaith have recognised the implication of the human trafficking on vulnerable people especially those who are extremely affected by the political situations, imbalance of socio-economic which led to extreme poverty, unemployment, lack of education, disintegrated families and corrupted law enforcement.

By identifying the push factors as the root cause for victimisation of the vulnerable people into trafficking, interfaith leaders at global level have come together to sign a new

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[1] "Interfaith Leaders Launch Effort against Human Trafficking," *Herald, The Catholic Weekly*, 30 March 2014.

agreement on 17 March at the Vatican press through a new organisation called the Global Freedom Network. The signatories representing Anglican Centre, Cairo based Grand Imam of Al-Azhar and INGOs like the Walk Free Foundation in tandem in agenda in the fight against human trafficking.

The launching of anti-human trafficking by the interfaith leaders is to eliminate slavery and eliminate the trading of human being for financial profit. Such approach was initiated when the leaders realised that they were not doing enough among faith communities in addressing the problem of human trafficking which has creep into every corner of the world.

2. Securitisation and Responses

When leaders of interfaith join hands to combat human trafficking, a state can perform better when leaders in the government have their legal framework in place with effective legislative as instruments and equitable people to tackle the menace of human trafficking. Undeniably for Malaysia with the relegation to Tier 3 ranking in the 2007 and 2014 Trafficking in Persons Act report reflected negatively upon the reputation of the country.

Human trafficking cannot be managed merely by measures of exclusion and control alone.[2] There has to be a more comprehensive approach in tackling this issue as it is not about one state and its people alone any longer. Because of the global scale, measures and approaches are not only concentrated at state level but in tandem with regional and international bodies. Hence, Malaysia with its own action plan and strategies has been

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[2] Helga Konrad, "The Fight against Trafficking in Human Beings from the European Perspective," in Sally Cameron and Edward Newman (eds.), *Trafficking in Human: Social, Cultural and Political Dimensions*, United Nations University, 2008, p. 164.

corresponding with neighbouring countries in combating human trafficking at larger scale. The Malaysian government has been responding critically towards the act of human trafficking by articulating the threats the crime has upon the state and its people which is paramount.

The government is not looking at this crime as just another criminal offence but significantly addressing and highlighting the impact and violence it has on the victims of human trafficking. By responding the government has securitised the issue of human trafficking by enforcing extra-ordinary measures with the implementation of Anti-Trafficking in Persons Act 2007 and amending it in 2010 by including migrant smuggling in the act.

Subsequently, the government established a secretariat not only to oversee the human trafficking issue in the country but to combat it at global scale with enforcement agencies. The secretariat is known as the Anti-Trafficking in Persons and Smuggling of Migrant (ATIPSOM) under the purview of Ministry of Home Affairs Malaysia. The secretariat has been active with monthly meetings and proactive discussions to tackle both human trafficking and migrant smuggling issues in the country and around the region as well at global level.[3] There are mini ATIPSOM units in all the fourteen states under the purview of Royal Malaysian Police and prosecution teams in major cities to tackle human trafficking cases.[4]

In a nutshell, the Malaysian government has applied the Copenhagen School theory of securitisation by responding with extra-ordinary measures first by accepting the issue as a

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[3] Interview with Prof. Dr. Azizah Kassim, Principal Research Fellow, Institute of Malaysian and International Studies (IKMAS), 13 January 2014.
[4] Interview with DPP Adilla Hj. Ahmad, Attorney General Chamber's Office Malaysia, 16 October 2013.

threat to the nation and the people and articulating that human trafficking is indeed a threat. State leaders such as the Prime Minister Dato' Seri Mohammad Najib Razak and the Deputy Prime Minister Dato' Seri Ahmad Zahid Hamidi have reiterated the menace of human trafficking in numerous press statements and critical in combating the crime in the state as well as in the region. Razak stated that the state is "serious in tackling the issues of cross-border crimes including human trafficking and cyber crimes boosting the capacity of all existing resources to repel the various forms of threats." [5]

3. Partnership between the State and NGOs

In Malaysia, the partnerships between state actors and non-state actors are highly imperative especially when the perpetrators are becoming more sophisticated with their operations in luring vulnerable people for the very reason of exploiting them for profit. It is rather highly essential for the Malaysian government to take critical measures and progression with the partnerships of enforcement agencies, local NGOs and various regional organisations to curtail human trafficking.

Thus, both state and some of the non-state actors in Malaysia play their roles effectively in tackling the activities of human trafficking including migrant smuggling. There is a mutual understanding among the actors and non-actors in the state to work closely in combating this crime which has an eye on the global vulnerable population.

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[5] See "Malaysia to Implement Measures to Strengthen National Council," *Channel News Asia*, 19 October 2015, <http://www.channelnewsasia.com/news/asiapacific/malaysia-to-implement/2202576.html> (accessed 5 May 2016).

However, during interviews, some of the NGOs shared their view of that the government does not provide funding to some NGOs who also advocate human trafficking issue in the state. In fact they are willing to be part of the ATIPSOM team to combat human trafficking and partner with IOs in the region. By engaging civil society organisation in tackling human trafficking issue in Malaysia in areas of anti-trafficking laws, research and investigation, prosecution and developing effective anti-trafficking law to punish the human traffickers and their collaborator to curtail the crime is a positive move.

4. Impact on Rescued Victims

The impact of this crime on individuals is so immense that the victims were traumatised due to horrendous physical and emotional abuse.[6] Despite experiencing freedom after rescuing, these victims go through some psychological torments in their lives and it takes a long time for healing. Some of these women and children who were forced into forced prostitution, commercial sexual entertainments and young children into the streets to beg are disabled with physical injuries and inflicted with HIV/AIDS for life. Since these victims were coerced and manipulated of their money and bonded with debt, back at home their families received neither money nor news from their children. The families have no idea of their whereabouts and happenings leaving them in distressed situations.

According to the officer at one of the shelters for human trafficking victims, once a victim of human trafficking is identified by the authorities, the victim is sent to one of the

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[6] Shared by Noor Aznida at a Seminar Awareness Campaign on Human Trafficking and Migrant Smuggling in University Malaya, 20 September 2012.

shelters immediately and cared by the staff at the shelter.[7] Suspected victims are given IPO and fourteen days later confirmed victims are obtained with PO which serves for not more than two years. Besides counselling offered for the victims to rehabilitate, they are also encouraged with indoor activities however, now they are allowed to work outside the shelters as the victims become depressed since they are without job for a long period of time.

The U.S TIP report on Malaysia stated that the government is doing significant efforts to curtail the activities of human trafficking however it is lacking in the areas of protection and prosecution. The government is strongly urged to amend the Anti Trafficking in Persons (ATIP) law in order to allow the victims sheltered in the homes to travel, work and reside outside government facilities. Though the government does not fully agree with this suggestion due to the safety of the victim as the victims can be approached by the agents of human traffickers or their gang members and extort them. This is because of fear from threats, such action may hinder the victims from testifying against the criminals and the perpetrators walk away free.[8]

With the advice from the U.S. government, finally the Malaysian government has agreed to restrain the victims of labour trafficking any further and permit them to work with conditions.[9] Similarly some of the local NGOs like Tenaganita, CAMSA and SUKA were in the same tune with the recommendations by the U.S because the victims have no source of income and their concern over their families' welfare pushes them to emotional stress.[10] The one and only thing that these rescued victims desire is to work and earn plus send some

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[7] Shared by Noor Aznida at a Seminar Awareness Campaign on Human Trafficking and Migrant Smuggling in University Malaya, 20 September 2012.
[8] Interview with DPP Adilla Ahmad, Attorney General Chambers Office Malaysia, 10 October 2013.
[9] "*Permission to Work for Labour Trafficking*," Ministry of Home Affairs, Malaysia, 5 March 2014.
[10] Spontaneous chat with Glorene Dass, Tenaganita; Interviews with Daniel Lo, CAMSA, 21 October 2013; Anderson, SUKA Society, 1 October 2013.

money to their poor families back in their countries.[11] These victims become very depressed when they have no source of income to send back some money to their families.

Apart from that, the local welfare institution functions by organising activities for children and women at the shelter and they also provide counselling sessions for the victims. It is very important to care for the victims and the welfare of their needs. Local NGOs are invited to be part of the counselling sessions if necessary and be part of activities designed for the victims and their children and rescued children from trafficking.

5. Challenges in Combating Human Trafficking in Malaysia

5.1 Malaysia's International Image and Reputation

The human trafficking syndicates are well aware of the justice system and law enforcement of a country as well as ways to step into a country especially Malaysia with various entry visas namely single visit, multiple visit, and transit visa in place.[12] When information are at finger tips and easily accessible, traffickers manipulate the orders of the system in order to enter into the country and transit to another with no trouble. Such incident reflects badly upon the security system of our borders indicating flaws and the integrity of the law enforcement authorities are questionable.[13]

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[11] Interviews with Daniel Lo, CAMSA, 21 October 2013; Anderson, SUKA Society, 1 October 2013.

[12] See Ministry of Home Affairs Malaysia website at <http://www.imi.gov.my/index.php/en/visa/types-of-visa.html> (accessed 5 May 2016).

[13] V. Shankar Ganesh, Evangeline Majawat, and Jassmine Shadiqe, "Signs That Show Malaysia on Human Trafficking Route," *New Straits Times*, 30 April 2009, <http://www.highbeam.com/doc/1P1-163452783.html> (accessed 1 June 2012); Nelson Benjamin, "Influx of Workers Posing as Students: Thousands of Bangladeshis Aided by Institutions Working with Human Traffickers," *Sunday Star*, 3 November 2013.

Such bad impressions may impinge on bilateral relations with foreign investors and subsequently impede future investments. Apart from that, a state necessitates to spend a huge amount to prevent this crime, for rescue missions as well as to prosecute. Plus, the possibility for bribery to take place is high as traffickers' approach of crossing borders and places by using this method. This is one of the reasons for this crime to protract globally thus, in need of collective involvement from various actors at state and international level.

In curbing this crime, the state is in dire need of a sound support system from individuals but due to lack of awareness it is a challenge for any government. Human trafficking is no more about illegal immigrants and refugees and asylum seekers or migrants smugglings because any one of them can become potential victims of human trafficking.

The profit from the activities of human trafficking does not contribute any monetary value to the state or its people as the whole revenue goes to the perpetrators and its chain of networks. Profits from this illegal business of modern-day slavery are used to build a bigger and global trade in human beings. This crime destroys not only people's lives but rips apart the structure of local economies and global economic growth and compel more burden and work to the actors in the state as well as at international levels. Immigration problems increase and escalate due to lack of border security because of corrupted officials working together with the syndicates of human trafficking.

Various crimes in the community and the safety of vulnerable people at stake and therefore decrease the welfare of the nation at the source country especially in least developed nations. Whereas, high cost is incurred in dealing with illegal immigration in destination countries and in deportation as well.

5.2 Identifying Victims of Human Trafficking

The first group of people to respond to the victims of human trafficking is the law enforcement authorities such as the police, marine police, border police, immigration officers, labour department officers during raids or responding to a complaint or information from reliable sources.[14] During the encounters, the enforcement officers often fail to identify the victims of human trafficking especially sex trafficking and even those who had numerous training in identifying victims of human trafficking. It is due to the victims fear and they prefer to be non-responsive when being questioned.

Therefore, the victims are taken into custody first for further investigation to distinguish volunteer sex workers from the victims of sex trafficking. In addition, the authorities and health service providers should be exposed with the knowledge on human trafficking issue because they would be medically attending to some of the victims of sex trafficking. Some of these victims normally would have infected with sexually transmitted diseases (STD) and also addicted to drugs and alcohol substances.[15] With all these signs, medical practitioners should be able to identify victims of human trafficking and willing to report to the police for further action.

In labour trafficking cases, authorities have to put extra effort and separate the workers from the employers to get the truth. This is because, employers would manipulate and fabricate story as they prefer in order to avoid problems. Hence, the U.S. TIP report

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[14] Interview with Inspector Hafez Halim of Royal Malaysian Police, 19 October 2012; Graeme R. Newman, *The Exploitation of Trafficked Women*, U.S Department of Justice, Office of Community Oriented Policing Services, 2006; James O. Finckenauer and Ko-lin Chin, "*Asian Transnational Organized Crime and Its Impact on the United States*," Washington, National Institute of Justice, 2007, available at: <http://www.nij.gov/pubs-sum/214186.htm> (accessed 12 May 2011).

[15] Jeremy M. Wilson and Erin Dalton, "Human Trafficking in the Heartland Variation in Law Enforcement Awareness and Response," *Journal of Contemporary Criminal Justice*, Vol. 24, No. 3, 2008, pp. 296-313.

suggest the Malaysian government to develop and implement procedures to identify labour trafficking victims by applying internationally recognized indicators of forced labour among vulnerable groups. Upon identifying the groups such as migrant workers they can be referred to available protection services and shelters.

When it comes to child trafficking, the Malaysian police take it seriously and have travelled from state to state to rescue kidnapped babies and toddlers who are handed to illegal adoptive parents or to agents who use these minors for wrong reasons.[16] Newborn babies are kidnapped from hospitals questions the security in the vicinity, children are kidnapped from their parents, or at shopping malls, fun fairs, playgrounds and even from daycares and schools show the extend human trafficking syndicates would take to reap profits from selling and exploiting them.[17]

5.3 Investigating and Prosecuting of Human Trafficking Cases

The Malaysian government has increased the efforts to prosecute and punish human traffickers and their accomplices by applying severe criminal punishments for the fraudulent of illegal recruitment documents for forced labour. The Malaysian prosecution team is working on more legal frameworks as was shared by the Deputy Public Prosecutor Adilla during interview. Teamwork is paramount among prosecution, law enforcement officers and government agencies especially when local authorities can do little when dealing with human trafficking cases. When there are suspected human trafficking cases in other states in

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[16] Interview with Hafez Halim of RMP, 19 October 2012; Winnie Yeoh, Wong Pek Mei, and Nicholas Cheng; also see "Baby Racket Smashed," *The Star*, 23 February 2013.

[17] Winnie Yeoh, "Rescued Children Pay the Price," *Sunday Star*, 3 March 2013.

Malaysia, the team from the head office in Kuala Lumpur assist the trafficking in persons unit in the states. The connection between service providers and law enforcement agencies is the key to effective justice system responses.[18] Hence, the enforcement authorities and government agencies work mutually during interrogation to nab the perpetrators during phone tapping, tracing any wire transfer, developing databases to track the prostitutes, pimps, labourers and employers to arrest.

Though lack of personnel to address the human trafficking cases in the respective enforcement agencies, nonetheless they are managing and operating as effectively as possible. Equip with more adequate resources and training surely they would improve the identification and investigation of human trafficking cases in Malaysia. Often the lack of cooperation from the victims impedes the work of enforcement authorities and prosecution team in bringing the offenders to justice.

Accordingly with the help from NGOs and counsellors break the fear and concern in the victims to testify and reveal the whole happenings that took place; from the time they were coerced or kidnapped to the travelling and where they ended up. It is painful for the victims to trace back their encounters but it helps in prosecuting and punishing the human traffickers rightfully with the justice system and subsequently to curtail this crime.

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[18] Kevin Bales and Steven Lize, Croft Institute for International Studies, "*Trafficking in Persons in the United States, Final Report*," University, MS: Croft Institute for International Studies, 2005.

5.4 Lack of Training

One of the tandem feedback received during interviews were that the lack of training conducted for officials who handle and manage human trafficking cases. The lack of awareness on the subject matter, training and adequate resources may hinder investigations and prosecutions of a case. A member of NGOs admitted that when they have a human trafficking case they do know whom to contact yet they have no idea if by doing so it would unfavourably affect their clients.[19] It is also revealed that it is hard to trust the police and the system because of the suspicious that the some police officers especially the corrupted ones could be an informer to the human trafficking syndicates and by revealing the escaped victims to them would jeopardize the case and the life of the victims. Therefore, to create the trust among service providers and law enforcement authorities is indeed critical.

Another challenge is when the front line officers fail to identify victims of sex and labour trafficking during raids and inspections. This is because, the law enforcement officers are often moved to different units and the new faces are not familiar with the subject matter, operations, investigation, and hence unable to distinguish trafficking victims. For the law enforcement agencies to function significantly in addressing the problem of human trafficking, it is vital to understand the situation as a whole and to be aware of the characteristics of the victims of human trafficking. They have to be the front liners who have to detect the situation and not impede a case by lack of proper investigations. If investigations are done with lack of enthusiasm then the case may not go through the prosecution stage at all.

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[19] An informal chat with a local NGO.

When the victims of human trafficking are not identified properly, they could be deported without standing a trial to punish the offenders therefore more efforts are in need to identify the victims. At the same time, the prosecution team has to play an essential role in preparing the victims as witnesses in trafficking trials. Though there are cases where the victims were all ready for the trial and during the trial the victim was non-responsive and the offender was acquitted. Unfortunately, the AGC officer strongly stated that it is a great challenge to prepare the victims for trials and they counsel the victims often with the help of NGOs.[20] On the other hand, the government is need of reliable foreign language interpreters as it is indeed a deficit for front-line enforcement officers to communicate with foreign victims especially those who only speak their native language.

Some the Malaysian enforcement agencies agreed that they require more personnel in their respective ATIP departments to manage the paperwork, investigations and in need of various trainings at regional and global level in the subject matter. Moreover, the personnel should be maintained in the unit for a longer period rather than for a short time.

The same scenario happens during MAPO council meetings which are held monthly and some agencies send their representatives to attend the meeting. It was observed that the same officers do not appear for the next meeting hence, the minutes discussed in the earlier meeting may not transpire effectively to the bosses. This is a grave concern agreed by most of the agencies and NGOs.

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[20] Shared during interview by DPP Adilla Ahmad.

5.5 Concern over Trafficking in Persons Report

An officer in the northern hemisphere embassy stated that the TIP report does not reflect the groundwork of Malaysia but more on the efforts from the government in combating the crime.[21] The TIP report indicates if a particular government is doing enough to curb the crime in the country and in the region and the recommendations are to step up the efforts and do more to stop the exploitation of vulnerable and innocent people.

The officer further added that although Malaysia's efforts in tackling human trafficking in the country seems less nevertheless, the government has been exhibiting tremendous improvement in multiple areas especially in the 3Ps including partnership by having bilateral and multilateral agreement with neighbouring countries in the Asia Pacific region. The government leaders with the advice from its ATIPSOM secretariat has agreed to consider and follow the suggestions proposed by the U.S Department of State in the TIP report.

A positive move by the government is allowing the victims at the shelter facilities to work outside the vicinity is a significant effort in helping the victims to continue earn a living despite on-going court trials. The local NGOs welcome such consideration but also would want the shelter to be more of a friendly environment rather than a prison-like facility. Such remark reflects on the barbed wire fencing around the shelter facilities for the human trafficking victims. The reason is to protect the victims from running away and also from perpetrators who are lurking outside to harm the victims whilst jeopardize ongoing court cases.

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[21] Identity is not disclosed due to work confidentiality.

Finally, it is highly pertinent to educate the public on human trafficking and the many ways traffickers would manipulate to exploit for profits. It should start with the schools by sharing the knowledge on transnational organised crimes to their students. By exposing them to the happenings in the world and in the neighbourhood, these children would be vigilante and take extra care when they are on the social networks and meeting new people. Education plays a huge role in creating awareness and educating the younger generations and public at large. Together the people and the state with the NGOs can fight human trafficking in Malaysia.

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INTERVIEWS

Adilla Hj Ahmad: She is the Deputy Public Prosecutor in the Malaysian Attorney General Chambers Office in Putrajaya. She has experience of handling human trafficking and migrant smuggling cases in the country. She attends the ATPSOM council meeting and extends her knowledge on criminal law to the council members. A personal interview was conducted in Putrajaya on 16 October 2013.

Anderson Selvasegaram: He is the Executive Director, of SUKA Society, a NGO established to protect and preserve the best interest of children. SUKA's projects consist of prioritising the welfare of human trafficking survivors and end the cycle of revictimisation. Apart from that, SUKA advocates to end the detention of children by offering alternatives in the best interest of the children. A personal interview was conducted in Petaling Jaya on 1 October 2013.

Chua Khai Yan: He is the Project Coordinator and Head of Technical Cooperation of International Organisation for Migration (IOM) Malaysia. He has experience of more than five years and responsible in coordinating programmes with regards to human trafficking and migrant smuggling. This personal interview was conducted together with Jilien Ooi in IOM office on 7 November 2013.

Commander Nurul Hizam: He is the Senior Assistant Director with the Malaysian Maritime Enforcement Agency (MEMA), in Putrajaya. Commander Nurul shared his experience in detaining immigrants smuggling into Malaysia via sea during an Awareness Campaign on Human Trafficking and Migrant Smuggling, Kuala Lumpur, University Malaya, 20 September 2012. Besides that, telephone and email interviews were conducted on 15 August 2013.

Daniel Lo: He is Country Manager for the Coalition to Abolish Modern-Day Slavery in Asia (CAMSA) based in Kuala Lumpur. CAMSA is an international coalition of NGOs and partners with the Unites States, Canada, Germany, Taiwan, Thailand, Vietnam and Malaysia to combat human trafficking and migrant smuggling in Asia. CAMSA offers advocacy and extensive approach in the areas of prevention, protection, prosecution and partnership in the best interest of the victims and the state. A personal interview was conducted in Petaling Jaya on 18 October 2013.

Dato' Faridah Khalid: She is the President of National Council of Women's Organisation (NCWO), a consultative organization to raise the status of the women by encouraging their participation in national development. NCWO was given the task to shoulder the responsibility to raise awareness on human trafficking to the public by the Ministry of Home Affairs under the ATIPSOM. An email interview was conducted on 9 September 2013 and prior to that had several telephone conversations with Sheila Kanavathi of NCWO.

Habsah Harun: She is the Sr. Assistant Director with the Royal Malaysian Customs Penang. Prior to her transfer to Penang, she was based in Putrajaya, and led the anti-trafficking in persons unit. A telephone and email interview was conducted on 13 September 2013.

Hafiz Halim: Inspector with the Royal Malaysian Police (RMP). Personal interview conducted in Kuala Lumpur, 19 October 2012. He was with the Anti-Trafficking in Persons Unit for more than five years.

James Nayagam: He is the Commissioner of Human Rights Commission of Malaysia (SUHAKAM) and has experience dealing with numerous cases from refugees to migrants workers as well as human trafficking issue. Occasionally he visits the shelter homes accommodating the victims of human trafficking. He sits in the ATIPSOM council and opined that economic situation of vulnerable people push them into making the wrong choices and falling into the hands of traffcikers. A personal interview was conducted at the SUHAKAM's office on 9 September 2013.

Ku Masharizul Ku Mahmood: Inspector police with the Royal Malaysian Police (RMP). Personal interview during an Awareness Campaign on Human Trafficking and Migrant Smuggling, Kuala Lumpur, University Malaya, 20 September 2012. He was with the Anti-Trafficking in Persons Unit.

Kalmizah Salleh: She is the Deputy Public Prosecutor with the Malaysian Attorney General Chambers (AGC). Personal interview was conducted during an Awareness Campaign on Human Trafficking and Migrant Smuggling, Kuala Lumpur, University Malaya, 20 September 2012. She and her team at the AGC officer handle and manage human trafficking and smuggling of migrants' cases in Malaysia.

Lt Siti Khairunnisak binti Abdul Aziz: She is an officer with the anti-trafficking unit in MEMA and corresponded via telephone and email for an interview on 12 September 2013.

Noor Aznida: An officer with the Shelter Facility Service for Human Trafficking and Migrant Smuggling. This personal interview was conducted during an Awareness Campaign on Human Trafficking and Migrant Smuggling, 20 September 2012.

Nguyen Hoa Adam: She is the International Development Consultant, United Nations Inter-Agency Project on Human Trafficking (UNIAP) based in Kuala Lumpur. Miss Hoa has more than twenty years of experience in managing human trafficking issues in the region. She brings to the table her expertise on advocating and training the authorities and actors involved in handling human trafficking cases. This personal interview was conducted on 2 October 2013.

Ooi Jilien: She is a social worker as well as technical cooperation with the International Organisation for Migration (IOM) Malaysia. She shared her view on how the victims of human trafficking were deceived by scrupulous agents into myriad forms of slavery. With more than five years experience in handling human trafficking cases, she also expressed that children and women are the most affected victims. Personal interview was conducted in Kuala Lumpur on 7 November 2013.

Professor Azizah Kassim: She is the Principal Research Fellow of Institute of Malaysian & International Studies (IKMAS), University Kebangsaan Malaysia. Professor Aziziah is very passionate about human trafficking issues in Malaysia and keen in looking for avenues to curb this crime not only in Malaysia but also at regional level. A personal interview was conducted in Kuala Lumpur on 13 January 2014.

Saravana Kumar: He is the Deputy Director with the Malaysian Immigration Department (IMI). He shared his insights on the happenings of human trafficking in Malaysia and around the region. The personal interview was conducted in IMI premises in Putrajaya on 22 August 2013.

Shahrul Azlin: He is the Deputy Assistant Director of Immigration with the Malaysian Immigration Department of Malaysia. He explained the challenges faced by the immigration officers during their raids and also at security points accessible for human traffickers. This personal interview was conducted on 22 August 2013.

Syuhaida Abdul Wahab Zen: She is the former Secretary of Anti Trafficking In Persons and Smuggling Of Migrant (ATIPSOM). She had appeared in numerous media communications to create awareness among the public on human trafficking. In ATIPSOM, the members collaborate with other agencies to achieve the common goal that is to combat human trafficking in Malaysia. A telephone interview was conducted on 10 October 2012.

Zamzuri: He is an officer with the Labour Department in the State of Selangor. Zamzuri stated that the challenges faced by the officers are several such as lack of training in the subject matter, officers do not remain in the anti-trafficking unit for long therefore there is no consistency and insufficient logistics impede them from performing their jobs during raids. A telephone interview was conducted on 27 August 2013.

An anon officer with the Northern Hemisphere embassy in Malaysia: She stated that the Malaysian government has to step up in addressing the issues on human trafficking. She agreed that the government is responding effectively by setting up the ATIPSOM council however emphasised that it should adhere to the recommendations suggested by the TVPA report. A personal interview was conducted in Kuala Lumpur on 16 October 2013.

An anon social worker: She works with a local NGO who advocates the plight of migrants, foreign workers, refugees and victims of human trafficking. This personal interview was conducted in Kuala Lumpur on 15 August 2011.

An anon social worker: He works in Ipoh with an NGO. He has helped young women escaped from the clutches of traffickers to seek aid from enforcement authorities. Personal interview was conducted in Ipoh on 10 December 2012.