



ANTI-HUMAN TRAFFICKING LAWS AND THEIR
IMPLEMENTATION IN MALAYSIA

BY

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the degree of Doctor of Philosophy in Law

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ABSTRACT

Human trafficking is a transnational organised crime which has threatened all regions around the world. There are significant problems with the Malaysia legal framework and its enforcement in dealing with the crime which contributes to the country's downgrade to Tier 3 in 2014 from its previous ranking as a Tier 2 Watch List country, in Trafficking in Persons reports 2011 to 2013, provided by the US Department of State. Therefore, the principal objective of this thesis is to examine the Malaysian legal framework on human trafficking and its enforcement by government bodies. The analysis is valuable in finding the reasons of Malaysia's inefficiencies to combat the crime. This study indicates that the inefficiencies are rooted from the obstacles faced by the enforcement bodies in combatting the crime due to their lack of manpower, experts, and basic facilities. The methodology utilised is fieldwork research which data was gathered from government enforcement and legal officers, together with published printed sources. All research data are supported by statistical data and cases obtained from the authority and reliable sources. This thesis concludes with suggestions and recommendations for Malaysia's improvement, including through law reformation and effective efforts to overcome human trafficking. This thesis will benefit Malaysia in determining the root cause of its inefficiencies in combatting human trafficking, thus enhancing the country's position in the Trafficking in Persons report.

ملخص البحث

الاتجار بالبشر هو جريمة دولية منظمة تهدد جميع المناطق في جميع أنحاء العالم. هناك مشاكل كبيرة في الإطار القانوني في ماليزيا و تطبيقه في التعامل مع هذه الجريمة التي تساهم في تخفيض مستوى البلاد إلى الدرجة 3 في عام 2014 من الترتيب السابق حيث كانت في الدرجة 2 في قائمة ووتش، في الاتجار بالأشخاص في تقارير بيرسون 2011-2013، المقدمة من قبل وزارة الخارجية الأميركية. ولذلك فإن الهدف الرئيسي لهذه الأطروحة هو دراسة الإطار القانوني الماليزي في الاتجار بالبشر والعمل به من قبل الهيئات الحكومية. وتشير هذه الدراسة إلى أن عدم الكفاءة يرجع إلى العقوبات التي تواجهها الهيئات التنفيذية في مكافحة الجريمة بسبب افتقارها إلى القوى العاملة، والخبراء، والمرافق الأساسية. المنهجية المستخدمة هي البحث النوعي حيث جُمعت البيانات من الهيئات الحكومية التنفيذية والموظفين القانونيين، إضافة إلى المصادر المطبوعة المنشورة. جميع بيانات البحث مدعومة بالبيانات والحالات الإحصائية التي تم الحصول عليها من السلطات والمصادر الموثوق بها. وتختتم هذه الأطروحة باقتراحات وتوصيات، بما في ذلك القيام بإصلاح قانوني شامل وبذل جهود فعالة للتغلب على الاتجار بالبشر. وستفيد هذه الأطروحة ماليزيا في تحديد السبب الرئيس في عدم نجاحها في مكافحة الاتجار بالبشر، وبالتالي تعزيز موقف البلاد في تقرير بيرسون عن الاتجار بالبشر.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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Elimination of Discrimination against Women (CEDAW)
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Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
Protocol against Smuggling of Migrants by Land, Sea and Air.
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime 2001 (UN TIP Protocol)
United Nations Convention on Transnational Organised Crime (UNCTOC)
Universal Declaration of Human Rights 1948 (UDHR 1948)

LIST OF ABBREVIATIONS

ACS	Australian Customs Service
AFP	Australia Federal Police
AGC	Attorney General Chambers
ATIP	Anti Trafficking in Persons
ATIPSOM	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007
CAMSA	Coalition to Abolish Modern Day Slavery
CLJ	Current Law Journal
DIMA	Department of Immigration and Multicultural Affairs
DPP	Deputy Public Prosecutor
GAO	US Government Accountability Office
GRO	Guest Relations Officers
IMF	International Monetary Fund
IOM	International Organisation of Migrants
IO	Investigation Officer
IPO	Interim Protection Order
INTERPOL	International Criminal Police Organisation
KLIA	Kuala Lumpur International Airport
LCCT	Low Cost Carrier Terminal
MAPO	Majlis Anti Pernerdagangan Orang
MoU	Memorandum of Understanding
MLJ	Malayan Law Journal
MMEA	Malaysian Maritime Enforcement Agency
MOHA	Ministry of Home Affairs
NAP	National Action Plan
NGO	Non-governmental organization
NFA	No Further Action
PO	Protection Officer
PNG	Papua New Guinea
RM	Ringgit Malaysia
RMC	Royal Malaysian Customs
RMP	Royal Malaysian Police
SUHAKAM	Human Rights Commission of Malaysia
STIs	Sexually Transmitted Infections
SOP	Standard Operating Procedure
TIP	Trafficking in Person Report
TVPA	Trafficking Victims Protection Reauthorization Act
UDHR	Universal Declaration of Human Rights 1948
UN	United Nation
UNCTOC	United Nation Convention on Transnational Organized Crime
UNODC	United Nations Office on Drugs and Crime
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
US	United State

WHO
HTT

World Health Organization
Human Trafficking Teams

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Most people view human slavery to have ended in the 19th century, and is considered a past occurrence in our history. On the contrary, slavery still continues today in multiple forms of exploitation in all regions around the world. Despite the achievements of 19th-century abolitionists, currently, human trafficking is the fastest growing criminal enterprise in the world. It has become a lucrative criminal industry where the syndicates obtain approximately USD32 billion a year through the sale, abuse and exploitation of the victims.¹ There are nearly 27 million adults and 13 million children worldwide who have become victims to the heinous crime.² They are trafficked every year for two main purposes; labour and sexual exploitation. Some reports have shown that nearly one-third of the world's total human trafficking victims (approximately 2.5 million) originated from Southeast Asia where the syndicates trafficked women and children to Australia, Thailand, Hong Kong, Singapore, Japan, and the United States (US);³ 1.2 million of these victims are under the age of 18.

Human trafficking is a unique crime, which distinguishes it from any other domestic criminal case. It is a grave transnational organised crime which crosses the border of many countries. It is global in reach where the members of a syndicate consist of individuals or groups around the world. They might expand their business and

¹ "ILO Action Against Trafficking in Human Beings 2008," International Labour Office. <http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf> (accessed on 27 May 2014).

² World Youth Foundation. (2013, September). Slide Presentation on Human Trafficking. Paper presented at International Conference on Trafficking organised by World Youth Foundation, Malacca.

³ Kara C. Ryf, "The First Modern Anti-Slavery Law: The trafficking Victims Protection Act of 2000" vol. 34 No.1 (2002) Case Western Reserve Journal of International Law 45.

criminal markets internally and externally. They continue to branch out beyond their traditional parameters by extending their business to new geographic areas as long as there is an opportunity to generate profit. Due to this nature, the crime has threaten the security of the world by tainting the image of democracy and continues to restrain the development of stable societies.

In response to the seriousness of this crime, the United Nations (UN) instituted two (2) main written documents to govern this transnational organised crime; the Universal Declaration of Human Rights 1948 (UDHR 1948) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organised Crime 2001 (UN TIP Protocol). Due to their comprehensive principles, guidelines and approaches, both of the documents have become the main guiding framework for most of the countries around the world in combatting human trafficking.

For the purpose of this research, Malaysia is chosen as the researched country based on their position and ability in fighting the crime. There are many efforts that have been taken by the related government bodies and institutions in preventing human trafficking. For example, the Ministry of Home Affairs (MOHA), together with other ministries have made efforts to prevent trafficking by producing a multi-lingual brochure, informing foreign nationals about the inherent dangers as well as the rights of the victims, and providing input on such matters as shelter audits.⁴

The government of Malaysia applies relevant laws as a principal tool in combatting the crime. The main Act governing human trafficking in Malaysia is Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM 2007).

⁴ Published by Human Rights Commission of Malaysia (SUHAKAM), Kuala Lumpur: 2011.

The amendment to this Act has been enforced on November 2010. A Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrant (MAPO) which consist of members such as from the Attorney General's Chambers and Immigration Department was organised to ensure the success of the Act's implementation.⁵ This principal Act is subject to the Federal Constitution of Malaysia, and supplemented by Immigration Act 1959/63 [Act 155], Malaysian Maritime Enforcement Agency Act 2004 [Act 633], Customs Act 1967 [Act 235], Evidence Act 1950 [Act 56], Court of Judicature Act 1964 [Act 91], Child Act 2001 [Act 611], Penal Code [Act 574], Anti-Money Laundering and Anti-Terrorism Financing Act 2001[Act 613] and Prevention of Crime Act 1959 [Act 297].⁶ In addition, due to its nature as a transnational organised crime, the laws on human trafficking in Malaysia is supported by Extradition Act 1992 [Act 479] and Mutual Assistance in Criminal Matters Act 2002 [Act 621].

In order to enforce the laws of human trafficking as required by the Acts, there are five enforcement bodies entrusted to implement such laws. All of the powers are embodied under Section 28, 29, 30, 31, 32, 34 and 36 of ATIPSOM 2007 and are granted to the selected enforcement officers from the Royal Malaysian Police (RMP), the Malaysian Immigration Department (MID), the Royal Malaysian Customs (RMC), the Malaysian Maritime Enforcement Agency (MMEA) and the Department of Labour. Each of these enforcement bodies has its own function and responsibilities in achieving the common objective to prevent human trafficking.

Unfortunately, instead of having extensive efforts, comprehensive laws and a group of enforcement bodies in Malaysia, the fight against human trafficking is a never ending battle. Malaysia is regarded as one of the destinations, source and transit

⁵ The Council's functions and powers are explained in Section 7 of the ATIPSOM 2007.

⁶ Council for Anti-Trafficking in Persons, Government of Malaysia. (2010). *National Nation Plan Against Trafficking in Persons (2010-2015)*.