

Human Trafficking in Malaysia: A Focus on Women and Children

A 2017 Report by
Women's Aid Organisation



WOMEN'S AID ORGANISATION
PERTUBUHAN PERTOLONGAN WANITA

With the support of



Women's Aid Organisation (WAO)

P.O. Box 493, Jalan Sultan
46760 Petaling Jaya, Selangor
Malaysia

Tel: +603 7957 5636/ 7957 0636

Fax: +603 7956 3237

Email: womensaidorg@gmail.com

Website: www.wao.org.my

Facebook: www.facebook.com/womens.aid.org

Twitter: [@womensaidorg](https://twitter.com/womensaidorg)

ISBN: 978-983-40325-9-3

Copyright © 2017 Women's Aid Organisation (WAO)

All rights reserved.

Written by Lainey Weiss (former WAO Advocacy Officer)

Edited by Natasha Dandavati (WAO Advocacy Officer)

We would like to acknowledge the contributions of Daniel Lo, former Special Officer (Human Rights) to Senator Datuk Paul Low, and Sumitha Shaanthinni Kishna, Co-Coordinator of the Migration Working Group, Malaysia, in reviewing this report. We would also like to acknowledge the contribution of former WAO Vice President Tashia Peterson; WAO staff Sumitra Visvanathan and Yu Ren Chung; and WAO volunteer Simarpreet Kaur.

We thank the office of Y.B. Datuk Paul Low Seng Kuan, Minister in the Prime Minister's Department, for supporting the printing of this report. We also thank WAO strategic partner Yayasan Sime Darby.

“No one is free while others are oppressed.” – Unknown

Women’s Aid Organisation is one of Malaysia’s leading shelter, re-integration, and case management service providers for women survivors of violence and their children. We support women through the challenge of evolving from victims of domestic violence, trafficking, rape, and other atrocities into empowered survivors. We match our services with strong, sustained advocacy work to create intolerance for all forms of violence against women.

With regard to survivors of trafficking, our goal is to first and foremost ensure the safety as well as physical and psychological well-being of the survivor. We inform the survivor of her options, and where possible, pursue prosecution, both in order to bring justice to the survivor as well as to punish the perpetrator and deter further incidence of trafficking. We believe that this is an important piece of the long-term psychological well-being of survivors, who desire closure and the justice to which they are entitled. Thus, we believe that the best interest of the survivor requires informing her of her various options, which includes seeking legal recourse, before deciding on repatriation as the most desirable option. At WAO we strive to ensure that trafficking survivors reintegrate socially and economically into society even after arrival in their homeland.

Recent changes to the Anti-Trafficking in Persons Act will shift an even greater deal of responsibility onto NGOs such as WAO to provide shelter, access to protection, and justice for survivors of trafficking. Women survivors of violence are often silenced by the barriers they face in getting access to justice and protection. These case studies highlight the voices of survivors whom we have assisted, and we are humbled by their strength and resilience. We present this report with the goal of identifying trends in trafficking

in Malaysia, gaps in protection, and the current capacity of multi-sectoral response, by learning from the stories of survivors.

If you are a survivor of trafficking or if you work in the sector of trafficking response (NGO, police, medical or diplomatic mission) WAO would be keen to hear your views on the issues raised in this report. Please get in touch by email at: womensaidorg@gmail.com.

We wish to honour the courageous women who have selflessly shared their stories in order to help us understand the experience of trafficked women in Malaysia, many of whom bravely left their home countries to support themselves and their families and to forge a better life.

Call our counselling line at +603 7956 3488 or SMS TINA at +6018 988 8058 if you or someone you know is experiencing abuse or violence.

Forewords

Carol Chin

*Women's Aid Organisation
President 2017–2019 term*



This report provides the reader insight into the situation of human trafficking survivors in Malaysia, with a specific focus on the trafficking of women and children. In 2014 and 2015, WAO sheltered 66 survivors of human trafficking in addition to survivors of related crimes. We wish to share our knowledge and experience gained from assisting these survivors in order to enlighten readers on the circumstances of trafficking survivors in Malaysia, and to identify ways that we as a community can prevent these atrocities from continuing to occur.

In this report, we look at the driving forces behind human trafficking, the vulnerable populations at risk, and relevant domestic, regional, and international laws. We also suggest recommendations to strengthen legislation and policies that protect against human trafficking, as well as to enhance the support and resources available to survivors.

This report captures the plight of trafficking survivors in Malaysia today. It stresses the need for a community response to trafficking. Each of us has a role to play in preventing the exploitation of our fellow human beings, whether we are part of an NGO, the police, an employment agency, the immigration department, a foreign embassy, the justice system, or someone who employs foreign workers in their home or business.

Those subjected to human trafficking are forced to endure violations of their dignity and the most basic of their freedoms as a result of exploitation motivated by the most depraved human desires, from greed to personal gratification. My heart goes out to these individuals, and it is my hope that readers of this report will be motivated by the best of humanity—love, compassion, and empathy—to take action towards stopping the egregious crime of human trafficking.

Thank you.

Y.B. Datuk Paul Low Seng Kuan

*Minister in the Prime Minister's Department
- Governance, Integrity and Human
Rights*



As Minister in the Prime Minister's Department in charge of Governance, Integrity and Human Rights, it is my desire to see the end of human trafficking in Malaysia. In this capacity and as the former President of Transparency International Malaysia, I have come to understand that human trafficking is the result of corruption and complicity, both of which must be combatted.

In order to overcome corruption, we must ensure that we have strong laws and policies in place to protect vulnerable individuals, and adequate punishments in place to deter potential traffickers. We must also ensure that these laws and policies are implemented, that the integrity of our institutions is maintained, and that perpetrators are brought to justice.

We must also address our own complicity in allowing human trafficking to thrive in our society. This complicity may be active, taking the form of organised crime or agents and employers benefiting from human trafficking. Alternatively, it may be passive, such as bystanders or community members who choose to look the other way even when they see that something is not right.

I commend WAO for the services it provides to many of the most vulnerable individuals in our society, and for its initiative in educating Malaysians on the circumstances surrounding human trafficking in Malaysia and driving positive change.

I hope that you will take this report as a call to action and that, whether you are an individual, a corporation, a civil society organisation, or a government actor, you will do your part to help put an end to human trafficking in Malaysia.



Table of contents

FOREWORDS	3
Carol Chin	3
Y.B. Datuk Paul Low Seng Kuan.....	4
TABLE OF CONTENTS.....	5
PREFACE.....	7
This Report.....	7
INTRODUCTION.....	9
DEFINING "HUMAN TRAFFICKING"	10
THE COMPONENTS OF HUMAN TRAFFICKING	12
THE IMPACT OF TRAFFICKING ON SURVIVORS	13
WHY DOES HUMAN TRAFFICKING THRIVE GLOBALLY?.....	14
TRAFFICKING IN MALAYSIA	18
TRAFFICKING OF WOMEN AND CHILDREN: THE SITUATION IN MALAYSIA	19
DOMESTIC SERVITUDE	20
SEX TRAFFICKING	21
OTHER TYPES OF FORCED LABOUR AND TRAFFICKING	22
TRAFFICKING OF MALAYSIAN CITIZENS.....	24
CASE STUDIES	26
WAO'S ROLE.....	27
SUMMARY OF HUMAN TRAFFICKING SURVIVORS AT WAO.....	28
CASE 1 - ASHA: CAUGHT IN THE CYCLE OF POVERTY AND TRAFFICKING.....	31
CASE 2 - NOOR: THE VULNERABILITIES OF AN ASYLUM SEEKER.....	32
CASE 3 - THERESA: A DEGREE HOLDER TRAFFICKED FOR DOMESTIC WORK.....	33
CASE 4 - LAVINIA: MALAYSIAN CITIZEN TRAFFICKED INTERNALLY	34
CASE 5 - PANN: SHAN WOMEN TRAFFICKED FOR SEX WORK.....	36
ANALYSIS OF THE CASE STUDIES	38
LEGAL STANDARDS	40
RELEVANT DOMESTIC LAW	41
RELEVANT INTERNATIONAL LAW AND STANDARDS	44
RELEVANT REGIONAL AGREEMENTS AND STANDARDS	47
THE REALITIES OF ACCESSING JUSTICE.....	49

.....

THE REALITIES OF ACCESSING SUPPORT SERVICES AND JUSTICE	50
SELF-REFLECTION	51
RECOMMENDATIONS	53
A COLLECTIVE ISSUE	54
RECOMMENDATIONS TO THE GOVERNMENT	56
RECOMMENDATIONS TO NGOs AND CIVIL SOCIETY	56
RECOMMENDATIONS TO IGOs AND INTERNATIONAL ACTORS	57
RECOMMENDATIONS TO THE PUBLIC	57
GLOSSARY	58
ABOUT WAO'S SERVICES	59

Preface

Maryam¹ was in her early forties when her husband became seriously ill and needed a heart surgery. As they were very poor and needed the money for the operation, she decided to look for a domestic helper job in Malaysia through an employment agent in India. She arrived in Malaysia in May 2013 and began working for her first employer through a Malaysian agent. She worked for this employer for four months, but was only paid two months' salary. She was then sent to another agent and began working for another employer. There, she worked for three months but was only paid for a month's work. When she got news that her husband was sick to the point of death, she requested to return to India. This enraged her employer, who then began to abuse her physically. Her agent also got angry with her and told her that she was not allowed to return to India at this stage; he even tore up her passport in front of her to prove his point.

Fortunately, Maryam managed to escape from her employer's home and went to the police. She was brought by the police to the Indian High Commission, where she was referred to WAO for shelter and social assistance. At WAO, Maryam was provided with shelter and counselling services. Maryam's social worker even made a criminal report to the police on her behalf and helped her contact her family. Maryam was heartbroken to learn that her husband had passed away in her absence. The social worker informed Maryam that she had been trafficked (and re-trafficked), and that she was a victim of a crime and, in order for her perpetrators to be prosecuted, she would have to stay in Malaysia for the duration of the trial as a witness. Even though Maryam came to understand that her situation was unjust, she chose to be repatriated back to India as soon as possible in order to be with her family.

This Report

WAO began as a place of refuge for women who had experienced domestic abuse, where they, along with their children, received various forms of services geared at empowering and enabling them to make their own choices for their futures. In the early 1990s WAO started serving migrant domestic workers (MDWs) who had experienced abuse, in line with our vision of creating a society free from violence against women. The number of MDWs we received rose significantly into the teens and twenties per annum in the 2000s. In addition to MDWs, trafficking victims were also referred to our shelter. In the past few years, the number of trafficking survivors that WAO has received has increased substantially. In 2014, 24.3% of our shelter residents—that is, 41 persons—were victims of trafficking. This increase mirrors national and global trends, where recorded incidences of human trafficking have been on the rise.

Just as with victims of domestic violence, WAO's goal is to help abused MDWs and trafficking victims become empowered survivors. This is a challenge that WAO, other NGOs, government, and other stakeholders will continue to face. This report has two goals, the first being to draw learning points for ourselves and for other NGOs serving women and children trafficking survivors. Secondly, we would like to highlight gaps in laws, policies, and procedures around trafficking in order to bring about legislative reform and greater enforcement of existing laws against trafficking in persons. The report does this through deepening our understanding of the circumstances of women and children trafficking survivors in Malaysia, drawing from the real life experiences of the

¹ All names and other identifying information has been changed in order to protect the identity of the survivors whom WAO has assisted.

women and children WAO has served.

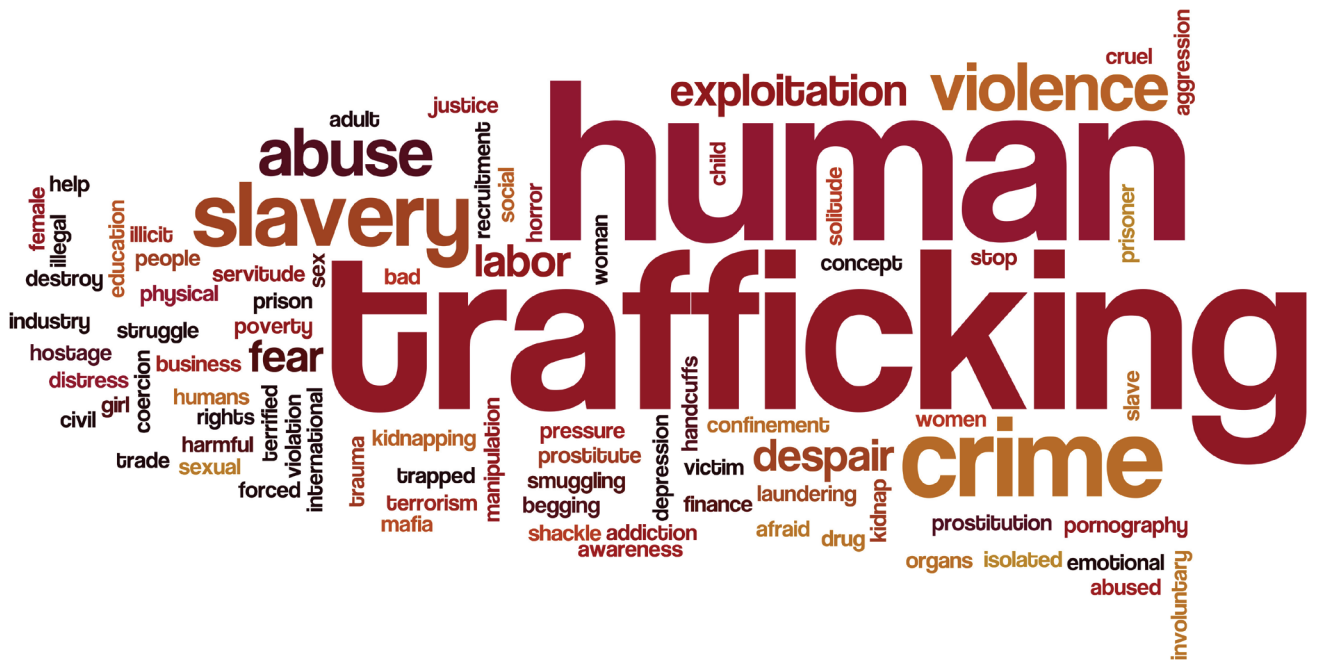
We first explore the issue of human trafficking broadly by looking at the definition of human trafficking, the components of human trafficking, the impact of trafficking on the survivors, and why trafficking is thriving. In the following section, we zoom in to consider the trafficking situation in Malaysia, with an emphasis on the trafficking of women and children. Related to that, we discuss the pertinent issues of domestic servitude, sex trafficking, and other types of trafficking and forced labour of women and children in Malaysia; we also briefly look at the trafficking of Malaysians. In the third section of this report, we focus on the cases of trafficking survivors in which WAO has assisted. After considering certain aspects of the trafficking cases we have dealt with at WAO, we examine five case studies in detail and contemplate a few learning points from each case. An analysis of the trafficking cases and WAO's services, along with a number of constructive suggestions, concludes this section.

We turn our attention next to legal standards that are applicable to human trafficking in the context of Malaysia, by surveying domestic law, international law and guidelines, and regional agreements and standards. In the final section of the report, we look at the trafficking problem in Malaysia as a collective issue, in that every layer of society—from individuals all the way to local and international organisations—is a part of a network that affects the lives of trafficking survivors; therefore, every member of society has its role to play in combatting this issue. Recognising this eliminates the need for placing blame for this social ill and empowers each and every one of us to do what is necessary to ensure that our society is free from trafficking and exploitation of human lives.

Ultimately, we hope that this report will help bring us one step closer to our mission of eradicating violence against women in our society.

Introduction

Defining “Human Trafficking”



The definition of human trafficking includes an “act,” such as recruitment, a “means,” such as abduction or threat of force, and a “purpose,” such as forced labour.

Human trafficking is gaining attention internationally as a serious human rights violation. It has become a focus of investigative reports, talk shows and documentaries, and is often spoken about amongst policymakers, academics, faith leaders, and human rights activists. Given this context, one could easily take for granted that the definition of human trafficking is widely understood by all parties. In reality, human trafficking is often misunderstood and confused with other concepts like *sex work* and *human smuggling*. Hence, it is helpful to begin with the definitions of a few key terms in order to gain a clear understanding of them and avoid conflating related but distinct issues. It is important to note that different organisations may use varying terms or focus on specific facets of human trafficking.

According to the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (henceforth, the UN Trafficking Protocol), **human trafficking**² is defined 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. Exploitation shall include, at a minimum, the

² United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 2000, Part I, Article 3, Available at: <http://www.osce.org/odihr/19223?download=true>

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.

This definition can be broken down into three constituent elements:

- **The “Act”**: Recruitment, transportation, transfer, harbouring or receipt of persons.
- **The “Means”**: Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim.
- **The “Purpose”**: For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.

Although comprehensive, this definition has the potential of leading policymakers to focus exclusively on the “act,” or movement of trafficking persons, which relates to immigration issues, rather than to combat and criminalise the “purpose,” or acts of exploitation. Hence, the US Department of State pointed out that:

Human trafficking can include but does not require movement. People may be considered trafficking victims regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked. At the heart of this phenomenon is the traffickers’ goal of exploiting and enslaving their victims and the myriad coercive and deceptive practices they use to do so.³

Therefore, a person does not have to cross an international border to be considered a trafficking victim.

Malaysian law through the **Anti-Trafficking in Persons (Amendment) Act 2010** defines trafficking in persons as: “**all actions involved in acquiring or maintaining the labour or services of a person through coercion and includes the act of recruiting, conveying, transferring, harbouring, providing and receiving a person.**”⁴

Human trafficking, in most cases, constitutes modern-day slavery. It is an illegal act of the trading of people for exploitation or economic profit. It could take the form of **sex trafficking, forced labour, bonded labour or debt bondage, child labour, involuntary domestic servitude, or child soldiering.**⁵ Human trafficking is also committed for the purpose of **illegal adoption or forced marriage.**

Forced labour is a term commonly used by the International Labour Office (ILO) to denote slave-like working conditions, and this form of exploitation is one of the most common motivations for human trafficking. According to the ILO’s Forced Labour Convention, forced or compulsory labour means “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily,” except for compulsory military

³ US Dept. of State (2012). *Definitions and methodology: Trafficking in persons report 2012*. Available at US Dept. of State: <http://www.state.gov/j/tip/rls/tiprpt/2012/192352.htm>

⁴ Malaysia Act 670. *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007*, Part I Section 2. Available at: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20670.pdf>

⁵ The Convention Concerning Forced or Compulsory Labour, 1930 (No.29). Available at ILO: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

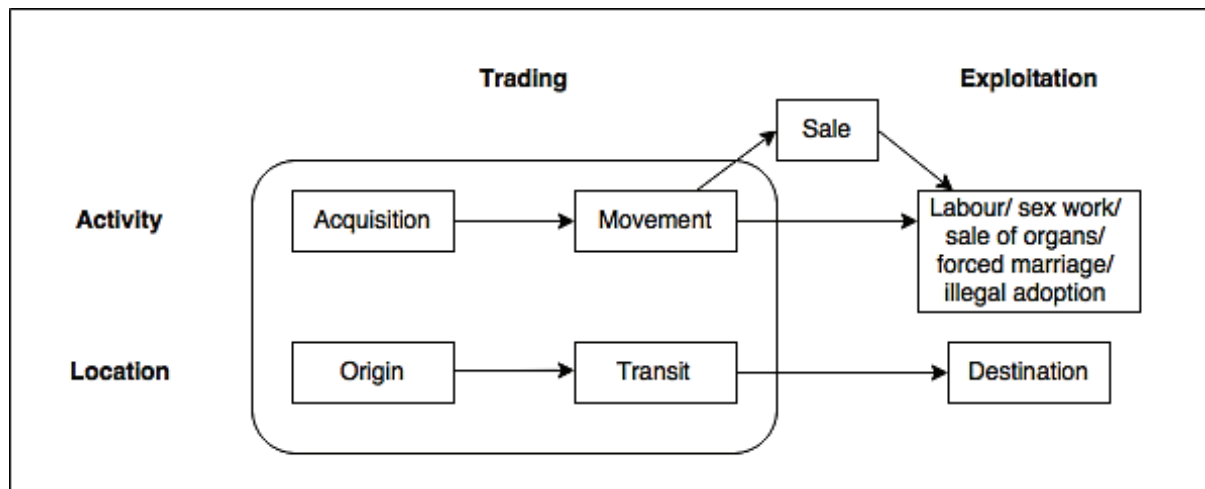
service, normal civic obligations, as a consequence of a conviction in a court of law, in cases of emergency, or minor communal services.⁶

The ILO produced a publication to help local authorities and civil society to identify forced labour situations. The presence of at least one of the indicators could imply the occurrence of forced labour. The indicators are:⁷

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

For the sake of ease, we shall employ the term *human trafficking* to represent both the “Act” (including acquisition and movement) and the “Purpose” (exploitation of persons).

The Components of Human Trafficking



The components of human trafficking¹

Trading, as indicated in the diagram above, represents the *supply side* of human trafficking, which includes *Acquisition* and *Movement*. *Acquisition* relates to the means by which human trafficking is done, and can include a variety of methods, such as using threat, coercion, abduction, deceit or fraud; sale by family; abuse of another's vulnerability; or luring with payment or benefits. *Movement* represents the transfer of persons from their place of origin to the destination. Often trafficking involves the crossing of international borders, but it can also occur within the same

⁶ *ibid.*

⁷ International Labour Organization (ILO) (n.d.). *Indicators of Forced Labour*. Available at ILO: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

country, which is known as *internal trafficking*. Movement can take the form of any mode of transportation, including human-powered transport like walking or swimming.

Exploitation refers to the purpose for which human trafficking is done, and represents the *demand side* of the practice. *Exploitation* could take the form of labour trafficking, which is typically manual labour, e.g. domestic servitude, factory work, mining, construction, farming, and fishing. Sex trafficking remains a common form of exploitation, as it is very lucrative. Children are also trafficked into other exploitative situations such as armed conflict and begging. Another form of coercion leading to slave-like work is through debt bondage, which will be discussed later in this report. People are also trafficked for organ harvesting, forced marriage, child laundering, or illegal adoption. In sum, exploitation of persons is the unlawful and unethical use of human beings for financial gain or the gratification of personal desires.

The Impact of Trafficking on Survivors

As expected, the intense dehumanisation and victimisation that accompanies human trafficking can have lasting undesirable impacts on its survivors. It is common for physical, psychological, sexual, financial, and social abuse to take place at every stage of trafficking. Financial abuse may include the withholding of an individual's rightfully earned wages or failing to compensate an individual at all for their labour, which is forced servitude. Social abuse is restricting the individual from contact with the outside world, such as limiting their ability to meet friends or family, or even to make phone calls or engage in other forms of communication.

In addition to the abusive treatment, trafficking victims are often forced to endure inhumane or hazardous, unhygienic, and unsanitary living and working conditions, such as by being provided with only an extremely small space to sleep, or working in a dangerously hot and uncomfortable area for prolonged periods of time. Victims are also unlikely to be provided with sufficient nutrition (food and water) and medical care. This leads to long-term *physical* impacts, such as injuries, deformities and infections. Victims who have been sexually abused or trafficked for sexual exploitation often contract sexually-transmitted diseases including HIV/AIDS.^{8,9} Some trafficking victims are coerced into drug use to enhance their performance or compliance, and some turn to substance abuse to cope with their situation. Sex trafficking victims are subjected to a high level of violence and risk—the average age of death of a sex worker is 34.¹⁰

Trafficking victims also commonly suffer from mental health issues, such as post-traumatic stress disorder (PTSD), depression, anxiety, and other mental distresses.^{11,12} They are traumatised for a prolonged period during the trafficking process and have no control over their own lives. This

⁸ United Nations Office on Drugs and Crime (UNODC) (2008). *An introduction to human trafficking: Vulnerability, impact and action*. Available at UNODC: https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf

⁹ Stöckl, H., Busza, J., Howard, L.M., & Zimmerman, C. (2012). Prevalence and risk of violence and the physical, mental, and sexual health problems associated with human trafficking: Systematic review. *PLoS Medicine*, 9(5). Available at PLoS Medicine: <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001224>

¹⁰ Bennetts, L. (2011, July 18). *The growing demand for prostitution*. Available at Newsweek: <http://www.newsweek.com/growing-demand-prostitution-68493>

¹¹ United Nations Office on Drugs and Crime, op. cit.

¹² Stöckl, H., op. cit.

disempowerment tends to lead to hopelessness, cognitive impairment, suicidal behaviour, and even aggression.¹³

These physical and psychological harms appear more pronounced in child victims, as they have lower resistance and experience severe physical and mental disruptions in their development. Trafficked children often suffer from malnutrition, rotting teeth, stunted growth, reproductive issues, and sexually transmitted infections, along with many other physical ailments. They are also mentally harmed in the process, and often display attachment issues, aggression, sexualised behaviour, addictions, and a distrust of authority. In addition, child victims of trafficking usually experience developmental delays and cognitive problems, which affect their prospects for future education and employment opportunities, further jeopardising their chance for successful reintegration into society even if they escape or are rescued.¹⁴

On top of the egregious treatment to which victims of trafficking are subjected during the trafficking process, as well as the lasting physical and emotional consequences they are left to deal with, trafficking victims also face social discrimination and stigma even after escaping their trafficking situation. For those who return to their home country, they may encounter disapproval and ostracisation from their families, friends, and communities for returning without bringing financial wealth or failing to uplift themselves. Victims of sex trafficking are likely to be shunned by their communities, making it difficult for them to reintegrate into society. Therefore, it is not uncommon for them to move away from their hometowns and continue in sex work or become pimps themselves.¹⁵ Many trafficking victims are also left vulnerable to being re-trafficked, as is discussed below.

Why Does Human Trafficking Thrive Globally?

On **the supply side**, certain factors contribute to the reason why human trafficking is so rampant worldwide. These are also known as the *"push" factors*. A well-known indicator of whether a person is being trafficked is poverty and a lack of opportunity for economic mobility. This could be caused by conflict situations, economic crises, government corruption, perceived lack of opportunity, and population pressure. That said, poverty is not a straightforward indicator of one's vulnerability to being trafficked. Traffickers tend to seek out certain criteria—such as physical strength, size, or attractiveness—in people to suit the purpose for which they are being trafficked. Nevertheless, desperation resulting from poverty, inequality, and various forms of discrimination are often strong motivators for a significant population of people to seek shelter and employment opportunities outside of their own community, resulting in them being susceptible to exploitation.

Gender inequality is another push factor for trafficking. Women are particularly vulnerable to trafficking because they are often excluded from mainstream socioeconomic systems, such as education and employment and property ownership. In most parts of the world, women suffer from income inequality and a disparity in political influence.¹⁶ Their "unfavoured" status in the family can also lead to them being expected to financially provide for their family. In countries such as Nepal, many girls are sold by their families due to the dowry system that disadvantages

¹³ *ibid.*

¹⁴ United Nations Office on Drugs and Crime, *op. cit.*

¹⁵ Bennetts, L., *op. cit.*

¹⁶ The World Economic Forum (2014). *The Global Gender Gap Report*. Available at World Economic Forum: http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf

women.¹⁷ Women and girls are targeted for exploitative types of work, such as sex work and domestic servitude.

In general, women face many types of harm and maltreatment in society, which can result in their becoming internally displaced or seeking refuge in another country.¹⁸ They are regularly and uniquely victimised in war and conflict zones. Additionally, women make up more than half of the global refugee population.¹⁹ Refugees, asylum seekers, and internally displaced persons (IDPs) are at extremely high risk of being trafficked and exploited. Women and children in these situations are often forced to perform sexual acts in exchange for provisions vital for their survival.²⁰

Yet another push factor for trafficking is social and cultural exclusion. In most countries, some groups are marginalised and do not benefit from the economic development of their country or have equal access to education, employment, and social services. Socially excluded groups are marginalised due to reasons such as ethnicity, religion, caste, cultural, sexual orientation, and linguistic differences, lower social status, or simply being in the minority. This is exemplified by the caste system in South Asia, and many other caste-like divisions all over the world, where there is a clear distinction between the upper class and a “serf” class. As a result of being marginalised, these groups are more likely to be vulnerable to exploitation and trafficking.

Looking at **the demand side** or the “pull” factors of trafficking, it is apparent that the desire for cheap labour and services serves as a strong factor for trafficking to occur. Keeping wages low allows businesses to maximise their profits and keep prices competitive. Trafficked workers are paid less than minimum wage, or no wages at all, for their labour. Employers using trafficked labour also do not have to contribute to these workers’ medical or accident insurance plans, retirement funds or pensions, or any other employment benefits. Moreover, businesses also benefit from a more compliant labour force, as many trafficking victims are undocumented workers, who typically would be far more hesitant to resist employers’ unreasonable or unlawful demands than would those who have legal status.²¹

Another pull factor is the demand of private entities, particularly of the middle and upper classes of society, for low-cost domestic servants, babysitters, and elderly caregivers. Once again, the prospect of paying subminimum wages to domestic workers, coupled with their high level of compliance, is attractive to many. This fuels the incentive for traffickers to acquire the human resources to satisfy the demand.

¹⁷ Kara, S. (2009). op. cit.

¹⁸ Bailliet, C.M. (2012). Persecution in the home: Applying the due diligence standard to harmful traditional practices within human rights and refugee law. *Nordic Journal of Human Rights*, 30(1), 36-62.

¹⁹ Sengupta, I. (2009). Becoming a refugee woman: Gender-based persecution and women asylum seekers under international refugee law. *Social Science Research Network*. Available at SSRN: <http://ssrn.com/abstract=1649996>

²⁰ United Nations Office on Drugs and Crime, op. cit.

²¹ Shelley, L. (2006). *Human trafficking: A global perspective*. New York, NY: Cambridge University Press.

Human Trafficking



Child abduction



Human cage



Forced prostitution



Forced labor



Forced marriage



Organ theft



Selling baby



Forced child beggar



Trafficking boat

This chart illustrates some of the types of exploitation involved in human trafficking.

The demand for sexual services, which constitutes a highly lucrative industry, also fuels human trafficking. Prostitution is normalised in most societies—whether or not it is legal—and men of every age group, ethnicity, religion, profession, and socioeconomic class consider it socially acceptable to purchase sex. Popular media and pornography glamorise prostitution, thus minimising the feelings of guilt on the part of men who pay to use women's bodies, regardless of whether these women truly consent. The high demand for commercial sex results in its profitability, particularly when supplied by trafficked labour that comes at low or no cost to the trafficker. A recent estimate by the UN International Labour Office indicates that profits from sex trafficking is on average six times higher than that of other forms of forced labour, such as domestic work.²² It is, therefore, no wonder that sex trafficking is rife all over the world.

²² Kolodny, C. (2014, May 22). *Slavery is still thriving and is more profitable than oil*. Available at the Huffington Post: http://www.huffingtonpost.com/2014/05/22/modern-slavery-profits-big-oil_n_5365220.html

Other than the supply and demand factors, **gaps in law and policy as well as weak law enforcement around human trafficking** contribute to its prevalence. For example:

- Lack of clarity over the definition of human trafficking is common, which leads to law enforcement focusing on aspects that do not help curb the criminal activities;
- Lack of training for judges and public prosecutors in understanding the complexity of human trafficking and the vulnerability of the trafficked victim results in low number of prosecutions;
- Corruption amongst law enforcement and border control personnel leads to loopholes in the system;
- Lack of international collaboration and coordination to combat trafficking allows trafficking, which is a transnational crime, to continue to flourish;
- Absence of or under-resourced special task forces to combat trafficking, weak law enforcement and prosecution of offenders, and feeble economic penalties for trafficking offences all enable human traffickers to continue with their activities without *real* consequences; and
- Inadequate support services and protection for trafficking survivors during investigation and prosecution provides very little incentive to survivors to cooperate in helping to convict their traffickers.

Trafficking in Malaysia

Trafficking of Women and Children: The Situation in Malaysia

Due to its geographical location and economic strength, Malaysia is a popular destination country for women, men, and children from numerous countries to seek employment. It is currently estimated that there are approximately two million documented and more than two million undocumented migrant workers in Malaysia.²³ Those who are categorised as undocumented often enter Malaysia legally, but become undocumented later for various reasons, as discussed later in this section. It is important to note that not all migrant workers are victims of trafficking, but many of them, including refugees, asylum seekers, and stateless persons, are vulnerable to trafficking.

Unethical practices of recruitment agencies and employers subject migrant workers to disproportionately high recruitment fees, withholding of salary, debt bondage, confiscation of passports, excessive working hours, hazardous working conditions, physical abuse and humiliation, and other forms of human rights violations. As of January 2013, the Malaysian government policy imposed a 'foreign levy', which is an annual tax, on migrant workers, rather than on their employers, making them even more susceptible to exploitation.²⁴



Domestic servitude is one form of human trafficking that is prevalent in Malaysia

²³ US Dept. of State (2016). *Trafficking in Persons Report 2016*. Available at US Dept. of State: <http://www.state.gov/j/tip/rls/tiprpt/countries/2016/258814.htm>

²⁴ US Dept. of State (2014). *Trafficking in Persons Report 2014*. Available at US Dept. of State: <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226770.htm>

WAO recognises that there is a persisting false perception that conflates human trafficking with sex work and identifies men solely as traffickers and women as trafficking victims;²⁵ in reality there are many men who are trafficked in Malaysia to work in industries such as construction, agriculture, manufacturing, services, and fishing.²⁶ However, because WAO specialises in working with women and children, the focus of this report is on women and children victims of trafficking. Other non-governmental organisations (NGOs), such as Tenaganita, work to protect migrant workers who are men.

Domestic Servitude

There are an estimated 250,000 documented and 100,000 undocumented migrant domestic workers (MDWs) in Malaysia.²⁷ Many MDWs become victims of trafficking due to the exploitative practices of unscrupulous employment agencies in their home country or in Malaysia, or their employers in Malaysia. These agents or employers cause many MDWs to fall into debt bondage through initial recruitment fees.

These 'recruitment fees' can include government fees for immigration processing, foreign worker levies, as well as the agency's own administrative fees, which can be substantial. Since Malaysian law allows for government fees to be initially paid by the employer and then subsequently deducted from the workers' wages, employers can lure workers who would not otherwise be able to afford the recruitment fees into relocating to Malaysia, and then having these fees deducted from their future wages.²⁸ This practice incentivises abuses by employers, who may change the initial terms of the employment agreement—including wages, job duties to be performed, etc.—and hold the worker hostage until the fees are recouped. This practice is known as **debt bondage**.

There are also cases of involuntary servitude,²⁹ where victims are recruited deceptively. Due to the restrictive environment of their work, MDWs are subject to numerous forms of abuses that add to their vulnerability to becoming victims of trafficking, such as breaches of contract, withholding of salary, unnecessary wage deductions, excessive working hours, withholding of passport and prohibition from having days off from work. Moreover, many domestic workers suffer from physical and psychological abuses by their employers that amount to torture. It is not uncommon for them to be subjected to verbal abuse, beatings, deprivation of food, scalding with hot water, and sexual assault. MDWs are often afraid to seek justice for fear of losing their jobs or due to the threats made by their employers. Even when police reports are made by victims or NGOs, the

²⁵ Australian Department of Foreign Affairs and Trade (DFAT) (2013). *Gender equality*. Available at Australia-Asia Program to Combat Trafficking in Persons (AAPTIP): <http://www.aaptip.org/content.php?mcId=1385449158>

²⁶ UN General Assembly (UNGA) (2015, June 15). *Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro: Mission to Malaysia*. UN Doc A/HRC/29/38/Add.1.

²⁷ Migration Working Group (MWG) (2013). *A joint submission by members of the MWG for the 17th Session of the Universal Periodic Review, 24 October 2013*. Available at WAO: <http://wao.org.my/file/file/Migration%20Working%20Group%20Joint%20UPR%202013%20Submission.pdf>

²⁸ US Dept. of State (2016). op. cit.

²⁹ Nguyen, H. (2014). *Examining violence against women in situations of human trafficking in South-East Asia*. Available at The Asian Forum of Parliamentarians on Population and Development (AFPPD): <http://www.afppd.org/en/resources/news-2-2/asia-pacific-mps-working-end-aids-epidemic-2-4/>

police rarely offer protection to the victims, but instead threaten to return them to their employers or employment agency.³⁰

MDWs are specifically termed as "domestic servants" in the Employment Act 1955, and are so excluded from many of the benefits afforded to employees under the Act. Hence, they are not given the right to maternity leave, days off and regular hours of work, or to termination, layoff, and retirement benefits.³¹ They also face institutionalised debt bondage, as government policy leads to them being subjected to wage deduction of six to nine months, isolation, and having no day off.³² Since most domestic workers are women, these practices can be viewed as discriminatory against women.

Sex Trafficking

Malaysia is a prominent destination for the trafficking of women and children into the sex trade.³³ Sex trafficking is extremely profitable; the International Labour Organization (ILO) computes that the average annual profit per sex worker in Malaysia is about USD \$23,500.³⁴ It is projected that there are approximately 142,000 sex workers in Malaysia, out of which 8,000 to 10,000 are located in Kuala Lumpur. While Malaysia is not typically labelled as a sex tourism destination, it has a booming sex industry and a large demand for sexual services.³⁵ Although there is not much data around it, there is also a thriving underage sex trade with girls from other Asian countries working in Malaysia.³⁶

Many girl and women sex workers are employed in massage parlours, spas, pubs, karaoke lounges, or restaurants.³⁷ It is alleged that various organised crime groups are responsible for some of the sex trafficking cases and disingenuously lure women into the country by offering them legal employment or education opportunities, even processing their travel documents and visas. There are also cases of girls and women who are enticed into arranged marriages in Malaysia, only to be later forced into prostitution.³⁸

Upon arrival, sex trafficking victims' travel documents are usually confiscated and they are coerced into sex work to repay their travelling costs. They are often threatened with imprisonment

³⁰ UN General Assembly (UNGA) (2015, June 15). op. cit.

³¹ Migration Working Group (MWG) (2013). *A joint submission by members of the MWG for the 17th Session of the Universal Periodic Review, 24 October 2013*. Available at WAO: <http://wao.org.my/file/file/Migration%20Working%20Group%20Joint%20UPR%202013%20Submission.pdf>

³² The Coalition of Malaysian NGOs in the UPR Process (COMANGO) (2013). *Stakeholder report on Malaysia for the 17th session in the 2nd cycle of the HRC's Universal Periodic Review in 2013*. Available at WAO: <http://wao.org.my/file/file/Coalition%20of%20Malaysian%20NGOs%20in%20The%20UPR%20Process%20UPR%202013%20Submission.pdf>

³³ US Dept. of State *Trafficking in Persons Report 2014*. op. cit.

³⁴ Belser, P. (2005). *Forced labor and human trafficking: Estimating the profits*. Geneva, CHE: ILO. Available at School of Industrial and Labor Relations (ILR) Cornell University: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor>

³⁵ Zainal, N.E., Kamaruddin, M.S.Y., Bakhtiar, M.F.S., & Ahmad, N.A. (2014). In N. Sumarjan, M.S. Mohd Zahari, S. Mohd Radzi, Z. Mohi, M.H. Mohd Hanafiah, M.F.S. Bakhtiar, & A. Zainal (Eds.), *Hospitality and tourism: Synergizing creativity and innovation in research* (pp. 349-352). Boca Raton, FL: CRC Press.

³⁶ The 2014 documentary film, "Trapped," produced and directed by Mahi Ramakrishnan and Rian Maelzer, explores some cases from the perspective of the girls involved, as well as police, social workers, and psychologists. Available at: <https://www.youtube.com/watch?v=UDCjKLUGr30>

³⁷ Nguyen, H. (2014). op. cit.

³⁸ UN General Assembly (UNGA) (2015, June 15). op. cit.

for soliciting prostitution or reprimanded with beatings for refusing to provide sexual services. While most of the victims are from Southeast Asia, others hail from South Asia, Africa, the Middle East, and the Russian Federation.³⁹ In recent years, there have been increasing reports of trafficking of children for sexual exploitation, including the trafficking of boys. It was estimated that more than 5,000 children were involved in sex work in the Klang Valley as of 2015.⁴⁰ There are also a number of Malaysian citizens who are subjected to sex trafficking domestically, as well as to other countries.⁴¹



The International Labour Organization (ILO) estimates that the average annual profit per sex worker in Malaysia is about USD \$23,500.

Other Types of Forced Labour and Trafficking

Besides domestic work and sex work, women and children are trafficked into other forms of labour. Most trafficked females are from South or Southeast Asia. Many migrate voluntarily and legally to Malaysia for employment, although some are recruited with false promises, and are subsequently victimised and coerced into undesirable working conditions in various industries such as agriculture, food service, textile, and electronics.

³⁹ UN General Assembly (UNGA) (2015, June 15). op. cit.

⁴⁰ Singh, R. (2015, March 7). *Child sex trade in Malaysia on the rise, says Tenaganita*. Available at The Rakyat Post: <http://www.therakyatpost.com/news/2015/03/07/child-sex-trade-in-malaysia-on-the-rise-says-tenaganita/>

⁴¹ UN General Assembly (UNGA) (2015, June 15). op. cit.

According to government and independent reports, 60 to 80 percent of workers in the electronics industry are women. A recent comprehensive survey of factory workers in the electronics industry revealed that many indicators of forced labour are present in the treatment of employees.⁴² Almost every single foreign worker was charged recruitment fees—by agents in both the source country and Malaysia—that were above the legal standard. Many of the workers had to borrow money to pay these initial charges, leaving them in significant debt even before they started work. Virtually all the workers who were in debt due to the recruitment fees worked for more than three months before they could pay off the debt; half of the workers took more than a year to do so. Almost all of those who were in debt felt obligated to work overtime to repay the debt; most of them felt that they had to stay in the same job until the debt was repaid. This shows that situations similar to bonded labour tend to arise due to exorbitant recruitment fees. Additionally, the foreign levy of RM1,250 per annum that the Malaysian government began imposing on foreign workers in January 2013 places a further financial burden on them.

In the same study, it was discovered that nearly every foreign worker's passport was withheld by their agent even though this practice is prohibited by law in Malaysia under the Passports Act 1966. Most of them reported great difficulty in retrieving their passports when they requested for them. Nearly two-thirds of the workers surveyed shared that their movement was restricted, and attributed it to the retention of their passports. Many foreign workers reported poor living conditions in accommodation provided by their employers or employment agents. Some of them revealed that they were subject to surveillance at their housing and could not leave their housing freely. Almost half of the interviewed workers reported having had unpleasant encounters with the police, immigration officials, or the volunteer citizen security corps (known as RELA)—they were either detained or threatened with detention, and a majority of them reported having paid a bribe.

Foreign workers are tied to their employers by their work permits, which are required for them to maintain legal status in Malaysia. This power imbalance leaves them vulnerable to abuse by their employers. Migrant workers who have filed cases against their employers have had their work permits cancelled, and those who wish to pursue justice are required to pay for temporary Special Passes which do not give them the right to work. Non-citizens continue to face discrimination in access to health care and education, and encounter other basic human rights violations.⁴³

Malaysia is not a party to the UN Refugee Convention, and so refugees and asylum seekers do not have their status formally recognised by the Malaysian government. This lack of formal status limits their ability to acquire employment, education, and health care services, or to move freely and access justice, making them especially vulnerable to trafficking. Many refugees and asylum seekers incur a large debt to be transported to Malaysia and are then subsequently subjected to bonded labour by traffickers.

⁴² Verité (2014). *Forced labor in the production of electronic goods in Malaysia: A comprehensive study of scope and characteristics*. Available at Verité: <http://www.verite.org/research/electronicsmalaysia>

⁴³ Migration Working Group (MWG) (2013). A joint submission by members of the MWG for the 17th Session of the Universal Periodic Review, 24 October 2013. Available at WAO: <http://wao.org.my/file/file/Migration%20Working%20Group%20Joint%20UPR%202013%20Submission.pdf>

Refugee women and children have been trafficked for all forms of labour exploitation. Some refugee children are even trafficked for the purposes of forced begging and criminal activity.⁴⁴ The United Nations High Commissioner for Refugees (UNHCR, also known as the UN Refugee Agency) is the designated protection and support agency for refugees. Although the mandate of the UN Refugee Agency does not explicitly include the issue of human trafficking, their mandate does include preventing refugees and other persons of concern from becoming victims of human trafficking, thus recognising the link between being a refugee, asylum-seeker, or stateless person and becoming a victim of human trafficking.⁴⁵ UNHCR's scope includes assisting states in ensuring that trafficking survivors who are without identity documents are able to establish their identity and nationality in order to prevent them from being rendered stateless.⁴⁶ The correlation between being a refugee and becoming a victim of trafficking emphasises the need for stronger protections and recognition of rights for refugee communities, including access to justice and the right to work, which might prevent some vulnerable individuals from falling prey to labour exploitation.

In some jurisdictions, the application of the refugee definition to trafficking survivors has helped protect certain categories of trafficking survivors. Although being a victim of human trafficking in itself typically does not suffice to establish a successful claim for refugee status, under certain circumstances, a trafficking survivor may be eligible for refugee protection, such as where the human trafficking is linked to the survivor's political opinion or membership in a particular social class or group.⁴⁷

Finally, there are reports of children who have been trafficked for adoption to childless couples in Malaysia. While very rare, there are also some cases of organ trafficking that have been discovered in Malaysia. Malaysians have also been known to go abroad to purchase body organs harvested illegally in China, India, and the Philippines.^{48,49}

Trafficking of Malaysian Citizens

While Malaysia is not considered a source country for trafficking, there are Malaysian citizens who are trafficked internally and overseas. Malaysian girls and women have been found to be trafficked for commercial sex work in major cities and tourist destinations all over the country.⁵⁰ Girls and women from rural areas and indigenous groups have also been found to be among those trafficked internally for labour and sexual exploitation.⁵¹

⁴⁴ UN General Assembly (UNGA) (2015, June 15). *Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro: Mission to Malaysia*. UN Doc A/HRC/29/38/Add.1.

⁴⁵ UNHCR *Considerations On The Issue Of Human Trafficking From The Perspective Of International Refugee Law And UNHCR's Mandate*, 2009. Available at: <http://www.unhcr.org/4ae6b66e9.html>

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ Alphonsus, A. (2012, March 27). *Are we a hotspot for organ trafficking?* Available at Free Malaysia Today News: <http://www.freemalaysiatoday.com/category/nation/2012/03/27/are-we-a-hotspot-for-organ-trafficking/>

⁴⁹ Nguyen, H. (2014). *op. cit.*

⁵⁰ Belser, P. (2005). *op. cit.*

⁵¹ Aronowitz, A. (2009). *Human trafficking, human misery: The global trade in human beings*. Westport, CL: Greenwood Publishing Group.

Malaysians have also been found to be trafficked to other countries including China, Singapore, Brunei, Thailand, Japan, USA, New Zealand, France, UK, and Northern Ireland.^{52,53} Malaysian children who have become victims of sex trafficking have been found in Thailand, Indonesia, and Taiwan.⁵⁴ In light of this, it is particularly alarming that almost 8,000 children in Malaysia were reported to be missing between 2012 and 2014.⁵⁵

⁵² Belser, P. (2005). *op. cit.*

⁵³ Nguyen, H. (2014). *op. cit.*

⁵⁴ Singh, R. (2015, March 7). *op. cit.*

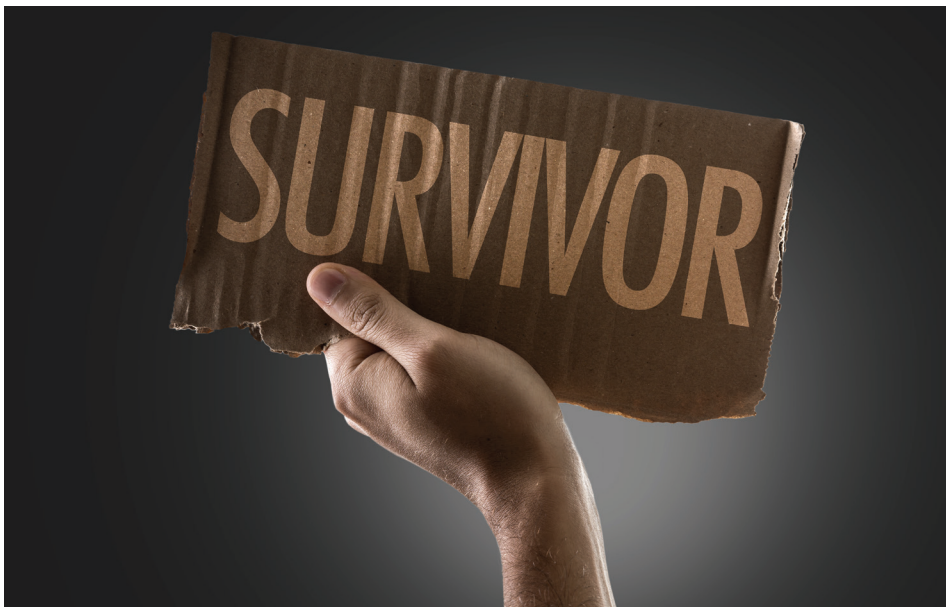
⁵⁵ *ibid.*

Case Studies

WAO's Role

WAO's vision is to create a society that is free from violence against women. We believe that all human beings have the right to self-determination and should have control over the conditions that shape their lives, and it is this philosophy that drives the services we provide and the changes in laws, policies, procedures, and attitudes for which we advocate.

For the woman survivor of trafficking, exploitation and the abusive actions of the perpetrator would have had the effect of negating her self-determination and removing her power and control over her own life. Services that respond to the needs of women survivors of trafficking and other forms of violence are not merely an offer of charity to the survivor in her moment of crisis. The provision of shelter and other services is about enabling the survivor to regain her dignity in a supportive and safe environment. The service must aim to assist her to move towards a future that is free from exploitation and violence.



The decisions of whether to pursue prosecution and whether to remain in Malaysia or return to her home country immediately must be left to the survivor after informing her of all her options.

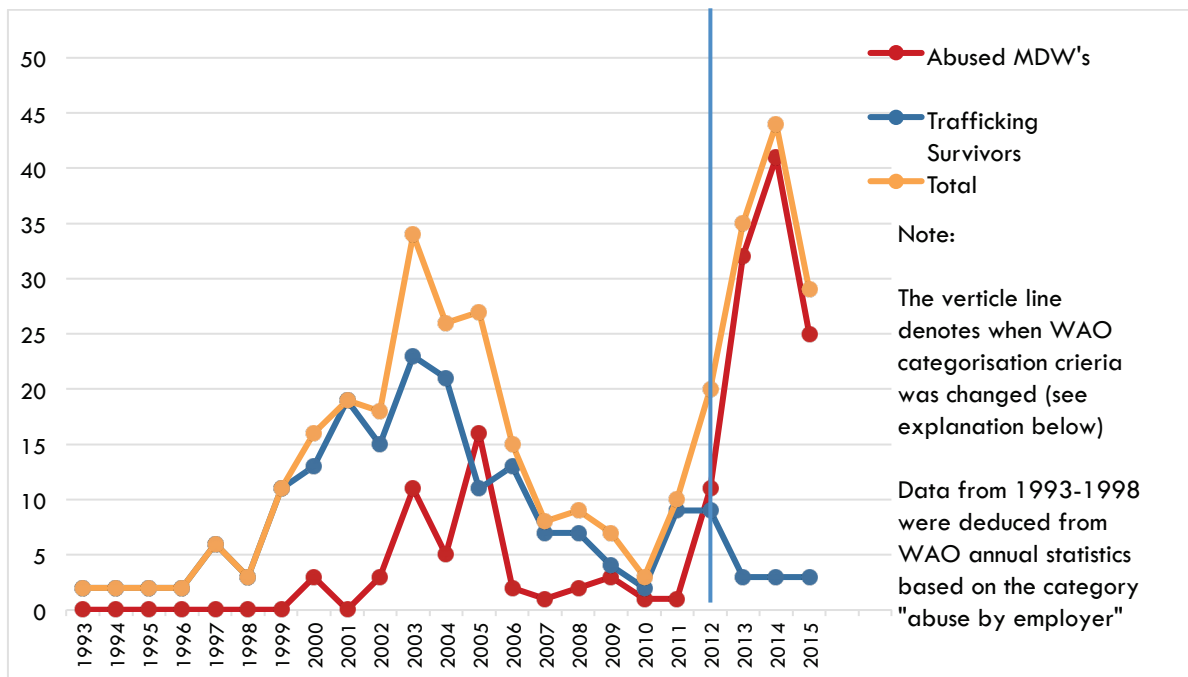
With regard to survivors of trafficking, our goal is to first and foremost ensure the safety, as well as the physical and psychological well-being, of the survivor. We inform the survivor of her options and counsel her through the process of deciding which option is best for her. Once the survivor has made this decision, we support her in whatever way necessary, whether it be by accompanying her to lodge a police report against her trafficker, seeking medical attention, or getting assistance from the embassy of her home country with the repatriation process. Where possible, we assist the survivor to pursue prosecution, both in order to bring justice to the survivor, as well as to punish the perpetrator and deter further incidence of trafficking. We believe that this is an important piece of the long-term psychological well-being of survivors, who desire closure and the justice to which they are entitled. Thus, we believe that the best interest of the survivor requires informing her of her various options, which include seeking legal recourse, before deciding on repatriation as the most desirable option. At WAO, we strive to ensure that trafficking survivors reintegrate socially and economically into society after returning to their homeland.

As they are to the crime of domestic violence and other forms of violence, women are also more vulnerable to exploitation and violence in the form

of human trafficking. This vulnerability is recognized in the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). CEDAW, which Malaysia ratified in 1995, provides the relevant international standards with relation to women's human rights and the state's obligation to promote, respect, protect, and fulfil these rights. Much of WAO's advocacy work is grounded in the standards upheld by CEDAW, including in relation to human trafficking.

CEDAW Article 6 states that, "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." While states have an obligation to address the issue of trafficking directly through legislation by criminalising trafficking, prosecuting offenders, and enforcing punishments, states also have an obligation to address more insidious forms of discrimination which may lead to women becoming vulnerable to trafficking. For example, discriminatory laws around access to education or employment may lead to women being less able to negotiate terms and conditions of employment or being forced to migrate to find employment.⁵⁶ Similarly, immigration laws that restrict migrant women from freely seeking or changing their employment, or that make a woman's status in the country tied to the sponsorship of one specific employer, can also increase women's vulnerability to labour exploitation and trafficking.⁵⁷ Trafficked women may face additional discrimination in accessing justice even once they have escaped their abusive and exploitative situation.

Summary of Human Trafficking Survivors at WAO



Number of migrant domestic workers and trafficking survivors at WAO by year⁵⁸

⁵⁶ Global Alliance Against Traffic in Women. "A Toolkit for Reporting to CEDAW on Trafficking in Women and Exploitation of Migrant Women Workers." 2011. Available at: [http://www.gaawt.org/publications/A Toolkit for Reporting to CEDAW GAATW2011.pdf](http://www.gaawt.org/publications/A%20Toolkit%20for%20Reporting%20to%20CEDAW%20GAATW2011.pdf)

⁵⁷ *ibid.*

⁵⁸ WAO Annual Statistics 1993-2015, Available at http://www.wao.org.my/WAO+Annual+Statistics_21_6_1.htm

To date, a total of 190 abused migrant domestic workers (MDWs) and 158 human trafficking survivors have resided at the WAO shelter.⁵⁹ While the abuses experienced by women from these two categories are comparable, they were initially categorised into separate groups according to their legal status (e.g. work permit). However, since 2012, we have altered our categorisation criteria by considering the elements of the clients' testimony. Clients who experience a lack of freedom over their own lives (e.g. not having the freedom to stop working or change jobs) or a high level of exploitation for profit are classified as having been trafficked, even if they held valid work permits. This may explain, at least in part, the doubling of total survivors sheltered from 2011 to 2012. Although not always the case, many who lack legal status are survivors of trafficking, as they face heightened dependence and powerlessness.

Nevertheless, the level of abuse suffered by MDWs, even if they are not categorised as trafficking survivors, often amounts to forced labour. This is usually due to the MDW's fear of losing their jobs or legal status. The problems typically faced by them are physical and psychological abuse, withholding of wages and travel documents, and deprivation of food. Almost all of the trafficking survivors WAO worked with entered Malaysia legally, but eventually become undocumented and were coerced to work in deplorable working conditions for very little or no wages. They were all deceptively recruited, being falsely promised a good salary and work permits. Many of them paid for the services of recruitment agents in their home countries, only to find themselves in situations of slavery shortly after arriving in Malaysia. Engaging the services of an agent often further restricted their options and mobility, as they would have to pay a penalty fee if they requested to return to their home country.

Forms of Exploitation:

- Out of the 66 trafficking survivors WAO worked with in 2014 and 2015, more than half were forced into domestic servitude, almost one-third into sex work, four into other forms of labour, and one was trafficked into a forced marriage.

Seeking Help:

- Before coming to WAO, 25 of them sought assistance from the police, and only 13 out of the 25 were satisfied with the assistance they received. Most of the 39 of the survivors who refrained from going to the police did so because of a language barrier; almost half of them reported that they were afraid of police officers.
- Out of the 66 clients, only 17 sought care from medical practitioners before coming to WAO. Sadly, only five of them were satisfied with the care they received. 15 of the 49 who did not access medical care cited it was due to a language barrier; many lacked the financial resources or were afraid of getting arrested for their illegal status.
- 10 of the survivors in 2014 had gone to other NGOs for help prior to coming to WAO, and all of them reported that they were satisfied with the NGO services they received. Almost all who did not previously approach NGOs said that they did not do so owing to lack of information.

Outcomes:

- 29 of the survivors WAO assisted were repatriated back to their home countries and eight were referred to shelters run by community-based refugee organisations.

⁵⁹ Based on WAO data through December 31, 2015

- WAO supported the abused MDWs and trafficking survivors by providing them with information and ensuring each woman knew her options, and then supporting her through the course of action of her choice. In 2014, amongst those who had not done so already, our social workers assisted three clients who chose to make police reports and 17 to seek medical examinations. Besides that, the social workers also helped around half of the survivors negotiate with their embassies or high commissions, and more than half of them to acquire special passes and check-out memos. Out of the 31 of them with overstay issues, we managed to help 27 of them obtain waivers for overstaying.
- We pursued negotiations with the employers or agents for seven survivors and managed to claim unpaid wages for four of these survivors.
- For the first time in our history of dealing with trafficking survivors, between 2014 and 2015 we had three clients who agreed to pursue justice through the Malaysian judiciary system.

In the next subsection, we will look at a few recent case studies of trafficking survivor clients at WAO. The names and certain details of the clients have been edited to protect the identities of the individuals.

Case 1 - Asha: Caught in the cycle of poverty and trafficking

I am from Andhra Pradesh in India. I was the youngest born child; however, all my siblings passed away as babies. My mother could not look after herself well during the pregnancies and had to work very hard, even when she was pregnant. I only went to primary school for one year. I was married off to my mother's brother when I was 12 years old. My husband had always been partially paralysed and was unable to work to support our family, so I started working at a paddy field right after we got married. My husband and I had four children, but only three of them survived. Our third child passed away at 10 months old for unknown reasons.

Being the only breadwinner in my family put me under great financial pressure. I decided to travel abroad to look for better employment. I found work in Bahrain as a domestic worker and worked there for three years. In 2011, I was sent to Singapore through an employment agency. When I arrived, I was asked to perform sex work, to which I strongly objected. My agent then sent me back to India after less than two weeks. In the following year, I came across the opportunity to go to Malaysia to do domestic work. I was in my early forties at the time.

The first year-and-a-half in Malaysia went as expected. One day, my agent took me to work for another employer. After a month, he brought me to yet another employer for whom I worked for two months. During this period, I did not receive any salary and was regularly abused by my agent, his wife, and another man hired by my agent. The agent smacked me and struck me with a belt and a hosepipe, and the other man also smacked me. This man also threatened me with a knife and a pair of scissors, and even confined me in a house with no water or food in September 2014. On the fifth day of captivity, I called out for help; a neighbour heard me and rang the police. The police arrived soon after and rescued me.

I was brought to the hospital for a check-up and then referred to the Indian High Commission (IHC). The IHC brought me to WAO to access the shelter services while I was awaiting repatriation to India. Initially, I told the social worker who worked with me that I wanted to obtain my unpaid wages, but I was unsure about assisting with prosecuting my perpetrators in court. After a few days, I expressed my desire to my social worker to take up a case against my perpetrators under the Anti-Trafficking in Persons (ATIP) Act 2008. I returned to India while the criminal court proceedings against my traffickers were still in progress.

Remarks:

- Client came from a very poor family and found herself caught in the cycle of poverty, with the disproportionate impact of such poverty on women evident through Asha's own experiences as well as her mother's; as a girl from a poor family, Asha received very little education, and was married as a child to her disabled uncle in order to fulfil her mother's obligation to provide for and look after him.
- Client was the sole breadwinner of her family and sought better remuneration abroad, a decision at the root of which lies the issue of systemic gender-based income inequality, wherein women have less access to employment opportunities or are paid less for the same work as men. Given her circumstances, she was very vulnerable to exploitation and was eventually trafficked and re-trafficked.
- Client decided to have her traffickers prosecuted in court. Even so, it was quite laborious

for her to go down this route, as she, with the help of her WAO social worker, had to apply for an emergency visa and extensions. Before the very recent 2015 ATIP Act amendments, trafficking survivors were unlikely to be allowed to work or move freely or to acquire compensation, which were very disadvantageous to Asha. The amended regulations supporting the implementation of the 2015 ATIP Amendments only came into force in November 2015.

- Client's decision to pursue justice through the judicial system set precedent for WAO to continue to encourage trafficking survivors to seek justice and help fight human trafficking by pursuing prosecutions. With the 2015 ATIP amendments there is also a reasonable chance for survivors to receive financial reparation.
- Unfortunately, the two individuals against whom charges were brought under ATIP were acquitted due to a lack of evidence linking them to the trafficking, which suggests that the evidentiary requirements in the law may be too burdensome, or that there are issues with the way cases are investigated. Asha was also at a disadvantage in providing evidence due to language barriers and her case was delayed due to her requiring an interpreter. The Deputy Public Prosecutor (DPP) in Asha's case filed an appeal, which is still pending at the time of writing of this report.

Case 2 - Noor: The vulnerabilities of an asylum seeker

I am a Rohingya woman from Burma. My father works at a meat shop, while my mother is a homemaker. I have more than a dozen siblings, most of them younger than me. One of my brothers lives in Malaysia. I got married when I was 17 years old and had two children with my husband. In late 2013, my husband and I decided to make our way to Malaysia as a family. I was in my mid-twenties at that time, and my children were both toddlers.

En route to Malaysia, my family and I were abducted by an employment agent. My husband was separated from our children and myself in the process, and my children and I were sent off to a place of captivity with other women and children. A man came to take the children and me to Kuala Lumpur, where I worked for him as a domestic servant. He also continuously raped and sexually abused me. Whenever I refused to have sex with him, he would threaten to harm my children. Besides that, the man physically abused me several times. This went on for approximately three months. I began suspecting one day that I was pregnant and told the man about it. From then on, he became even more abusive. One morning after beating me up, he drove my children and me in his car to a road side and left us there.

Stranded, I approached strangers for help. I met two Rohingya men who agreed to help me; one of them gave me some money and directed me to go to the United Nations High Commissioner for Refugees (UNHCR). I was initially reluctant to go, as all I wanted to do was to look for my husband, but I finally agreed to do so. I was referred to WAO by UNHCR for shelter and social services. My WAO social worker brought me to a clinic for medical examination. I had bruises on my body and forehead. I shared that the man had hit me on the head and I complained about dizziness and pain from my injuries. I was also about 12 weeks pregnant and indicated that I wanted to keep the child.

When asked about how I expected my husband to accept all that had happened to me, I said

that I believed that he would understand and accept my unborn child and me. A week later, a friend contacted me to inform me that he had found my husband. I spoke with my husband over the phone and was extremely emotional during our conversation. I felt happier and calmer after that phone call. Soon after, I left the shelter to be reunited with my husband.

Remarks:

- Client is from a group that is being persecuted in their home country. The Burmese government does not regard the Rohingya as an official ethnic group and refuse to grant them citizenship, which renders them stateless. Statelessness removes and prevents access to basic human and citizenship rights. Stateless persons are vulnerable to all forms of exploitation, and women who are stateless are especially vulnerable to exploitation and violence.
- It is a disturbing reality that there are traffickers operating at the Thai-Malaysian border, and that asylum seekers are being abducted for exploitation. Indeed, reports of death camps at the Thai-Malaysian border confirm the illicit activity and grim outcome.⁶⁰
- It is unknown how the man was able to transport Noor and her children through the Malaysian-Thai border, as the client and her children were undocumented. This implies that there is a gap in the Thai-Malaysian border or the possibility of complicit immigration officers.⁶¹
- Client suffered from post-traumatic stress disorder, and even with the help of an interpreter, her social worker was not able to gather a lot of the details from her. Moreover, Noor was feeling very unwell due to her injuries and pregnancy. WAO was also unable to fully understand and respond to the full range of her protection and legal justice needs owing to the short duration of her stay at WAO.

Case 3 - Theresa: A degree holder trafficked for domestic work

I am from the Indian state of Tamil Nadu. My father is a part-time painter and my mother is a homemaker; my mother has a medical condition and is unable to work. I hold a Bachelor's degree, and had been hoping to find work overseas for four years. I had a friend who worked abroad and I wanted to follow in her footsteps. Having come from a poor family, I believed I could make a better living overseas to change the low economic status of my family.

It seemed to me that my job searching efforts were finally paying off. I was pleased to receive an offer of employment from a hotel in Malaysia through a recruitment agent. I was told that I would not be working at the front desk at the beginning and would have to learn the Malay language before I would be able to do so. In the meantime, I would have to work in the housekeeping department at the hotel. I agreed to these conditions and paid the agent 75,000 Rupees (approximately RM 4,700) to get my passport and visa. My father took out a loan for me to make this payment, in the hopes that I would send the family money once I had commenced work.

⁶⁰ The Guardian, "Malaysia Mass Graves: Villagers Tell Of Migrants Emerging From Secret Jungle Camps," 26 May 2015. Available at <https://www.theguardian.com/world/2015/may/26/malaysia-mass-graves-villagers-tell-of-desperate-migrants-emerging-from-jungle-camps>

⁶¹ The Malay Mail Online, "Malaysian authorities possibly involved in refugee death camps, claims Zahid," 26 May 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/malaysian-authorities-possibly-involved-in-refugee-death-camps-claims-zahid#sthash.ovHA9hMm.dpuf>

When I arrived in Malaysia in August 2013, I was picked up by a Malaysian employment agent. I was taken to Seremban and coerced to become a domestic worker. My agent in Malaysia informed me that I had to work for him until I repaid a debt of RM 3,000, which was the cost he claimed he had to pay to my Indian agent. After two weeks of work and verbal abuse, I pleaded with my parents to pawn their jewellery to help me repay the debt and secure my freedom. They did so and managed to collect RM 2,500 to pay my agent. I then asked a family friend, who worked as an employment agent in Johor Bahru, for help. He agreed and paid the agent RM 1,000.

After "bailing me out," my family friend told me that I would need to work for him now, in order to save up money for my flight back to India. He brought me to Johor Bahru with him to work in a textile shop, which I did for the next four months. I had the impression that he may have been involved in organised crime and was fearful of offending him. In addition to that, he had taken hold of my passport and was always keeping watch over me, so I could not escape. I was not paid for my work, and once when I spoke back to my employer, I was not given food or water for several days. In March 2014, when my employer and his wife made a trip to India, I decided to take the opportunity to escape with the help of a friend. I made my way by bus to the Indian High Commission to seek assistance, where I was referred to WAO for shelter services.

I was too afraid to take any legal action against my employer because I was worried that my family in India would be endangered. I requested to be repatriated back to India. I felt very disappointed and guilty for having lost so much of my parents' money.

Remarks:

- Theresa was not given any remuneration for six months of work in Malaysia, and yet she and her family had lost at least RM 7,200 for her to work here.
- She was well-educated, but that did not exempt her from being cheated and exploited.
- Due to her trafficker's knowledge of her family, Theresa was too fearful to pursue a case against him.

Case 4 - Lavinia: Malaysian citizen trafficked internally

I was born to a poor family in a small town in Malaysia. I am the youngest child and have elder brothers. Because my parents could not afford to take care of me, they gave me to my aunt and uncle to look after me when I was little. When I was of school age, I was sent to a children's home where I lived for seven years, and went to school close by until I was 14. After that, I was sent back to live with my parents in a neighbouring state.

A year after living with my parents, I began to be subjected to rape and sexual abuse by my father on a regular basis. My mother was aware of the situation but did not intervene to protect me. Instead, she added to the abuse by berating me every day. I was not given nutritious food and lived in fear of my parents, who seemed to me to be wishing for my death. I had stopped going to school at this stage and was sent back and forth between my aunts' home and my parents'. After about a year, my father stopped raping me, but my second brother began doing

so for a year. Again, my mother was aware of this, but did nothing to help me. During these two years, I became pregnant several times and sought help from a good friend, who took me to a clinic and paid for all my abortions.

When I was in my late teens, my parents died suddenly in a road accident. My aunt then asked me to help look after my baby cousin for three months in the north of Malaysia. During this period, I was raped by my older cousin and had another abortion after becoming pregnant. After the three months were over, I moved to live with my elder brother and sister-in-law. My sister-in-law restricted me from leaving the home and physically abused me with different objects. My sister-in-law incessantly suggested to me to work as a sex worker. When I refused, the physical abuse escalated. My brother was unaware of these incidences as he was, at the time, serving time in prison for criminal offences.

After six months, my sister-in-law took me to another town to meet a man, who was in his mid-twenties. This man raped me for a month and then sold me to another man for RM 3,000. The man who had bought me was in his late-50s and was called "the Boss." The Boss raped me and forced me to work as a sex worker afterwards. I had to serve around 30 men each day and did not receive any money for my services; the Boss kept all my earnings for himself. After working for a month, I decided to lodge a police report against the Boss even though he had threatened to kill me a few times.

Once I went to the police, they arrested the Boss right away. I obtained an Interim Protection Order (IPO) for two years and was sent to the ATIP shelter where I stayed for almost two-and-a-half years. At the shelter, I became very depressed and attempted suicide four times by slashing my wrist. During my second year at the shelter, I received counselling from an NGO. With this, my condition started improving and I had less suicidal thoughts. After giving my testimony in court, I was released from the shelter and referred to WAO. During my stay, I was empowered by my social worker to move on from my past and to move forward with my life. Criminal proceedings under the ATIP were brought against two of my perpetrators, who were sentenced in early 2016 to eight years imprisonment.

Remarks:

- Malaysians are also susceptible to trafficking internally.
- Lavinia was caught in a cycle of gender discrimination and abuse from a young age. She was an unwanted child and was neglected by her parents as a result of her gender. She was violated by many family members, who showed no remorse for their actions towards her.
- This cycle of abuse is not easy to overcome and it was not surprising that Lavinia showed certain dysfunctional behaviours. Lavinia's cognitive and psychological development was most likely adversely affected. Her social worker at WAO found that she struggled tremendously with issues of shame and fear.
- Lavinia's traffickers were sentenced to eight years imprisonment. Although this does not undo the harm that was done to her, it did provide her with some sense of justice.

Case 5 - Pann: Shan women trafficked for sex work



Many survivors of trafficking in Malaysia entered the country seeking better opportunities to support themselves and their families than they had in their home country, and ended up being exploited by agents or other individuals they encountered.

I was born to a poor family in the northern Shan State of Myanmar. My parents owned a small farm, where they grew beans and corn. I was the third child out of more than five siblings. I never had the opportunity to go to school and could not secure any employment in Myanmar. Life was difficult and my family lived in perpetual poverty.

When I was a young adult, my mother asked me if I would go to Thailand to work, and I agreed to do so. She went around asking about work opportunities in Thailand. One day, a woman approached my mother to offer me a job in Thailand. After discussing the matter as a family, we all felt that it would be a good decision for me to take the job. We were informed that my travel expenses would even be covered.

I was taken on a long journey supposedly to Thailand. Because of the seven-day journey, I felt a little suspicious. During the journey, I was not provided proper food and drink. When I arrived at a hotel I was finally given some food. I soon realised that I was not actually in Thailand, but in Malaysia.

I was brought to my new home, where I was kept in a room with the door locked. The next morning, I was taken to a spa to work for a Shan woman who was married to a Malaysian. I learnt that my boss's sister helped her to recruit young women from the Shan area to work in Malaysia and I saw nine other Shan women working there. I was assigned a Thai name and was told by my boss that I would be serving customers and performing sex work. I objected and requested to be sent back to Myanmar; my boss informed me that they would only do so once I paid them RM 8,000.

I lived with the other nine young women in the same building as our boss. Although we were not locked up, we felt that our boss was constantly monitoring us. I was allowed to contact my family in Myanmar when I brought in more business. However, my boss and her husband were always hanging around and eavesdropping when I was on the phone. When I did not manage to attract customers, my employer would verbally abuse me. Even though I was promised RM 60 out of the RM 138 each customer paid, I never received any money for a month-and-a-half's work, as my boss claimed that my pay was deducted for rent, bills, and groceries. I was only given days off when I had my period and was not given nutritious meals. I was not even granted time off when I was sick, and was never taken for medical check-ups.

One of the young women who worked with me had a cousin who lived in Malaysia. She discussed with the rest of us about our wish to escape and she contacted her male cousin to ask for help. Her cousin contacted a community organisation to initiate an escape plan. One day, he rang to inform us that the police would be coming to raid our workplace and asked us not to be afraid of the police who were there to help. When the police arrived, they raided the workplace and accommodation. The police could not make any arrests as the boss and her husband had left the vicinity, but they managed to rescue all of us young women who had been trafficked.

The police brought us to the ATIP shelter and then referred us to UNHCR. We were consequently referred to WAO for temporary shelter and emotional support. All ten of us women were granted refugee status by UNHCR. At WAO, I received counselling and gradually learnt to view myself as a person of dignity and develop healthy coping mechanisms. I felt empowered to look for employment in Malaysia and left WAO to stay at a community shelter.

Remarks:

- Women from certain ethnic groups or geographical locations are highly susceptible to trafficking. The Shan women have been found to be vulnerable to sex trafficking.⁶²
- UNHCR granted Pann and the other women in the brothel refugee status, as it was unsafe for them to return to their home in Myanmar as a result of persecution they would face. There is a high chance of these women being re-trafficked, as there are not many viable alternatives for them to make a living.

⁶² Beyrer, C. (2001). Shan women and girls and the sex industry in South Asia; political causes and human rights implications. *Social Science and Medicine*, 53, 543-550.

Analysis of the Case Studies

These case studies provide only a small sampling of the myriad issues faced by women as a result of gender-based discrimination, exploitation, and violence. The cases highlight how ingrained prejudice and devaluing of women intersect with other factors—such as poverty, class and ethnic group—to make certain communities of women even more vulnerable to crimes such as human trafficking.

Although the specific facts of each case differ, there are certain commonalities we can observe that demonstrate how systemic factors worked against the women in all of the cases to lead to them becoming victims of human trafficking. All of the women came from poor backgrounds, where their education either could not be afforded by their family or was not prioritised as a result of their gender. Yet, many of these women were forced to bear the burden of providing for their families, whether before or after marriage, and due to limited opportunities in their own communities—owing to a combination of poverty and gender discrimination—had to look elsewhere for employment. This in turn resulted in exploitation, whether in the form of having to pay a large sum of money to an agent to be able to work, being unable to negotiate the terms of their employment, or being unable to leave, either as a result of physical or financial coercion.

The case studies show that the circumstances under which trafficking occurs are varied—there are differences in how the persons were acquired, moved, and exploited. Nevertheless, all three processes are present in each case highlighted above. Some of the women were offered employment by a recruitment agent and appeared to have voluntarily signed up for the job, while others found themselves abducted or forced into their situations. **None of them chose to be exploited and abused; hence, deception and coercion were present in each scenario.**

Every single case study illustrates a woman from a background of poverty. **This demonstrates that trafficking is often an exploitation of an individual's vulnerable and desperate situation.** Those caught in the cycle of poverty are especially at risk of trafficking. Those who are acquired through agents are enticed with employment opportunities. Most of these women, if not all of them, were seeking a better life.

When it comes to moving trafficked persons from their original location to the destination, the modes also vary. Most of the survivors WAO has assisted were issued work permits or another type of visa to enter Malaysia. There are isolated cases where trafficking victims came into Malaysia illegally, which implies that there is a gap in Malaysian border control or there are corrupt or negligent immigration officers. As illustrated in the fourth case study, trafficking does not have to involve the crossing of an international border. Therefore, trafficking is not always an immigration issue, but rather, the common denominator is the exploitation and abuse of a person for profit.

Exploitation of trafficked persons also takes different forms. Among the survivors WAO has served, many of them were coerced into domestic servitude or sex work, and the rest into other forms of labour. While it is more common for people who are trafficked to be forced into manual labour or hazardous work, there are a small number of people who are trafficked into more benign work, but still under coercive circumstances. One of the survivors who came to WAO in 2014 worked as a veterinary assistant and faced abuses such as movement restriction, psychological abuse, and withholding of salary by her employer. Many WAO trafficking clients were placed in debt bondage situations, sometimes unbeknownst to them. Some survivors were caught in a cycle of trafficking,

having escaped but then subsequently being re-trafficked. One WAO client was trafficked into a forced marriage situation.

All the trafficking survivors who came to WAO suffered from a combination of physical, psychological, sexual, financial, and/or social abuse. Some of them suffered physically due to the abuse they experienced when they were trafficked. Practically every one of them was mentally traumatised when they came to WAO and struggled with anger, guilt, shame, or disempowerment. Those who had been sexually abused feared they would be stigmatised and discriminated against when they returned to their home country. Almost all of them were financially disadvantaged as a result of the exploitation. Many of them were ashamed of not having earned money during their time in Malaysia.

Legal Standards

Relevant Domestic Law



Malaysia's Anti-Trafficking in Persons (ATIP) Act came into force in 2008 and was amended in 2010 and 2015. Persons convicted under ATIP face imprisonment of up to 15 years.

Federal Constitution

Article 6 of the Federal Constitution states that no person may be held in slavery and that all forms of forced labour are prohibited. It illustrates that forced labour defined here does not include compulsory service for national purposes or work related to a conviction by a court of law.

Anti-Trafficking in Persons Act 2007

The Anti-Trafficking in Persons (ATIP) Act was passed in 2007 and came into force in 2008. It was amended in 2010 and 2015, and has been renamed as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act in 2010. The definition of trafficking in persons in Section 2 of this Act is in accordance with the UN Trafficking Protocol and criminalises all aspects of trafficking. This Act covers trafficking cases both within and outside of Malaysia, and is applicable to offenders of any nationality. Its scope also extends to offences committed outside Malaysia by Malaysian citizens and permanent residents.

Under ATIP, any person convicted of trafficking an adult for the purpose of exploitation may be punished with imprisonment of not more than 15 years and a fine; a person found guilty of trafficking a person by means of threat, force, abduction, fraud, deception, abuse of power, abuse of the position of vulnerability of a person, or payments/benefits to obtain the consent of a person having control over a trafficked person may be imprisoned for a term of three to 20 years and also subject to a fine. Those who are convicted of trafficking children for the purpose of exploitation face three to 20 years imprisonment and a fine. The Act states that the consent of the trafficked person is irrelevant in the prosecution for these aforementioned offences.

A person who is found guilty for profiting from the exploitation of a trafficked person would be punished with a maximum of 15 years imprisonment, a fine of between RM 500,000 and RM 1,000,000, and be liable to forfeit the profits from the offence. Any person found to have been

involved in any process of trafficking in persons, such as recruiting, bringing in transit, providing facilities or services in support of trafficking, harbouring, dealing in fraudulent travel or identity documents in facilitating trafficking, or being the owner/operator/master of any conveyance would face imprisonment and are liable for a fine. Even a person who is convicted of intentional omission to give any information regarding the offence faces severe penalty.

The Act also provides for the protection of the victim in that their sexual history is deemed irrelevant and inadmissible in court. Moreover, the movement or conveyance of the trafficked person is also considered irrelevant for the prosecution, which ensures that individuals who were trafficked internally or whose status transformed, for example, from migrant worker to trafficked person, can still seek redress. A trafficked person may not be charged for crimes such as the illegal entry into the receiving or transit country, the period of unlawful residence there, and the procurement or possession of any fraudulent travel or identity document for the purpose of entering or transiting a country. There are also provisions for the protection of informers.

Amendments to the Act to improve protection of trafficking survivors were made in mid-2015 and came into effect in November 2015. Owing to these amendments, any person found or rescued who is suspected to be a trafficked person and has been given an IPO, or a confirmed trafficked person who has been granted a Protection Order (PO), may be allowed to move freely and to seek employment during the period of the IPO or PO. In addition, the court may order a convicted offender to pay restitution to the trafficked person. Even in a case where there is no conviction, the court is still able to order the alleged trafficker to pay a sum to the victim for withheld wages.

Penal Code

Sections 359 to 374 of the Malaysian Penal Code deal with the criminal activities of kidnapping, abduction, slavery and forced labour. Persons found guilty of kidnapping any person from Malaysia or from lawful guardianship may be punished with imprisonment for up to seven years and may also be liable for a fine. Kidnapping of a woman for forced marriage, unlawful intercourse, or prostitution is punishable with imprisonment for up to ten years and a possible fine. Likewise, kidnapping or abduction of a person for grievous hurt, slavery, or homosexual acts may carry a punishment of imprisonment for up to ten years.

The Penal Code also prohibits the buying, selling, or disposing of a person as a slave, which is a crime punishable with imprisonment of up to seven years and a probable fine. Furthermore, a person found to be habitual in dealing in slaves could be sentenced with imprisonment of up to 20 years and a fine. The exploitation of a person for sex work is criminalised, whether the offender is found to be selling, receiving, harbouring, restraining, advertising, or acting as an intermediary for the victim. This could result in imprisonment of up to 15 years, whipping, and a fine. Similarly, persons found to be living on or trading in prostitution or managing a brothel may be subject to a comparable degree of punishment. Soliciting prostitution or unlawfully compelling a person to labour could lead to a maximum of one year's imprisonment and/or a fine.

Immigration Act 1959/63

Under Section 8 of the Immigration Act, foreign sex workers, persons living on or receiving the proceeds of prostitution, and those who procure or attempt to bring girls or women into Malaysia for the purpose of sex work are considered to be prohibited immigrants and could be expelled from the country.

Passports Act 1966

The Passports Act states that any person who withholds the passport or internal travel document of another person without lawful authority may be sentenced to pay a fine of not more than RM 10,000 and/or imprisonment of a maximum of five years.

Employment Act 1955

The Employment Act grants minimum benefits and conditions to employees, including foreign workers, whose wages are less than RM 2,000, and all manual labourers regardless of their wages. The Act provides for protections around payment of wages; maternity leave; restriction of working hours; provision of weekly rest day, sick leave, public holidays, and annual leave days; compensation for overtime work; complaint procedure; and termination and lay-off benefits.



Domestic workers, however, are categorised as “domestic servants” and, hence excluded from the scope of the Employment Act and the Minimum Wages Order.⁶³ Domestic workers are also not entitled to protection under the Domestic Violence Act (DVA), which only applies to spouses and family members.⁶⁴

Private Employment Agencies Act 1981

The Private Employment Agencies Act serves to regulate private recruitment agencies nationwide. It requires every person conducting the business of a private employment agency to be licensed and enter into a bond with the Director General of Labour. No agency may charge more than the fees prescribed in the Schedule or provide false or incorrect information. Agencies may not place any person in an occupational situation that is injurious or immoral. The licence issued by the Director General must be endorsed for the agency to recruit Malaysian residents to work abroad. The Director General is given inspection and investigatory powers, and has the ability to revoke licenses and dispose of the bond if an agency has violated the Act. The penalties for contravening the Act are also specified; those who are found guilty may face imprisonment and/or a fine.

Children and Young Persons (Employment) (Amendment) Act 2010

⁶³ Ministry of Human Resources (2013). *Minimum wages portal*. Available at MOHR: <http://minimumwages.mohr.gov.my/employees/what-employees-need-to-know/>

⁶⁴ Huling, A. (2012). Domestic workers in Malaysia: Hidden victims of abuse and forced labor. *International Law and Politics*, 44, 629–680.

The Children and Young Persons (Employment) Act 1966 and its 2010 Amendment provide for the regulation of employment of children and young persons. No child or young person may be permitted to engage in any work contrary to the Factories and Machinery Act 1967, the Electricity Supply Act 1990, or the Occupational Safety and Health Act 1994, or to work underground or work at night. There are many other restrictions of where children and young persons are allowed to work; no child or young person may participate in employment risky to the life, limb, health, safety or morals of the child or young person. Those found guilty of infringing any of the provisions of this Act face an imprisonment term for up to a year or a fine of maximum RM 5,000 for their first offence, or an imprisonment term not exceeding three years or a fine up to RM 10,000 for their second and any subsequent offences.

Child Act 2001

Sections 43 and 44 outline the acts involved in exploiting a child for prostitution or sexual intercourse within or outside of Malaysia. Any person who is found to be involved in any way in the process of trafficking a child for sexual exploitation may be convicted and be liable for a fine of up to RM 50,000 and imprisonment of maximum 15 years. Persons found to have committed certain offences or second or subsequent offences may also be subjected to whipping in addition to any term of imprisonment.

Offences related to trafficking and abduction of children are dealt with in sections 48 to 53 of the Act. A person found guilty of participating in any transfer of possession, custody or control of a child; importing a child by false pretences; or taking or sending out a child without proper consent of the person who has lawful custody of the child could be fined up to RM 10,000 and imprisoned for a maximum of five years. Any person who is convicted for intentionally obstructing an authorised person to carry out a recovery order may be sentenced to prison for up to three years and whipping of maximum six strokes.

Relevant International Law and Standards

Malaysia is a state party to several multilateral *treaties* that relate to the trafficking and forced labour of women and children. These international treaties may also be referred to as *covenants*, *conventions*, or *protocols*. They are agreements between two nations (bilateral) or multiple nations (multilateral) and are open to voluntary commitments by countries in the form of *ratification* or *accession*. When a country has ratified or acceded to a treaty, they are agreeing to bind themselves to the obligations stated in the treaty. Malaysia subscribes to the dualist approach when it comes to international treaties, in that international law is not automatically incorporated into domestic legislation. Nevertheless, when an international treaty or convention has been ratified or acceded to, the Federal Executive has the responsibility to make every effort to prepare draft enabling legislation to be submitted to Parliament for it to become part of national law.⁶⁵

It is a somewhat grey area when it comes to the subject of international law having the force of law in Malaysia. In a ground-breaking case where a woman in Malaysia was victorious in her lawsuit against the Ministry of Education for their discriminatory termination of her employment, the judge referred to the provisions of the UN Convention on the Elimination of all Forms of

⁶⁵ Hamid, A. G. (2006). *Judicial application of international law in Malaysia, an analysis*. Available at The Malaysian Bar: http://www.malaysianbar.org.my/international_law/judicial_application_of_international_law_in_malaysia_an_analysis.html#f2

Discrimination Against Women (CEDAW) as the basis of his ruling.⁶⁶ However, in a comparable case in the context of employment discrimination by a private corporation, the court found that this same international convention, CEDAW, did not have the force of law in Malaysia because it had not been expressly incorporated into domestic legislation by an Act of Parliament.⁶⁷ Thus, international obligations must be incorporated into domestic law before they become binding on all actors and can be used to seek redress.

Although Malaysia ratified CEDAW in 1995, it has yet to fulfil many of its obligations under the convention, including with regard to Article 6, which addresses human trafficking.



The international treaties or conventions relevant to human trafficking which Malaysia is party to are as follows:

- **UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000** (acceded 26 February 2009)
- **UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956** (acceded 18 November 1957)
- **UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979** (acceded 5 July 1995)
- **UN Convention on the Rights of the Child (CRC), 1989** (acceded 17 February 1995)
- **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002** (acceded 12 April 2012)
- **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000** (acceded 12 April 2012)
- **ILO C.29 Convention Concerning Forced or Compulsory Labour, 1930** (ratified 11 November 1957)
- **ILO C.182 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999** (ratified 10 November 2000)

In addition to multilateral treaties, Malaysia is also obligated to *customary international law* (CIL) with regards to the issue of human trafficking. CIL are international commitments that have arisen out of custom or the consistent practice of states. "Soft law," such as declarations and other non-binding bilateral or multilateral agreements, guidelines, codes and standards of international organisations, interpretive texts and resolutions of UNGA and its organs, could lead to the development of CIL. In practice, CIL and treaty law are equivalent in value.⁶⁸ Soft law and CIL are useful in the context of battling human trafficking in Malaysia in terms of contributing to the improvement of norms and legislation. For example, the 2002 **Recommended Principles and**

⁶⁶ Noorfadilla bt Ahmad Saikin v Chayed bin Basirun & Ors [2012] 1 MLJ 832

⁶⁷ Air Asia Bhd v. Rafizah Shima bt. Mohamed Aris [2014] MLJU 606

⁶⁸ Office of the High Commissioner for Human Rights (OHCHR) (2010). *Recommended principles and guidelines on human rights and human trafficking: Commentary*. Available at OHCHR: http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf

Guidelines on Human Rights and Human Trafficking go beyond international treaties in being more detailed in certain aspects. Other valuable documents are the 2005 **UN Basic Principles and Guidelines on the Right to a Remedy and Reparation**, the 2006 **UNHCR Guidelines on International Protection (UNHCR Trafficking Guidelines)**, the 2006 **United Nations Children's Fund (UNICEF) Guidelines on the Protection of Child Victims of Trafficking**, the 2007 **Criminal Justice Responses to Trafficking in Persons: ASEAN Practitioner Guidelines**, the 2009 **UNHCR's Perspective on Trafficking and Refugee Protection**, along with many others.

The US Department of State established the Office to Monitor and Combat Trafficking in Persons in 2001 to collaborate with foreign governments to fight against human trafficking. They operate according to a "3P" paradigm of prevention, protection, and prosecution; and publish annual reports on each country's efforts in combatting trafficking in the form of the **Trafficking in Persons (TIP) Report**. The information that goes into this report is obtained from US embassies, local governments, NGOs and IGOs, published reports and articles, and research on the ground. In the TIP Reports, recommendations are made to local governments on increasing anti-trafficking initiatives, typically with a focus on improving legislation and law enforcement to facilitate prosecutions, effecting victim-centred protection practices, and carrying out prevention efforts.

Every nation is ranked yearly using a four-tier standard, as stipulated by the Trafficking Victims Protection Act (TVPA): **Tier 1** is the optimum score, denoting that the government has completely met the minimum requirements in combatting human trafficking; **Tier 2** is granted when the government does not completely satisfy the minimum requirements, but is making meaningful efforts to meet those requirements; **Tier 2 Watch List** indicates that the government's efforts are comparable to those awarded to parties in Tier 2, but there is a remarkable increase in the *absolute number* of victims of serious forms of trafficking, there is no indication of *increasing* efforts to eliminate human trafficking, or the government is making commitments to take *additional steps in the coming year*; and finally, **Tier 3** is given when the government is neither meeting the minimum requirements nor making meaningful efforts to do so. Governments of nations on Tier 3 may be subject to particular **sanctions** by the US.⁶⁹

The TIP Report is a diagnostic and diplomatic tool for the purpose of engaging with governments globally to address the issue of human trafficking.⁷⁰ It is apparent that the enactment of the Malaysian ATIP Act and its subsequent amendments were carried out in response to Malaysia being downgraded in the tier ranking.⁷¹ This demonstrates that the TIP Report and the US Department of State's assessment hold some sway in influencing the Malaysian government to combat human trafficking.

Since 2010, Malaysia has been on the Tier 2 Watch List in the US State Department's Trafficking in Persons Report. Malaysia dropped to Tier 3 in 2014, as it was "not making significant efforts to comply with minimum standards."⁷² In 2015, Malaysia was again placed on the Tier 2 Watch List,

⁶⁹ US Dept. of State *Trafficking in Persons Report 2012*. op. cit.

⁷⁰ US Dept. of State (2015). *About us*. Available at US Dept. of State: <http://www.state.gov/j/tip/about/index.htm>

⁷¹ WAO (2012). *CEDAW & Malaysia: Malaysian non-government organisations' alternative report assessing the government's progress in implementing the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Available at WAO: http://www.wao.org.my/Malaysian+NGO+CEDAW+Alternative+Report_74_6_1.htm

⁷² US Department of State, *Trafficking in Persons Report 2014*, p260.

as it did not meet the minimum standards to end trafficking, but was “making significant efforts to do so.”

Despite the May 2015 discovery of mass graves and abandoned human trafficking camps along the Malaysia-Thailand border—and the subsequent lack of prosecutions of any government officials in that case,⁷³ Malaysia was upgraded in 2017 from the Tier 2 Watch List to Tier 2.⁷⁴

Relevant Regional Agreements and Standards

Malaysia has signed treaties on mutual assistance in criminal matters with 13 countries and continues to negotiate similar treaties with other countries.⁷⁵ Hence, there are instruments that can facilitate the cooperation of Malaysia with other countries on transnational crimes, such as human trafficking. Those in effect include:

- **Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries** (signed on 29 November 2004; has also been signed on by Brunei, Cambodia, Indonesia, Laos, the Philippines, Singapore, Thailand, and Myanmar)
- **Treaty between the Government of Malaysia and the Government of Australia on Mutual Assistance in Criminal Matters** (signed on 15 November 2005)
- **Agreement between the Government of Malaysia and the Government of Hong Kong Special Administrative Region of the People's Republic of China concerning Mutual Legal Assistance in Criminal Matters** (signed on 17 October 2006)
- **Treaty between the Government of Malaysia and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Assistance in Criminal Matters** (signed on 21 July 2010)
- **Treaty between the Government of Malaysia and the Government of the Republic of Korea on Mutual Assistance in Criminal Matters** (signed on 10 December 2010)
- **Treaty between the Government of Malaysia and the Government of the Republic of India on Mutual Assistance in Criminal Matters** (signed on 12 March 2012)

Malaysia is a member country of the **Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime**, which is a regional forum that facilitates information sharing and cooperation in deterring and fighting people smuggling and trafficking networks.⁷⁶ Additionally, as one of the five founding members of the Association of Southeast Asian Nations (ASEAN), Malaysia plays a key role in supporting ASEAN initiatives and sectoral bodies. The **ASEAN Plan of Action to Combat Transnational Crime** has been in place since 1996 to encourage ASEAN countries to increase their efforts in fighting transnational crime at all levels and to fortify regional commitment and capacity in these efforts.⁷⁷

⁷³ “12 cops held over Wang Kelian human trafficking case freed,” *Free Malaysia Today*, 20 March 2017.

⁷⁴ US Department of State, *Trafficking in Persons Report 2017*

⁷⁵ Attorney General's Chambers of Malaysia (2011). *Mutual Assistance in Criminal Matters: Treaties*. Available at AGC:

http://www.agc.gov.my/index.php?option=com_content&view=article&id=429&Itemid=358&lang=en

⁷⁶ The Bali Process (n.d.). *About the Bali Process*. Available at the Bali Process: <http://www.baliprocess.net>

⁷⁷ ASEAN Secretariat (2014). *ASEAN Plan Of Action To Combat Transnational Crime*. Available at Association of Southeast Asian Nations: <http://www.asean.org/communities/asean-political-security-community/item/asean-plan-of-action-to-combat-transnational-crime>

Several ASEAN instruments have been created to encourage collaboration in combatting human trafficking in the region; however, these instruments are non-binding and, therefore, limited in their effectiveness.



Furthermore, non-binding instruments have been created specifically by and for Southeast Asian nations to encourage collaboration and commitment in combatting human trafficking and protecting the rights of women and children. These instruments include:

- **ASEAN Declaration Against Trafficking in Persons Particularly Women and Children, 2004**
- **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 2007**
- **Declaration on the Elimination of Violence Against Women in the ASEAN Region, 2004**
- **Terms of Reference (TOR) of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), 2009**
- **Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN, 2013**

Many tools and guidelines have also been developed specifically for the ASEAN region as standards in dealing with the crime of human trafficking and as training material for criminal justice officials. These include:⁷⁸

- **Practitioners' Guidelines on Criminal Justice Response to Trafficking in Persons (2007)**
- **Training Program on Trafficking in Persons for Front Line Law Enforcement Officials (2008)**
- **Awareness Program on Trafficking in Persons for Judges and Prosecutors (2008)**
- **Training Program on Trafficking in Persons for Specialist Investigators (2009)**
- **Handbook on International Legal Cooperation in Trafficking in Persons Cases (2010)**
- **Skills Course on Trafficking in Persons for Specialist Prosecutors (2010)**
- **Compendium of Good Practices in Investigation, Prosecution and Adjudication of Trafficking in Persons Cases (forthcoming)**

⁷⁸ Office of the High Commissioner for Human Rights (OHCHR) (n.d.) *Draft compendium of trafficking-related tools developed at the regional level*. Available at OHCHR: http://www.ohchr.org/Documents/Issues/Trafficking/Dakar_draft_compendium_en.pdf

The Realities of Accessing Justice

The Realities of Accessing Support Services and Justice

Out of 66 trafficking survivors whom WAO assisted in 2014 and 2015, only three decided to pursue legal action under the ATIP against their perpetrators. While some feared for the safety of themselves or their families, others found themselves in even worse financial straits than they had started off in, as a result of the fees they paid to agents and their wages being withheld by their employers, and wanted to return to their families who needed them. Still others were simply eager to move on from the trauma of their experience.

Indeed, even for those trafficking survivors who manage to escape situations of captivity or forced labour, there are still many obstacles to accessing support services, let alone justice for the crimes that have been perpetrated against them. A lack of adequate shelter space for trafficking survivors presents one such obstacle. In 2015 the Ministry of Women, Family, and Community Development (MWFCD or KPWK) maintained seven facilities to house trafficking survivors, while some survivors were sheltered by embassies or NGOs.⁷⁹ However, given the substantial numbers of migrant workers and sex workers in Malaysia—both populations that are known to be vulnerable to human trafficking—the capacity of existing shelters is insufficient. The November 2015 amendments to the ATIP, which allow NGOs to house survivors legally as designated protection officers, may bring Malaysia one step closer towards filling the gap in availability of existing shelter space.

Another positive amendment to the ATIP, which came into effect in November 2015, is the revised framework that allows trafficking survivors freedom of movement, as well as the right to work. Prior to these amendments, some trafficking survivors may have been dissuaded from seeking help or entering a shelter due to the restrictive environment and inability to continue earning money while under the protection of the shelter. However, the 2015 amendments granting trafficking survivors a greater level of freedom while staying at government shelters may make some survivors more likely to seek help.

In addition to facing obstacles in accessing support services, many survivors face obstacles in seeking justice. In 2015, the government initiated prosecutions against only 38 alleged trafficking offenders (24 for sex trafficking and 14 for forced labour) while only seven of these individuals were convicted. Unwillingness on the part of the government to investigate and prosecute perpetrators of trafficking may dissuade survivors from taking legal action against their trafficker. Inadequate sentencing of even the small number of perpetrators that were convicted may further deter trafficking survivors from pursuing justice; out of the seven traffickers who were convicted in 2015, one trafficker was imprisoned for just one day and fined RM 20,000, while three others were given sentences of between one and three-and-a-half years imprisonment.⁸⁰

Other obstacles to survivors seeking justice include the time and expense involved in going through the court system, as well as threats to the security of the survivor during the period of investigation and trial. Some survivors choose to avoid lengthy criminal proceedings, and instead opt to be immediately repatriated to their home country.⁸¹ Other survivors avoid court

⁷⁹ US Dept. of State *Trafficking in Persons Report 2016*. op. cit.

⁸⁰ US Dept. of State *Trafficking in Persons Report 2016*. op. cit.

⁸¹ *ibid.*

proceedings out of fear for the consequences of testifying against their traffickers; survivors have been threatened by their traffickers or bribed with out-of-court settlements.⁸² Again, the November 2015 amendments to the ATIP may alleviate some of these issues, such as through affording greater protection via the expansion of the interim protection order for trafficking survivors from 14 to 21 days, allowing for more thorough investigations. However, actually allowing survivors to testify remotely—as is already allowed under the law—may encourage survivors who wish to immediately return home to still pursue prosecution of their traffickers.

The 2015 amendments to the ATIP, as well as the regulations which were gazetted in 2016, should enhance the ability of trafficking survivors—both Malaysians as well as foreigners—to access shelter, support services, and justice by allowing them to stay at a government facility, to work, and to come and go freely (where previously foreign trafficking survivors could only do so with supervision) pending the outcome of a medical screening and risk assessment.⁸³ It is WAO's hope that these new amendments and regulations will be implemented fully and will result in more survivors of the egregious crime of human trafficking getting help, recovering from the trauma, and going on to lead productive lives.

Self-Reflection

In engaging in self-reflection aimed at improvement of our services and advocacy on behalf of trafficking survivors, WAO hopes to offer learnings for other service providers, so that together we are able to enhance the protection, response, and level of service that trafficking survivors receive.



In 2015 the Ministry of Women, Family, and Community Development (MWFC or KPWKM) maintained seven facilities to house trafficking survivors, while some survivors were sheltered by embassies or NGOs.

WAO social workers counsel, support, and empower trafficking survivors. It is a challenge for the social workers to develop a comprehensive counselling plan or to fully assist with access to justice, as most of the trafficking survivors we assist are repatriated home within a month. Besides that, due to language barriers, an interpreter might be required, and trafficking survivors often need the social worker's assistance to make police reports and seek medical examinations. More often than not, the social workers help trafficking survivors to negotiate with their embassies or high commissions, acquire special passes and check-out memos, and obtain waivers for overstaying. Occasionally, the social workers have negotiated with the client's employers or agents to claim their unpaid wages.

While WAO has built a considerable network of different professionals, institutions, and organisations, there is still a lack of a coordinated multi-disciplinary approach in providing services for survivors of trafficking. A multi-disciplinary approach could involve establishing and utilising a

⁸² *ibid.*

⁸³ *ibid.*

network of social workers, police, lawyers, interpreters, medical practitioners, diplomatic missions, religious organisations, government agencies, UN agencies, and other international governmental organisations (IGOs), local and international NGOs. Such a coordinated response would enhance services to survivors, including identification, rescue, counselling and rehabilitation, legal action, repatriation, and reintegration.⁸⁴

More advanced counselling tools and evidence-based interventions can also be used when dealing with trafficking survivors. This could involve social workers seeking professional development training in these modes of therapy. A particular counselling tool that could be useful is behaviour change communication (BCC) that has been utilised by the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) to empower the survivors to take clear, concrete steps to protect themselves from being re-trafficked.³⁶

Additionally, when the opportunity to work long-term with a trafficking survivor arises, evidence-based therapy would be beneficial in helping the client deal with the trauma they have experienced. Evidence-based therapeutic modes for survivors of trafficking include cognitive behavioural therapy (CBT), eye movement desensitisation and reprocessing (EMDR), and stress inoculation training (SIT).⁸⁵ Nevertheless, it is important for social workers to adapt these models to the cultural context they are working in, as a culturally insensitive or inappropriate approach could confuse the client or make her feel pressured to deal with issues she is not ready to confront.⁸⁶

Another area to pursue further is assisting trafficking survivors to pursue justice and redress. To date, WAO has only assisted three survivors who have sought to prosecute her trafficker through the Malaysian judiciary system, and a relatively low number of cases of negotiating with employers/agents to claim withheld wages. Systematically not pursuing justice and redress could hinder the long-term fight against human trafficking. Increasing prosecutions and seeking redress would help make human trafficking a less attractive and profitable criminal activity in Malaysia and the region. In order for WAO to develop this area of service for trafficking survivors, there needs to be increased capacity building and development of internal processes, as well as additional learning on the barriers women face in accessing justice. Many survivors wish to be repatriated as soon as possible, and the interest of each survivor is paramount for each case. Nonetheless developing NGO capacity to support survivors who wish to pursue justice and redress would give survivors better alternatives.

⁸⁴ Nguyen, H. (2014). op. cit.

⁸⁵ Williamson, E., Dutch, N.M., & Clawson, H.J. (2010). *Evidence-based mental health treatment for victims of human trafficking*. Available at the US Dept. of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation: <http://aspe.hhs.gov/basic-report/evidence-based-mental-health-treatment-victims-human-trafficking>

⁸⁶ Yakushko, O., & Rajan, I. (2014). Clinical applications with refugees. In D.W. Sue, M.E. Gallardo, & H.A. Neville (Eds.), *Case studies in multicultural counselling and therapy* (pp. 141-156). Hoboken, NJ: Wiley.

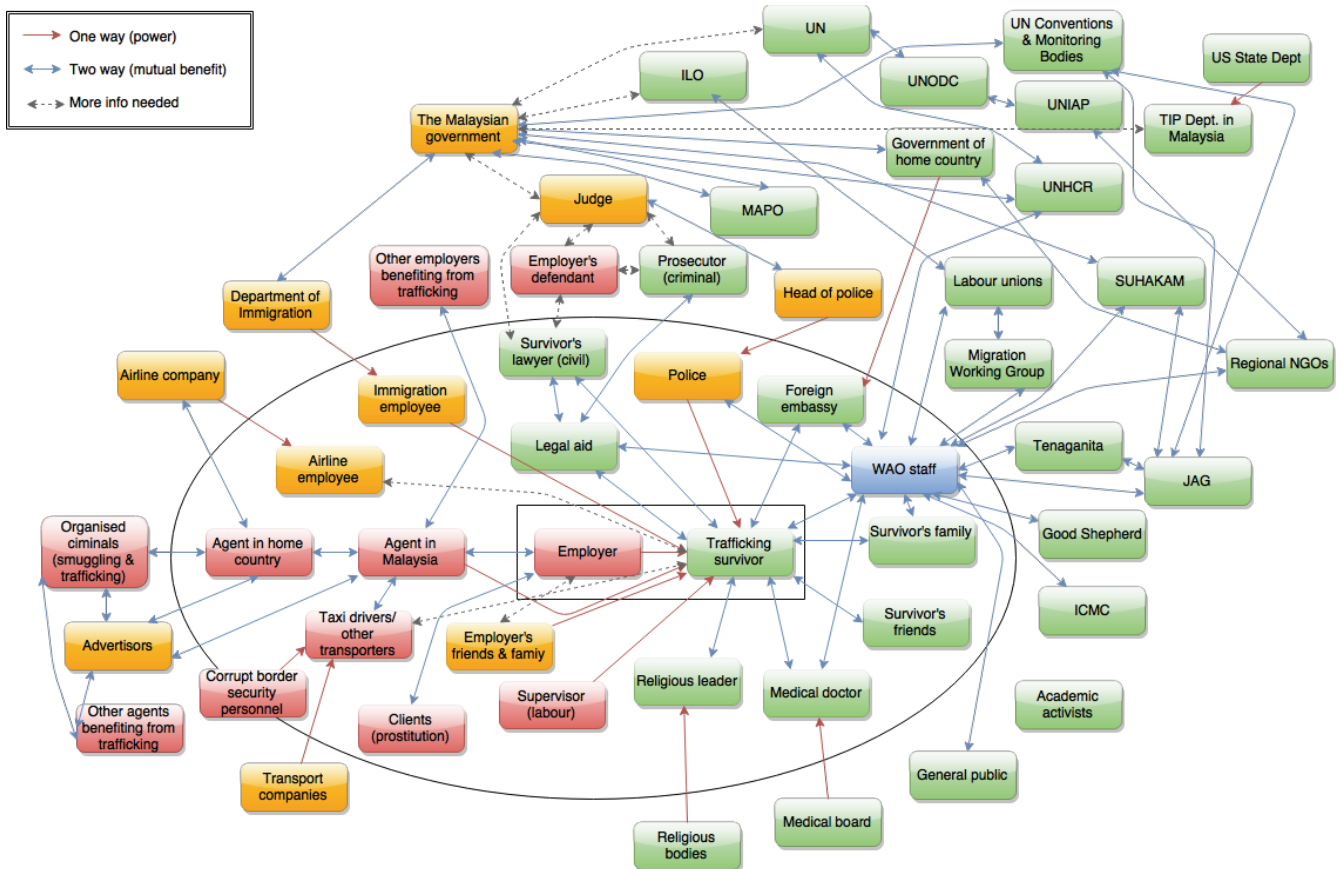
Recommendations

A Collective Issue

As we have seen in the preceding section, there are ample legal standards and guidelines available to be utilised in the Malaysian context for combatting human trafficking. Nevertheless, tools do not in themselves provide a solution for the issue at hand, unless they are employed by the individuals and institutions that are positioned to intervene. Furthermore, every member of society plays a role in eradicating human trafficking. Emphasising collective responsibility eliminates buck-passing and finger-pointing, and reminds us that human trafficking is a systemic issue that we have all allowed to infect our society, and which we must stop together.

The *tactical map* shown below is an example of an exercise in visualising the network of people, groups, and institutions, along with the nature of the relationships, connected to the trafficking survivor. This tool is helpful in allowing authorities and organisations who are involved in helping trafficking survivors analyse, discuss, and brainstorm on how to intervene. The tactical map also helps us better understand the political, social, economic, and cultural relationships related to the problem. This could lead to improved strategies and tactics in intervening to help trafficking survivors. It also opens our eyes to the intricacies and interconnectedness of society at large, even on an international scale, as related to the trafficking survivor and also the exploiter.

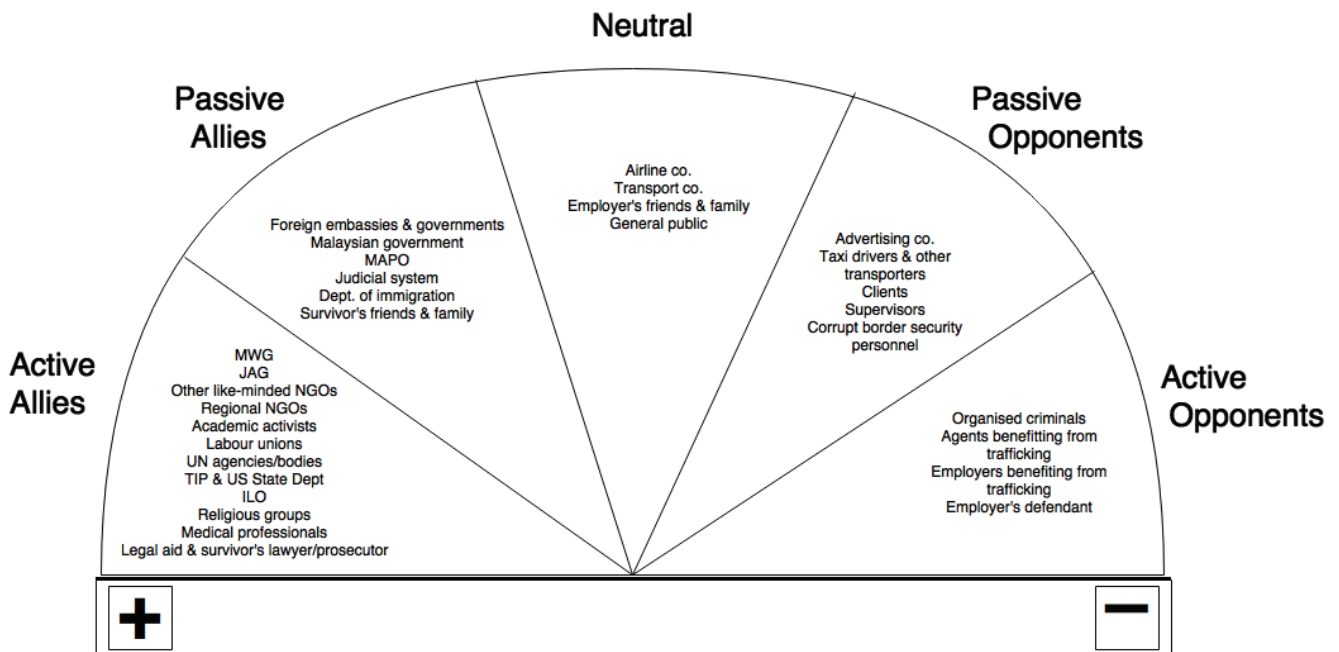
Tactical Map



The *spectrum of allies* is yet another tool to help authorities and organisations strategise on how to improve their intervention when aiding trafficking survivors. It is useful in helping to identify groups that are potential allies and potential opponents; these groups are often dynamic and could

move from one segment to another, depending on the individuals that comprise the group or the particular political, social, economic, or cultural context. The spectrum of allies is a guide for authorities and organisations to prioritise and fine-tune their strategies when dealing with stakeholders or groups connected to the trafficking survivor. The general idea of this tool is to help identify who the allies and opponents (and neutral parties) are and engage them accordingly, with the goal of moving groups incrementally closer to the positive pole.

Spectrum of Allies



In concluding this report, recommendations are made to every group and member of society, namely, to the Malaysian government, NGOs and civil society, IGOs and international actors, and to the wider public. Once again, this is to emphasise the collective responsibility every person, organisation and institution has towards combatting the issue of human trafficking in Malaysia, with a particular focus on women and children trafficking victims in the country. WAO would like to promote a culture of collaboration between different groups and stakeholders in order to overcome this social ill in society in a wide-reaching and sustainable manner. It is WAO's vision to eliminate violence against women and bring about gender equality in our society. Our hope is that this report would inform and encourage positive action so that the respect of human dignity of all women and children, and of every person, becomes an integral part of the Malaysian value system, which would lead the Malaysian society to become a more just and equitable one, where trafficking and forced labour would no longer be excused or be considered acceptable in any way.

■ Recommendations to the Government

1. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the ILO Domestic Workers Convention, 2011 (No. 189); the UN Convention and Protocol Relating to the Status of Refugees; and the UN Convention Relating to the Status of Stateless Persons and enact enabling legislation to give these conventions the force of domestic law.
2. Ensure enforcement of laws and regulations related to domestic workers, particularly the 2015 amendments to the ATIP, and the 2016 regulations.
3. Amend Employment Act 1955 in order to expand scope of protection to include migrant workers, or enact separate legislation to ensure migrant worker' labour rights.
4. Fulfil international obligations to ensure that no child is stateless, as statelessness increases vulnerability to human trafficking.
5. Incorporate international obligations from all treaties Malaysia is party to, and also obligations under customary international law, into Malaysian domestic law as soon as possible, followed by full enforcement of the law on a local level.
6. Increase efforts to investigate, arrest, prosecute, convict, and punish traffickers, including complicit officials.
7. Conduct trainings of law enforcement and judicial officers to better respond to trafficking cases, including identifying trafficking survivors and having a survivor-centred framework.
8. Enforce the law that prohibits employers/agents from withholding passports.
9. Organise nationwide campaigns to educate the public about the issue of human trafficking, forced labour, and the penalties associated with these crimes.
10. Prioritise national agenda of poverty alleviation and income inequality, with a focused attention to the situation of women and children.
11. Engage in impact assessments to identify how national agendas (e.g. the TPP Agreement) would affect foreign workers and other vulnerable groups.
12. Increase survivor identification efforts by implementing procedures to identify trafficking survivors among vulnerable groups.
13. Allocate adequate funding to NGOs to provide shelter and other critical support services to survivors of trafficking.

■ Recommendations to NGOs and Civil Society

1. Form active coalitions and collaborate with other local human rights organisations, labour unions, and women and children's organisations to advocate for the rights of trafficking survivors and to abolish every form of slavery.
2. Work towards the implementation of a multi-stakeholder response to assist trafficking survivors, utilising a network of NGOs, police, lawyers, interpreters, medical practitioners, diplomatic missions, and government agencies.
3. Increase efforts to educate migrant workers and other vulnerable populations on their rights and legal options.
4. Create a plan to provide intensive public education on the rights of workers, vulnerable populations, and the human experiences behind cases of trafficking.
5. Improve the collection of data and the work of monitoring of the problem of human trafficking.
6. Promote ratification of international conventions and adoption of domestic legislation to enhance protections for trafficking survivors, migrant workers, and other vulnerable

populations.

7. Utilise evidence-based advocacy to lobby for greater funding of NGOs to provide shelter and critical support services to survivors of trafficking.

■ Recommendations to IGOs and International Actors

1. Pressure the Malaysian government to enforce measures to eliminate human trafficking, including through ratification of international conventions and implementation of obligations under such conventions.
2. Support local initiatives with financial and technical assistance to help address human trafficking.
3. Investigate human trafficking in one's respective country, and work on collaborating with other governments to improve law enforcement to curb the activity of traffickers.
4. Do not engage in ventures that would lead to greater economic inequality in societies.
5. Reflect on solutions that empower vulnerable people groups to seek alternatives to overcome their economic hardship and inequality.
6. Undertake research initiatives on the contributing factors to trafficking.

■ Recommendations to the Public

1. Treat all workers with respect, and provide reasonable wages, benefits, and leave to all employees, whether formal or informal.
2. Learn your responsibilities as an employer, whether it is of a domestic worker in your home, or a local or foreign worker in your business.
3. Under no circumstances withhold the passport of an employee or worker against their will.
4. Never withhold wages from an employee or worker.
5. Always practice fair employment practices, including executing a signed contract and ensuring that the substance of the contract is translated into the language of understanding of the employee or worker.
6. Be vigilant in identifying and assisting trafficking survivors—if you suspect someone is a trafficking survivor or being subjected to forced labour, encourage them to get help from the police or from an NGO like WAO.

Glossary

ASEAN	Association of Southeast Asian Nations
ATIP	Anti-Trafficking in Persons
BCC	Behaviour change communication
CBT	Cognitive behavioural therapy
CIL	Customary international law
COMMIT	Coordinated Mekong Ministerial Initiative Against Trafficking
DFAT	(Australian) Department of Foreign Affairs and Trade
DVA	Domestic Violence Act
EMDR	Eye movement desensitisation and reprocessing
IGO	Intergovernmental organisation or international governmental organisation
IHC	Indian High Commission
ILO	International Labour Organization
IO	Investigation officer (police)
IPO	Interim Protection Order
MDW	Migrant domestic worker
MWFCD (or KPWKM)	Ministry of Women, Family and Community Development
NGO	Non-governmental organisation
OHCHR	Office of the High Commissioner for Human Rights
PO	Protection Order
SIT	Stress inoculation training
TIP	Trafficking in Persons
TVPA	Trafficking Victims Protection Act
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees
USA	United States of America
WAO	Women's Aid Organisation (WAO)

About WAO's Services

In our service, we focus on critical interventions that limit the adverse consequences of domestic violence:

Our **refuge** is a crisis shelter that provides a temporary home to 250-300 women and children each year, and offers comprehensive support services. In 2016, we sheltered 118 women and 133 children. The availability of our refuge for these individuals ensured that they did not have to choose between homelessness and violence. The refuge is managed by our social workers.

The **child care centre** is a transitional home for children of survivors. On the survivor's request, we care her children in the short-term, giving the survivor the time and support to viably re-establish a safe and independent life in the community of her choice. In 2016, we sheltered, counselled, and ensured access to education for 171 children while their mothers worked towards creating sustainable and independent lives for them.

Case management provides for individual case advocacy, which includes engagement with the police, facilitating legal representation, access to health and other public services for almost 3,000 individuals each year.

WAO counselling is multi-platform and is conducted by our social workers. It comprises individual sessions (face-to-face), the WAO Hotline, SMS text-based helpline (TINA, or "Think I Need Aid"), and emailed enquiries. Our hotline received more than 1,636 calls in 2016. In total, our counselling provided crisis intervention, safety planning, and onward referrals for 2,748 survivors.

Empowerment programmes offer follow-up support to all former refuge residents and their children, in order to empower survivors to break the cycle of domestic violence and maintain their independence. Our support programmes benefited many women and children in 2016. These programmes are run and coordinated by our social workers.

The purpose of this report is:

- 1) To draw learning points for ourselves and for other NGOs serving women and children trafficking survivors and
- 2) To highlight gaps in laws, policies, and procedures around trafficking in order to bring about legislative reform and greater enforcement of existing laws against trafficking in persons.

Call the WAO Hotline at +603 7956 3488 or SMS/WhatsApp TINA at +6018 988 8058 if you or someone you know is experiencing abuse.

Women's Aid Organisation (WAO)

P.O. Box 493, Jalan Sultan
46760 Petaling Jaya, Selangor
Malaysia

Tel: +603 7957 5636/ 7957 0636

Fax: +603 7956 3237

Email: womensaidorg@gmail.com

Website: www.wao.org.my

Facebook: www.facebook.com/womens.aid.org

Twitter/Instagram: [@womensaidorg](https://www.instagram.com/womensaidorg)

Copyright © 2017 Women's Aid Organisation (WAO). All rights reserved.

ISBN 978-983-40325-9-3

