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Trafficking in Persons Report 2018 - Country Narratives - Malaysia

MALAYSIA: Tier 2 Watch List

The Government of Malaysia does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government demonstrated significant efforts by convicting more traffickers, increasing criminal enforcement of unauthorized passport retention, granting more victims freedom of movement, tripling funding for NGOs including for three NGO-run shelters, and opening its first trafficking-specific court. The government also amended its foreign worker levy and Private Employment Agency Act to shift debt burdens away from migrant workers. However, the government did not demonstrate overall increasing efforts compared to the previous year. The government's victim protection efforts remained largely inadequate and the government identified fewer victims than the previous year. The Ministry of Human Resources drafted legislative changes that would cover domestic workers under employment laws, but the new regulations had not been approved by the Cabinet by the end of the reporting period, and recruitment practices often exposed foreign workers to debt bondage. Procedures to extend victims' freedom of movement and the right to work were impeded by bureaucratic delays, lack of appropriate staff, and risk-averse and paternalistic attitudes towards victims; of the 721 victims identified, the government granted two work visas and 91 special immigration passes for freedom of movement. Complicity among law enforcement officials hampered some anti-trafficking efforts; while authorities investigated these crimes, culpable officials typically avoided prosecution and punishment. No Malaysians, including suspected complicit officials, have been prosecuted for the possible trafficking crimes that were uncovered on the border of Thailand in 2015. The government prosecuted fewer suspected traffickers than the previous year. Therefore Malaysia was downgraded to Tier 2 Watch List.

RECOMMENDATIONS FOR MALAYSIA

Significantly increase the number of trafficking victims who obtain approval for freedom of movement; expand freedom of movement allowed of victims in shelters to include unchaperoned movement and at-will communication with people outside shelter facilities; increase the number of trafficking victims who obtain approval for employment; improve implementation of regulations for the 2015 amendments to the anti-trafficking law and formally establish procedures that ensure security assessments

are designed to mitigate safety and security concerns of individual victims rather than risk to the shelter or government; increase the number of trafficking prosecutions and convictions, including of complicit officials and forced labor crimes; reduce court delays and increase judicial familiarity with the full range of trafficking crimes, particularly forced labor; make public the results of investigations involving corrupt officials to increase transparency and deterrence and hold officials criminally accountable when they violate the law; provide greater protection against debt bondage to foreign workers during the worker recruitment process; increase law enforcement capacity to investigate and prosecute trafficking cases based on intelligence gathering and information-sharing among government agencies; increase the capacity of labor inspectors to identify trafficking victims among vulnerable groups, such as migrant workers, and to effectively investigate labor trafficking; expand labor protections for domestic workers and investigate allegations of domestic worker abuse; improve case management and communication with trafficking victims, including through increased prosecutor-victim interaction at least two weeks prior to trial in compliance with the attorney general’s directive; strengthen collaboration with credible and effective NGOs and implement plans to provide more services for victims, including the construction of new or expansion of existing shelters; expand efforts to inform workers, including domestic workers, of their rights to maintain access to their passports at any time, without delay or approval, and without consequence to their status and relationship with their employer, and include language explicitly stating passports will remain in the employee’s possession in model contracts and future bilateral memoranda of understanding with labor source countries; effectively enforce the law prohibiting employers from retaining passports without employees’ consent, educate workers and employers on foreign worker rights, including legal recourses and remedies against traffickers, and ensure employers provide lockers or other secure passport storage facilities; and fully implement the 2016-2020 national plan to combat trafficking.

PROSECUTION

The government demonstrated uneven law enforcement efforts. The 2007 Anti-Trafficking in Persons Act—amended in 2010 and 2015—criminalized labor and sex trafficking and prescribed punishments of up to 20 years imprisonment, which were sufficiently stringent and, with respect to sex trafficking, commensurate with those prescribed for other serious offenses, such as rape. The government conducted 556 trafficking and trafficking-related investigations in 2017, compared to 581 investigations in 2016 and 158 in 2015. The government initiated prosecutions against 80 alleged traffickers, compared to 175 initiated in 2016 and 38 in 2015. The government convicted 45 traffickers—including 13 for forced labor—under the anti-trafficking act, representing the highest number of convictions achieved annually, and compared to 35 in 2016 and seven in 2015. The government sentenced 25 traffickers to imprisonment ranging between 15 months and 12 years. Eleven traffickers received prison sentences ranging between one day and six months, while 12 traffickers received only fines.

In March 2018, the government established an anti-trafficking court beginning in the state of Selangor, which historically had the highest number of trafficking cases. In its first month, the court expedited 12 trafficking cases in an existing court by setting aside

a few hours a week for senior, experienced judges to focus on trafficking cases. The majority of prosecutors engaged with victims at least two weeks prior to trial to better understand and address victims’ concerns about the inner workings of trials; however, limited availability of certified interpreters and Malaysia’s decentralized jurisdictions made it difficult for officials to meet with all victims.

The government expanded the mandate of the interagency law enforcement task force and made it permanent. The government provided new office space for the 17-member interagency group. The task force successfully conducted six operations focused on forced labor in 2017. The Royal Malaysia Police continued to serve as the lead enforcement agency under the anti-trafficking act and maintained a specialized anti-trafficking unit comprising 242 officers posted throughout the country. The labor department’s specialized trafficking enforcement team increased the number of officers to 34, from 30. The attorney general’s chambers appointed two additional trafficking-specialist deputy public prosecutors throughout Malaysia, raising the total to 54. The government continued to conduct or support anti-trafficking trainings, including 34 in-service trainings for police officials and 14 transnational or bilateral trainings in the region focusing on victim protection, law enforcement, and prosecution, among other topics. Labor inspectors received eight trafficking-focused training sessions. During the year, a total of 40 prosecutors at the attorney general’s chambers participated in four trafficking-related training programs.

The 2015 discoveries of migrant camps and mass graves along the border with Thailand fueled reports that corrupt officials facilitated migrant smuggling, which may have included trafficking crimes committed in 2015. The media published a report in December 2017 alleging official misconduct and claiming law enforcement officials conducted a previously undisclosed raid in January 2015; the government reported it did not reveal the details of the case since it was an ongoing investigation. In 2016, investigations into these camps and graves yielded four migrant smuggling convictions in Malaysia; no Malaysian nationals were among those convicted. The government reported the investigations remained ongoing, and Malaysia and Thailand continued to cooperate in the search for additional suspects. No new charges have been brought and to date no Malaysian national—public official or private citizen—has been prosecuted for alleged trafficking crimes associated with these camps and graves.

Complicity among law enforcement officials, in the form of accepting bribes to allow undocumented border crossings, hampered some anti-trafficking efforts. The government uncovered four smuggling networks operating at Kuala Lumpur International Airport; the immigration director reassigned 600 officials and investigations remained ongoing at the close of the reporting period. Separately, authorities investigated 18 for human smuggling and trafficking in persons and prosecuted two officers for exploitation of their domestic employees (unrelated to their official duties); all cases remained ongoing at the end of the reporting period. In 2016, the government prosecuted five officials for corruption in the form of accepting bribes to allow undocumented border crossings; four were found guilty for smuggling offenses while the fifth official was acquitted.

PROTECTION

The government maintained protection efforts. Law enforcement agencies followed standardized procedures to identify trafficking victims. Identification of labor trafficking cases continued to rely on labor inspections in response to workers' complaints of non-payment of wages and other violations. In 2017, the government identified 2,224 potential trafficking victims nationwide and confirmed 721 victims, compared to 3,411 potential trafficking victims and 1,558 confirmed victims in 2016. Both years represented a marked increase over the 305 victims confirmed in 2015. Enforcement agencies employed the anti-trafficking law broadly by presuming as potential trafficking victims all foreign women during bar or massage parlor roundups. The government shifted significant resources toward forced labor, compared to a previous focus primarily on sex trafficking, partially explaining the decrease in the overall number of victims identified. The government did not proactively screen the vulnerable migrant worker population for indicators of trafficking, which left an unknown number of potential victims without proper care. The anti-trafficking law provided trafficking victims immunity from immigration-related offenses, such as illegal entry, unlawful presence, and possession of fraudulent travel documents. The government sometimes detained, deported, or charged with immigration offenses potential victims who denied they had been subjected to trafficking or when employers confiscated their documents.

Amendments to the anti-trafficking law allowed victims to work and to move freely in and out of government facilities, pending a security risk assessment, medical screening, and mental health evaluation. Of the 721 victims identified, the government issued 91 special immigration passes that would authorize freedom of movement, compared to 12 passes in 2016. However, in practice, authorities sometimes limited movement outside the shelter to occasional trips with a chaperone, two to three times a month. The government issued two work visas to victims, compared to six issued the previous year. Despite government efforts to provide legal employment for victims, government shelter staff reported the majority of eligible participants declined to participate in the program, citing a preference to return home. The government commenced monthly allowance payments of 127 ringgits (\$31) to victims for incidental expenditures, and by March 2018, 273 victims received a total of 96,320 ringgits (\$23,820). The government did not disburse the funds on a monthly basis, and victims received the allowance as a lump sum when they repatriated home.

The government housed most victims in government facilities as part of a court-ordered 21-day interim protection order (for suspected trafficking victims) or a subsequent 90-day protection order (for certified trafficking victims). Some victims, however, remained in the shelters for up to six months. Shelters sometimes became temporarily overcrowded following increased police efforts to identify victims. The government took steps to reduce shelter overcrowding by providing 80 percent of the funding for three new NGO-run shelters in Kuala Lumpur, Sabah, and Penang; however, the shelters remained underutilized due to bureaucratic obstacles and authorities approved only a small number of victims for transfer to these shelters during the reporting period. Most victims who stayed in government shelters did so without freedom of movement or the

right to work, in contravention of global best practices. As in past years, many victims preferred to return immediately to their home countries. Although the law permits victims to testify remotely, authorities generally expected victims to remain in-country pending trial proceedings. During the reporting period, many victims were unwilling to testify. The reluctance of victims to provide witness testimony reportedly stemmed from a desire to avoid protracted criminal proceedings and to quickly rejoin the informal workforce, unappealing shelter and work conditions, and bribes or intimidation from traffickers.

The Ministry of Women, Family, and Community Development maintained seven facilities specifically to house trafficking victims—four for women, one for men, and two for children. During the reporting period, the government allocated 5.6 million ringgits (\$1.4 million) to operate its shelters, including funds to open three new trafficking shelters in the states of Kedah, Kelantan, and Sarawak. The government provided basic services for all victims staying in its facilities, including food, shelter, medical care, social and religious activities, and security; NGOs provided some victim rehabilitation and counseling services in most shelters, typically without government-allocated funding. After an initial 21-day period when authorities did not permit victims any communication with persons outside the shelter, victims could make a phone call once per month, and shelter staff provided opportunities for victims to engage in handicrafts and other income-generating activities. In general, NGOs expressed difficulty in maintaining adequate resources and staffing levels to provide consistent services for victims. Overall, the government tripled its funding for NGOs this year, increasing from 483,000 ringgits (\$119,440) in 2016 to 1.4 million ringgits (\$341,250) to conduct various programs and activities with shelter residents.

PREVENTION

The government increased efforts to prevent trafficking. The home affairs ministry headed the anti-trafficking council (MAPO), which included five enforcement bodies, other government entities, and three NGOs. It met on a quarterly basis and was active in coordinating interagency anti-trafficking efforts and conducting trainings for government ministries, in addition to consultation sessions with NGO partners to strengthen victim protection. In 2017, the government maintained its allocation of 4 million ringgits (\$989,120) to operate the MAPO secretariat. The government continued implementing the national action plan spanning 2016-2020, making progress towards improved cooperation with civil society, integrated action among law enforcement agencies, and increased focus on combating labor trafficking. The government produced and aired 9,006 public service radio broadcasts and 1,605 television segments during the reporting period, compared to 6,492 and 1,648 announcements, respectively, in 2016. It also consulted with civil society to create and publish a new informational booklet for employers of domestic workers. The government printed 2,000 booklets in English and Bahasa Malaysia for distribution to new employers. Labor officials also provided banners and other signage at the Kuala Lumpur International Airport in holding lounges for newly arrived migrant workers in a range of languages to help educate foreign workers about their rights in Malaysia. MAPO partnered with Malaysia Airlines on a human trafficking awareness campaign, kicked off with a three-day

exhibition at Kuala Lumpur International Airport. UNHCR and a local NGO mapped stateless people in peninsular Malaysia and submitted nationality applications to reduce vulnerability to trafficking by providing identity documents. In response, the government granted citizenship to 2,168 persons and continued processing the remaining 10,000 applications during the reporting period.

The government strengthened its enforcement of the law against unauthorized passport retention by initiating 70 prosecutions and obtaining 41 convictions of employers who contravened the Malaysian Passport Act of 1966 (17 in 2016). The government also implemented two improvements to labor laws to eliminate conditions that often lead foreign workers into debt bondage. The first improvement required employers to pay the foreign worker levy for any non-Malaysians they hired, instead of forcing workers to bear the costs. The government also amended the Private Employment Agency Act to significantly increase the penalties for violating recruitment laws and to require all recruitment agencies to get a special license from the Ministry of Human Resources to recruit foreign workers, including domestic workers. Employment law continued to exclude domestic workers from a number of protections, including the country’s minimum wage. Labor inspectorates conducted 40,869 labor inspections, which resulted in the issuance of 5,257 correction notices, a slight decrease compared to 49,610 labor inspections and 5,297 correction notices in 2016. Labor courts resolved 12,498 labor disputes and ordered employers to provide exploited workers back wages of more than 64 million ringgits (\$15.8 million) and levied fines of 979,000 ringgits (\$246,090) for non-compliant employers. The government did not demonstrate efforts to reduce demand for commercial sex. The government provided anti-trafficking training for its diplomatic personnel and its troops prior to their deployment abroad on international peacekeeping missions.

TRAFFICKING PROFILE

As reported over the past five years, Malaysia is a destination and, to a much lesser extent, source and transit country for men, women, and children subjected to forced labor and women and children subjected to sex trafficking. The overwhelming majority of victims are among the estimated two million documented and an even greater number of undocumented migrant laborers in Malaysia. Foreign workers constitute more than 20 percent of the Malaysian workforce and typically migrate voluntarily—often illegally—from Bangladesh, India, Nepal, Burma, Indonesia, the Philippines, and other Asian countries. Employers, employment agents, and informal labor recruiters subject some migrants to forced labor or debt bondage when they are unable to pay the fees for recruitment and associated travel. Outsourcing or contract labor companies may not have oversight of personnel issues or day-to-day working conditions, leading to heightened vulnerabilities to exploitative labor conditions and a reduced ability to resolve disputes for foreign workers. Agents in labor source countries may impose onerous fees on workers before they arrive in Malaysia, and additional administrative fees after arrival in some cases cause debt bondage. Large organized crime syndicates are responsible for some instances of trafficking.

Official complicity and corruption among immigration and police officers remains a problem and impedes some efforts to address trafficking. NGOs made credible accusations of complicity among some Malaysian law enforcement agencies, including immigration officials who reportedly accept bribes to allow undocumented border crossings. Discoveries of migrant camps and mass graves along the border with Thailand in 2015 and media reporting in December 2017 generated reports some officials were complicit in facilitating migrant smuggling, which may have included trafficking crimes; however, no Malaysian official (or national) was held criminally accountable.

Some migrant workers on palm oil and agricultural plantations, at construction sites, in the electronics and garment industries, and in homes as domestic workers are subjected to practices that can indicate forced labor, such as passport retention, contract violations, restricted movement, wage fraud, and imposition of significant debts by recruitment agents or employers. Contract violations remain widespread in Malaysia. Passport retention remained widespread and problematic; Malaysian law allows employers to hold workers’ passports with the workers’ permission, but it is difficult to determine if workers have freely given permission, and some employers may retain the passports to prevent workers from changing jobs. In efforts to circumvent anti-trafficking protections established by the Indonesian government, some Indonesian workers may transit Malaysia legally en route to Middle Eastern countries, where traffickers exploit some into forced labor. Although significantly fewer than the number of forced laborers, some young foreign women—mainly from Southeast Asia—are recruited ostensibly for legal work in Malaysian restaurants, hotels, and beauty salons, but are instead forced or coerced into prostitution. Traffickers force some women and girls into prostitution through brokered marriages. The more than 152,000 registered refugees and asylum-seekers in Malaysia lack formal status and the ability to obtain legal work permits, leaving them vulnerable to trafficking. Many refugees incur large smuggling debts, which traffickers use to subject some refugees to debt bondage. Traffickers exploit Malaysian orphans and children from refugee communities for forced begging. The number of internal Malaysian victims, including child victims, is increasing due to the additional focus on labor trafficking.

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