

Document #2010858

USDOS – US Department of State

2019 Trafficking in Persons Report: Malaysia

MALAYSIA: Tier 2 Watch List

The Government of Malaysia does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. These efforts included convicting slightly more traffickers, issuing a significant number of passes for victims' freedom of movement from shelters, and establishing an additional shelter for adult female trafficking victims, although it had not yet served victims. The government reported some investigations into allegations of official complicity and authorized a Royal Commission of Inquiry into the camps and mass graves discovered in Wang Kelian in 2015. The government also continued to overhaul its foreign worker management system. However, the government did not demonstrate overall increasing efforts compared to the previous year. The government identified far fewer victims than in previous years and authorities investigated and prosecuted fewer cases. The government's victim protection efforts remained largely inadequate and some rehabilitation services such as medical care, telephone calls, freedom of movement, and the issuance of work permits were inconsistently implemented, if at all. The government stopped funding NGOs to provide shelter. Corruption related to processes for foreign nationals to work in Malaysia remained pervasive and the government did not report initiating new prosecutions or convicting any complicit officials during the reporting period. Therefore Malaysia remained on Tier 2 Watch List for the second year.

PRIORITIZED RECOMMENDATIONS

Draft, finalize, disseminate, and train relevant officials, including labor inspectors and immigration officials, on standard operating procedures for victim identification that include information on trafficking indicators. • Increase efforts to prosecute and convict more trafficking cases, including of complicit officials and forced labor crimes. • Make public the results of investigations involving corrupt officials to increase transparency and deterrence and hold officials criminally accountable when they violate the law. • Create a system for access to timely and accurate interpretation in victims' primary languages available to law enforcement, the court system, and shelters. • Increase the number of trafficking victims who obtain approval for freedom of movement from shelters and expand freedom of movement to include unchaperoned movement and at-will communication with people outside shelter facilities, including through telephone calls. • Strengthen and continue to expand cooperation with NGOs, including through financial or in-kind support to NGOs to provide some victim rehabilitation services. • Increase the number of trafficking victims who obtain approval for

employment and streamline the process for finding a job. • Take steps to eliminate recruitment or placement fees charged to workers by Malaysian labor recruiters and ensure any recruitment fees are paid by employers. • Increase law enforcement capacity to investigate and prosecute trafficking cases based on intelligence gathering and information-sharing among government agencies. • Expand labor protections for domestic workers and investigate allegations of domestic worker abuse. • Reduce court delays and increase judicial familiarity with the full range of trafficking crimes, particularly forced labor. • 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. • 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 and educate workers and employers on foreign worker rights, including legal recourses and remedies against traffickers.

PROSECUTION

The government demonstrated uneven law enforcement efforts. The 2007 Anti-Trafficking in Persons and Smuggling of Migrants (ATIPSOM) Act—amended in 2010 and 2015—criminalized labor trafficking and sex trafficking and prescribed punishments of three to 20 years’ imprisonment and a fine, which were sufficiently stringent and, with respect to sex trafficking, commensurate with those prescribed for other serious offenses, such as rape. The government conducted 281 case investigations in 2018, a decrease compared to 398 investigations in 2017. Of the 281 investigations, 123 were for forced labor. The government initiated prosecutions against 50 alleged traffickers, a decrease compared with 80 in 2017. The government convicted 50 individuals under ATIPSOM, an increase from 45 in 2017; however, this number may have also included convictions for smuggling. The government reported sentences ranged from three to 13 years’ imprisonment; in the past, courts sentenced some traffickers to fines alone as punishment. Civil society and media reported cases of forced labor that were charged as disparate labor law violations instead of criminal cases of human trafficking.

The government continued to operate its special court in Selangor with two judges with expertise in trying trafficking cases, but it had not implemented plans to expand special trafficking courts around the country. During the reporting period, a group of 45 judges drafted best practices for handling trafficking cases but had not yet finalized their recommendations or disseminated the practices. A 2014 directive required prosecutors to meet with victims at least two weeks prior to the start of trial to prepare victims to record their statements and to help them understand the judicial process. Prosecutors reported they engaged with victims; however, limited availability of interpretation services made effective communication difficult and NGOs reported some prosecutors did not meet with victims at least two weeks before trial as required by the directive. Law enforcement agencies also overwhelmingly cited language barriers with potential

victims as an ongoing challenge in their work; while the government sometimes worked with foreign embassies or NGOs to interpret conversations, it did not have an institutionalized way to ensure timely and accurate communication with potential trafficking victims who did not speak Bahasa Malaysia or English.

The Royal Malaysia Police continued to serve as the lead enforcement agency under ATIPSOM and increased the number of officers in its specialized anti-trafficking unit from 242 in 2017 to 247 in 2018. The government extended the mandate of the interagency law enforcement task force for three years beyond its usual one-year extension. The labor department also employed a specialized trafficking enforcement team, although the number of its officers decreased from 34 in 2017 to 30 in 2018. The attorney general’s chambers appointed an additional trafficking-specialist deputy public prosecutor, raising the total to 55 throughout Malaysia. The government continued to conduct or support anti-trafficking trainings, including 28 in-service trainings and 26 transnational or bilateral trainings in the region for police officials focusing on victim protection and law enforcement. The government also hosted 14 trafficking-focused training sessions for its labor inspectors and eight trafficking training programs for 55 prosecutors at the attorney general’s chambers.

Official complicity remained a serious concern. The 2015 discovery of migrant camps and mass graves in Wang Kelian, containing bodies of suspected Rohingya and Bangladeshi victims of extortion, torture, and other crimes, fueled reports that corrupt officials facilitated migrant smuggling and in some cases trafficking crimes. Since 2015, NGOs and media have continued to allege official complicity in the Wang Kelian camps through inaction on reports of the camps prior to 2015 and misconduct in the investigation of the camps and the crimes perpetrated there. In 2016, the government convicted four foreign nationals for people smuggling related to the camps; however, authorities had not brought charges against any Malaysian official or private citizen, despite such allegations. In March 2019, the Human Rights Commission of Malaysia and a NGO published a report investigating the events leading up to the mass graves and the government’s response. The report alleged the smugglers and traffickers benefited from corrupt Malaysian border officials who demanded bribes to allow vehicles through the border without conducting proper inspections. Further, the report alleged authorities may have committed obstruction of justice when a senior police officer ordered the destruction of all potential evidence, including the camps and mass graves, one day after their discovery. NGOs continued to assert authorities had not investigated or held perpetrators accountable for the full extent of the crimes related to the camps, including trafficking crimes. During the reporting period, the prime minister ordered a Royal Commission of Inquiry into the camps and mass graves and the King approved the expected six-month long investigation in January 2019.

Ongoing corruption related to processes for foreign nationals to work in Malaysia increased the cost of migration and consequently increased a migrant worker’s vulnerability to trafficking through debt-based coercion. During the previous reporting period, the government reported it was investigating four smuggling networks, operating at the Kuala Lumpur International Airport and allegedly involving 600 immigration officials. The government reported the reassignment of the 600 officials and the arrest of seven of these officials; at the end of the reporting period the cases

remained ongoing. Separately, authorities reported investigating 18 immigration and police officers for human smuggling and trafficking in persons and prosecuting two officers for exploitation of their domestic employees (unrelated to their official duties); all cases remained ongoing at the end of the reporting period and the government did not report any new developments. The government did not report initiating any new prosecutions or convicting any complicit officials during the reporting period.

PROTECTION

The government decreased protection efforts. In 2018, the government identified 1,305 potential victims and confirmed 97 victims, a significant decrease compared to 2,224 potential and 721 confirmed victims in 2017, and 3,411 potential and 1,558 confirmed victims in 2016. Of the 97 confirmed victims in 2018, 63 were women, approximately the same number of women victims confirmed in 2018; however, there was a marked decrease in the number of confirmed male and child victims in 2018 (34) compared with 2017 (659). The government explained the continued decrease in the number of victims identified as a result of a reduction in the use of large-scale police raids of suspected commercial sex establishments and instead focused on investigations against forced labor, the larger trafficking problem in Malaysia. The government reported each of the five law enforcement agencies followed agency-specific standard operating procedures (SOPs) to identify trafficking victims. However, observers reported the SOPs lacked basic indicators that would allow officials to proactively and accurately identify trafficking victims and instead focused on the role and responsibility of the officer once a victim was referred to law enforcement. The government's identification of labor trafficking cases relied on reports of abuse from embassies representing foreign workers and other informants and labor inspections in response to workers' complaints of non-payment of wages and other violations. NGOs relayed that authorities treated many of the victims identified during police or immigration raids like criminals. NGOs also believed this treatment contributed to the government's insufficient identification of victims; the raid-environment was not conducive to victims speaking candidly to law enforcement and due to the lack of basic indicators of trafficking, NGOs reported officials arrested and charged some victims for immigration violations instead of identifying them as trafficking victims.

The Ministry of Women, Family, and Community Development (MOWFCD) continued to fund and operate seven shelters specifically to house victims of trafficking—four for women, one for men, and two for children. During the reporting period, MOWFCD established an additional shelter for adult female trafficking victims, although it had not yet served victims. The government housed victims in these shelters as part of a court-ordered 21-day interim protection order (for potential trafficking victims) or a subsequent 90-day protection order (for certified trafficking victims). In practice, the government renewed the protection order for certified victims, which required their stay in a shelter, until the completion of the trial associated with their case; some victims remained in the shelters for up to six months. In the previous reporting period, the government took steps to reduce government shelter overcrowding by providing funding and referring victims to three NGO-run shelters; however, in July 2018, the government—a new administration since May 2018—suspended the funding in order to

review the program and did not reestablish it by the end of the reporting period. Because of the reduction in the number of identified victims, no government shelter was over capacity.

In March 2019, the government established a pilot program to provide two victim assistance specialists to guide victims from their identification, through the judicial process, and finally to repatriation in their home country; at the end of the reporting period the program had yet to begin working with victims. The government continued to provide basic services for all victims staying in its shelters, including food, medical care, social and religious activities, and security. NGOs reported medical screening was inadequate for victims upon arrival to government shelters and shelters lacked full access to reproductive health and dental services. Shelters did not have medical staff on site and accessing medical care required shelter staff to coordinate transportation and a chaperone. NGOs provided some victim rehabilitation services, including medical care and counseling, without government-allocated funding; however, NGOs continued to express difficulty maintaining adequate resources and staffing levels to provide consistent services for victims. Due to the lack of available and adequate interpretation services, some victims did not understand shelter rules and their rights during the judicial process, contributing to stress and leading some victims to request repatriation instead of participating in prosecutions. During the reporting period, MOWFCD translated shelter rules and regulations in to five languages and disseminated them to several, but not all, of its shelters. The government reported it allotted each victim 35 Malaysian ringgit (RM) (\$8.50) to make telephone calls each month; however, in practice this amounted to one or two calls supervised by shelter staff. Some government shelters were not able to track phone costs per victim and instead instituted one 10 minute international phone call per month while others only allowed calls within Malaysia. The government continued to give monthly allowance payments of 127 RM (\$31) to victims for incidental expenditures; during the reporting period, 184 victims received a total of 73,550 RM (\$17,810). The government did not always disburse the funds on a monthly basis; some victims received the allowance as a lump sum when they repatriated home.

The government amended the anti-trafficking law in 2015 to allow victims to work and move freely in and out of government facilities, pending a security risk assessment, medical screening, and mental health evaluation. Of the 97 confirmed victims, the government issued 68 special immigration passes that authorized freedom of movement, compared to 91 passes for 721 confirmed victims in 2017. At the end of the previous reporting period, the government announced a policy to ensure victims received a special immigration pass before the end of their 21-day interim protection order. While the majority of confirmed victims received this pass, the government continued to lack enough qualified mental health counselors to conduct the required psycho-social evaluation during the appointed timeframe. Additionally, in practice, a victim's freedom of movement remained restricted to chaperoned trips. The government did not issue any work visas to victims during the reporting period, compared to two in 2017 and six in 2016. Shelter staff continued to provide opportunities for victims to engage in handicrafts and other income-generating activities in the shelter. In February 2019, the government began offering technical and

vocational training for shelter residents in the Kuala Lumpur women’s shelter and the Malacca men’s shelter; 21 victims (13 women and eight men) participated in training ranging from English-language classes to vocational courses in sewing and car repair.

As in past years, many identified victims preferred to return immediately to their home countries. Although the law permitted victims to testify remotely, authorities generally expected victims to remain in-country pending trial proceedings. The reluctance of victims to stay in Malaysia and provide such testimony reportedly stemmed from a desire to avoid protracted criminal proceedings, interest to quickly rejoin the workforce, unappealing shelter and work conditions, and intimidation from traffickers. For victims who participated in court proceedings, prosecutors noted they were instructed to request restitution in each case; in 2018, prosecutors requested restitution in 29 cases, compared with three in 2017, and secured 80,000 RM (\$19,370). The government did not provide legal alternatives to the removal of foreign victims to countries where they may face hardship or retribution. The government worked with foreign diplomatic missions to fund and provide repatriation assistance for victims to return to their countries of origin.

PREVENTION

The government increased efforts to prevent trafficking. The Ministry of Home Affairs (MHA) led the anti-trafficking council (MAPO), which included five enforcement bodies, other government entities, and three NGOs. It met on a quarterly basis and coordinated interagency anti-trafficking efforts to implement the government’s 2016-2020 national action plan. MAPO also conducted trainings for government ministries and held consultation sessions with NGOs. In 2018, the government maintained its allocation of four million RM (\$968,520) to operate the MAPO secretariat. The government produced and aired 16,880 public service radio broadcasts and 1,515 television segments, an increase from 9,006 radio and 1,605 television announcements in 2017. Labor officials continued to provide 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. The prime minister appointed a 13-member committee on foreign workers to develop recommendations to overhaul the government’s foreign worker management system; the committee conducted 13 town halls around the country and met with nearly 300 stakeholders. In February 2019, the committee submitted 40 policy and structural recommendations to the Cabinet including creating an online worker recruitment system to prevent fraud and exploitation and establishing a foreign worker complaint mechanism.

The government’s Private Employment Agency Act (PEAA), amended in 2017, required all recruitment agencies secure a license with the Ministry of Human Resources (MOHR) to recruit foreign workers, including domestic workers. As part of PEAA’s implementation, in October 2018, the government announced it would ban the more than 150 Malaysian-based outsourcing companies from recruiting migrant workers after January 2019. Outsourcing companies had previously been under the purview of MHA and retained control over the migrant workers as the employer, despite the migrant workers performing work for other companies at off-site locations. The

government required current employees of outsourcing companies to transfer their employment directly to the company they were performing work for or face deportation after March 31, 2019. Civil society and media documented instances where outsourcing companies increased migrant workers’ vulnerability to debt bondage through lack of communication regarding options for the employees to stay and work legally within Malaysia and withholding salaries from migrant workers who were leaving Malaysia.

The 2017 PEAA capped employee-paid recruitment placement fees at 25 percent of the first month’s salary for Malaysian workers employed within or outside of Malaysia and one month’s salary for non-citizens employed within Malaysia. The law did not define what comprised a “placement fee.” The majority of migrant workers in Malaysia paid fees to agents in Malaysia as well as to recruitment agents in their home country, which contributed to the workers’ vulnerability to debt bondage. In 2018, the government investigated 14 companies for violating the PEAA—nine for allegedly conducting recruitment without a license, two for improperly imposing fees on workers, and three for failure to display their license or keep proper records—but did not report the result of the investigations. Media reported that from 2015-2018, Malaysian employment agencies and 10 Bangladeshi recruitment agencies formed a monopoly on recruitment of Bangladeshi workers to charge higher recruitment fees and reportedly bribed politicians and officials in both countries to facilitate the monopoly. The government charged the former joint-Deputy Prime Minister and Minister of Home Affairs with multiple counts of corruption and criminal breach of trust. Some of the charges related to allegations of money laundering related to outsourcing companies charging high fees to Bangladeshi workers and allegations that he received bribes from a private company to appoint it as the implementer of the one-stop center to process work permits for Pakistani and Nepali migrant workers.

In the previous reporting period, the government mandated employers pay the foreign worker levy, a one-time cost paid to the government for any non-Malaysian the company hired, instead of forcing workers to bear the cost. Civil society and embassies representing migrant worker home countries reported the majority of employers were not passing the levy cost onto workers, although there were exceptions. Employer-perpetrated passport retention remained widespread and, in contrast to last year, the government did not report prosecutions and convictions for unauthorized retention.

During the reporting period, migrant workers, media, and civil society alleged several rubber-product manufacturers based in Malaysia exploited migrant workers, including through methods indicative of forced labor. The government reported it investigated the allegations and in February 2019, MOHR filed 42 charges against one of the companies for breach of the labor law. The government also threatened another company with fines for the use of excessive overtime but did not publicly report if it took any action against the company for this or other substantial allegations. In November 2018, an NGO published a report documenting multiple indicators of forced labor in the production of palm oil in Malaysia, including coercive practices such as threats, violence, lack of clarity of employment terms and conditions, dependency on the employer, lack of protection by police, debt bondage, high recruitment fees, and involuntary overtime. In June 2018, the government funded and began a five million RM (\$1.21 million) survey, under the oversight of an international organization, to ascertain

the prevalence of forced and child labor in the palm oil sector. The government completed data collection in January 2019 and reported it was analyzing the data at the end of the reporting period.

Employment law continued to exclude domestic workers from a number of protections, including the country’s minimum wage. Labor courts resolved 14,009 labor disputes and ordered employers to provide workers back wages of more than 34.4 million RM (\$8.33 million) and levied fines against employers who violated the labor law of 1.35 million RM (\$326,880). 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, human traffickers exploit domestic and foreign victims in Malaysia, and to a lesser extent, traffickers exploit victims from Malaysia abroad. The overwhelming majority of victims are among the estimated two million documented and an even greater number of undocumented migrant workers in Malaysia. Foreign workers constitute more than 20 percent of the Malaysian workforce and typically migrate voluntarily—often through irregular channels—from Indonesia, Bangladesh, the Philippines, Nepal, Burma, Cambodia, Vietnam, India, Thailand, and Laos. Employers, employment agents, and illegal sub-agents exploit some migrants in labor trafficking primarily through debt-based coercion when the workers are unable to pay the fees for recruitment and associated travel. Some agents in labor source countries impose onerous fees on workers before they arrive in Malaysia and Malaysian agents administer additional fees after arrival—in some cases causing debt bondage. Large organized crime syndicates are responsible for some instances of trafficking. Employers exploit some migrant workers in labor trafficking on oil palm and agricultural plantations; at construction sites; in the electronics, garment, and rubber-product industries; and in homes as domestic workers. Employers utilize practices indicative of forced labor, such as restrictions on movement, violating contracts, wage fraud, the imposition of significant debts, and passport retention—which remained widespread. 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 retain the passports to prevent workers from changing jobs. Pervasive corruption and official complicity related to processes for foreign nationals to work in Malaysia increase the cost of migration and consequently increase a migrant worker’s vulnerability to trafficking through debt-based coercion.

Traffickers recruit some young foreign women—mainly from Southeast Asia, although also recently from Nigeria—ostensibly for legal work in Malaysian restaurants, hotels, and beauty salons, but instead compel them into prostitution. Traffickers compel some women and girls into commercial sex through brokered marriages. Traffickers also compel men and children into commercial sex, although less frequently. More than 163,000 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 then use to exploit refugees. Traffickers exploit Malaysian orphans and children from refugee communities in forced begging. Traffickers increasingly exploit Malaysian women and children in forced labor. Media report young male and female Malaysians pay recruitment fees for promised high-paying jobs, but traffickers transfer them to Cambodia and exploit them and authorities arrest them for immigration violations. In order to circumvent the Indonesian government's ban on Indonesian migration to 21 countries, some Indonesian workers transit Malaysia legally en route to Middle Eastern countries, where traffickers exploit some into forced labor.

ecoi.net summary:

Annual report on trafficking in persons (covering April 2018 to March 2019)


Country:

Malaysia

Source:

USDOS – US Department of State [\(/en/source/11558.html\)](/en/source/11558.html)

Original link:

<https://www.state.gov/reports/2019-trafficking-in-persons-report-2/malaysia/> (<https://www.state.gov/reports/2019-trafficking-in-persons-report-2/malaysia/>)

Document type:

Periodical Report

Language:

English

Published:

20 June 2019

Document ID:

2010858

Austrian Red Cross

Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD)

Wiedner Hauptstraße 32, 1041 Wien

T (Telefon) +43 1 589 00 583

F (Fax) +43 1 589 00 589

info@ecoi.net

ecoi.net is run by the Austrian Red Cross (department ACCORD) in cooperation with Informationsverbund Asyl & Migration. ecoi.net is funded by the Asylum, Migration and Integration Fund, the Austrian Ministry of the Interior and Caritas Austria. ecoi.net is supported by ECRE & UNHCR.

