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▶ **Forced Labour and Trafficking in Persons**
Training Manual for Malaysian Law Enforcers

From Protocol to Practice: A Bridge to Global Action on Forced Labour

Forced Labour and Trafficking in Persons

Training Manual for Malaysian
Law Enforcers

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Acronyms

ACTIP	ASEAN Convention Against Trafficking in Persons, Especially Women and Children
APTISOM	The Malaysian Anti-Trafficking in Persons and Anti-Smuggling of Migrant Act
ARTIP	Asia Regional Trafficking in Persons [Project]
ASEAN	Association of Southeast Asian Nations
COMMIT	Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region
CPC	Criminal Procedure Code
DOL	Department of Labour
FOMEMA	Foreign Workers' Medical Examination
HIV/AIDS	Human immunodeficiency virus/Acquired immunodeficiency syndrome
ILKAP	Institute of Judicial and Legal Training (Institut Latihan Kehakiman dan Perundangan)
ILO	International Labour Organisation
MAPO	The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrant ((Majlis Anti-pemerdagangan Orang)
MMEA	Malaysian Maritime Enforcement Agency
MOHR	Ministry of Human Resources
NGO	Non-Governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
RELA	People's Volunteer Corps
RMP	Royal Malaysian Police
SOCISO	Malaysian Social Security Organization
SOP	Standard Operational Procedure
TE	Temporary Employment
TIP	Trafficking in Persons
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Trans-national Organised Crime. (Palermo Protocol)
VP	Visit Pass

► About this guide

This Forced Labour and Trafficking for Labour Exploitation – Training Manual for Malaysian Law Enforcers was developed as a practical guide to be used by the Royal Malaysian Police (RMP), Immigration Department (ID), Royal Customs Police (RCP), Malaysian Maritime Enforcement Agency (MMEA) in understanding the legal frameworks for forced labour and human trafficking, identifying potential victims and protecting potential victims' rights and referring cases. This Manual is not a binding document, but a tool for law enforcement to better address forced labour and trafficking for labour exploitation.

This Manual is also used to develop an e-learning course for law enforcers.

Modules

Module 1: What are the definitions and mandates on forced labour and human trafficking? This module provides the basic understanding about what forced labour and trafficking in persons (TIP) are according to the national and international legal frameworks. This also discusses the national mandates of the law enforcers on forced labour and TIP.

Module 2: What other national, international and regional framework relate to forced labour and TIP? This provides references to regional frameworks and other relevant national laws and policies pertaining to labour and immigration, which the law enforcers need to also be aware of, particularly for effective referral of non-trafficking cases of forced labour and other labour violations.

Module 3: How can law enforcers identify potential cases of forced labour and trafficking in persons? This module explains the methods by which victims of forced labour and TIP may be identified and how victims may be controlled by their perpetrators. The indicators for both forced labour and TIP are discussed in this chapter. References are made to reports of forced labour and TIP in Malaysia to demonstrate why focus on certain indicators would be

necessary. The Malaysian National Guidelines on Human Trafficking indicators is also used in this module.

Module 4: How can law enforcers care for the needs of the potential victims of forced labour and TIP? This module discusses the experiences and hardships faced by the potential victims of forced labour and TIP, which are important for law enforcers to understand to effectively address the victims' needs. The rights of the victims are also discussed, along with the responsibilities of law enforcement officials towards the victims. The referral workflow is also tackled.

Module 5: What can law enforcers do if they encounter potential cases of forced labour and TIP? This module provides law enforcement agencies with practical guideline on actions that have to be taken when they encounter forced labour and TIP, either on their own or as referred to them.

This manual was developed by the ILO project From Protocol to Practice: A Bridge to Global Action on Forced Labour (Bridge) with USDOL funding support. ILO Consultants involved in developing these were Pieter Cronje and Azlan Bin Said, both former law enforcers. Technical inputs were provided by the Anti-Trafficking in Persons and Smuggling of Migrants Council Secretariat (NSO-MAPO), RMP, RCP, ID, MMEA, and the Ministry of Human Resources (MOHR) Department of Labour (DOL). The ILO Labour Law Reform and Industrial Relations Project also provided inputs.

1 What are the definitions and mandates on forced labour and human trafficking?

▶ Learning objectives

At the end of the module, the participants will have the necessary knowledge to:

- Define and differentiate forced labour, TIP, smuggling of migrants and sub-standard working conditions according to national and international legal framework
- Understand enforcement officers' duty to enforce the laws or refer such cases to relevant agencies, and their duty to protect the victims.

▶ Chapter outline

- 1.1. What is forced labour and sub-standard working conditions?
- 1.2. What is TIP and how does it differ with human smuggling?
- 1.3. What are the national mandates of law enforcement on forced labour and TIP?
- 1.4. Questions for self-evaluation
- 1.5. Activities

► 1.1. What is forced labour and sub-standard working conditions?

Forced labour

There is no national definition of forced labour. However, the internationally recognised definition of forced labour is found in ILO Forced Labour Convention, 1930 (No. 29), which Malaysia ratified in 1957.¹ According to this Convention,

Forced labour is “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 (or herself) voluntarily.

For a situation to be considered forced labour, it is important to note that:

- ✓ ***There should be work or service rendered:*** This includes all types of work, service and employment, regardless of the industry, sector or occupation within which it is found, and encompasses legal and formal employment as well as irregular and informal employment.
- ✓ ***The definition applies to ANY PERSON:*** This refers to adults as well as children, regardless of their nationality and legal status.
- ✓ ***There is a menace or threat of a penalty if the person leaves the employment:*** This threat or menace of penalty given by the perpetrator to the victim can be any form of coercion such as threats, violence, the retention of identity documents, confinement, or non-payment of wages. The penalty may also take the form of a loss of rights or privileges. **Module 3 discusses the indicators of Menace/Threat of Penalty.**
- ✓ ***There is the element of involuntariness:*** This means that the victim did not consent to enter into employment freely, or she/he has no freedom to leave the employment at any time, with reasonable notice

¹ Such ratification goes with the obligation to eliminate forced labour as a matter of urgency, criminalise forced labour, impose adequate penalties to reflect the seriousness of the offense and strictly enforce the penalties. It is also critical that the law enforcement response includes prosecution under criminal law.

in accordance with national law or collective agreements. **Module 3 discusses the indicators of Involuntariness.**

What is not forced labour?

Article 2(2) of the ILO Convention No. 29 (ILO C29) sets out certain exceptions pertaining to practices which would otherwise have fallen under the definition of forced labour:

- compulsory military service;
- normal civic obligations;
- prison labour carried out under supervision and control of public authority, and not for private individuals, companies or associations;
- emergencies and minor communal service.

All these situations only constitute exceptions under certain conditions, as defined by the ILO Committee of Experts.²

The lack of viable economic alternatives that makes people stay in an exploitative work relationship does not in itself constitute forced labour though it may constitute a position of vulnerability to forced labour and trafficking.

It should also be noted that in Article 1 of the ILO Forced Labour Protocol of 2014, the definition of forced or compulsory labour contained in ILO C29 is reaffirmed. Besides, the Protocol provides that measures tackling forced labour should include specific action against trafficking in persons for the purposes of forced labour – making a clear link between forced labour and human trafficking.

Can forced labour also be Trafficking in Persons? Yes, if they meet the criteria for TIP as discussed in the succeeding sub-module.

² https://www.ilo.org/ilc/ILCSessions/previous-sessions/101stSession/reports/reports-submitted/WCMS_174846/lang--en/index.htm

Sub-standard working condition

Enforcement agencies, after careful assessment if indicators of forced labour are met, sometimes find either the involuntariness or menace of penalty is missing. Often, it could be a case of sub-standard working conditions, which are within the mandate of the Department of Labour.

Sub-standard working conditions are exploitative working conditions that do not meet the criteria for forced labour or TIP. For example, victims in receipt of low wages may not be working in a forced labour situation if they are not working under the threat of a penalty or are freely consenting on their employment.

What if the law enforcer found sub-standard working condition instead of forced labour or TIP? The responsible thing to do is to refer this to DOL for their proper action.

▶ 1.2. What is TIP and how does it differ with human smuggling?

Trafficking in persons

Malaysia's definition for TIP come from the Anti-Trafficking in Persons and Anti-Smuggling of Migrant Act 2007 (Act 670) or otherwise called ATIPSOM. This Act states that

"trafficking in persons" means 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 or receiving a person for the purposes of this Act.

Proving the element of coercion is central to making a case of trafficking or forced labour. Under APTISOM movement is not necessary to establish a trafficking case.

Coercion is defined in ATIPSOM as:

- (a) Threat of serious harm to or physical restraint against any person;
- (b) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (c) The abuse or threatened abuse of the legal process.

Under the Act, Malaysian courts have jurisdiction to hear prosecutions of any person charged with an offense under the Act, whether or not the alleged offense occurred within or outside Malaysia and regardless of the nationality of the offender, if Malaysia is a receiving country, transit country, or if the trafficking starts in Malaysia. The Act also extends jurisdiction to extraterritorial offenses committed by Malaysian citizens or permanent residents.

Part III of the ATIPSOM Act sets out a number of offenses related to trafficking in persons, while Part IV relates to smuggling of migrants. The main offense of trafficking in persons for the purpose of exploitation may be punished with up to fifteen years in prison; where threats, use of force, abduction, etc. are involved, the punishment is from three to twenty years of imprisonment. Trafficking in children also attracts a maximum twenty-year term. Persons convicted of these offenses can also be fined. Other offenses include profiting from the exploitation of a trafficked person; making, obtaining, giving, selling, or possessing fraudulent travel or identity documents; recruiting others to participate in an act of trafficking in persons; providing facilities or services in support of trafficking in persons; and harbouring persons involved in trafficking in persons.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children of 2000 (Palermo Protocol) states that:

3(a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability or 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 exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour

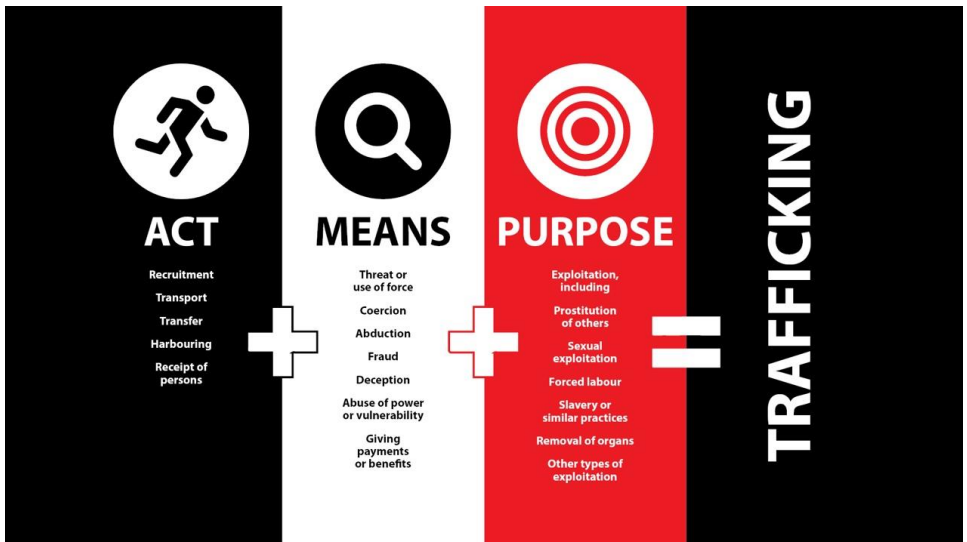
or services, slavery or practices similar to slavery, servitude or the removal of organs.

3(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in sub-paragraph (a) of this Article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used

3(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in sub-paragraph (a) of this Article

3(d) “Child” means any person under the age of eighteen years of age

This definition is complex, but TIP can be broken down into three separate elements as shown in the following illustration:



- If one condition from each element (Means, Act, and Purpose) is met, the result is trafficking.
- If any one of the three elements is missing, then it will not be trafficking. However, if the person is under the age of 18 years, it is only necessary to show that any one or more of the defined actions has been used to achieve

any one or more of the defined exploitative purposes. The means by which this has been achieved are considered as irrelevant and can be ignored.

Key points to note about the TIP definition in the Palermo Protocol

1. The Palermo Protocol is a treaty – this means that it is a legally binding instrument which creates obligations for all States that ratify and accede to it.
2. The definition recognises virtually all forms of trafficking that involve the exploitation of the body, labour or services of a person
3. The definition recognises that women, men, girls and boys are trafficked and is not confined only to women and girls.
4. Borders are not mentioned and the definition does not require that a victim crosses any internationally recognised border; this acknowledges the reality that victims are trafficked internally from one part of a country to another
5. The definition requires some form of distortion of the victim's free and informed consent, for example, through the threat or use of force, deception etc
6. In respect of persons under the age of eighteen years of age, there is no requirement for the distortion of the victim's free and informed consent – the use of the activity for the exploitative purpose of sufficient to breach the terms of the Article

Smuggling of migrants

According to ATIPSOM Act,

“smuggling of migrants” means— (a) arranging, facilitating or organizing, directly or indirectly, a person's unlawful entry into or through, or unlawful exit from, any country of which the person is not a citizen or permanent resident either knowing or having reason to believe that the person's entry or exit is unlawful; and (b) recruiting, conveying, transferring, concealing, harbouring or providing any other assistance or service for the purpose of carrying out the acts referred to in paragraph (a).

Migrant smuggling was also defined in international law at the same time as the Palermo Protocol. Article 3 of the United Nations Protocol against the Smuggling of Migrants ³ defines migrant smuggling as follows:

Smuggling of migrants means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.

Smuggling, therefore, always has a transnational element, and is primarily directed against the interests of a state, and not against an individual, i.e. the smuggled person.

Important reminders

- Many people who are smuggled across borders illegally become prime targets for forced labour and human trafficking.
- It is however important to realize that not all people who are smuggled may end up being exploited for labour purposes.

► 1.3. What are the national mandates of law enforcement on forced labour and TIP?

Federal Constitution of Malaysia

The Federal Constitution of Malaysia came into force on 27 August 1957 and is the supreme law of the land. Fundamental liberties of a person are set out in Articles 5 to 13 of the Constitution.

Article 6 of the Federal Constitution states that no persons shall be held in slavery and all forms of forced labour are prohibited with the exception of compulsory national service and work or service carried out by persons as a consequence of a court conviction. The use of the term 'no persons' indicates

³ Article 3 of the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Trans-national Organised Crime defines migrant smuggling

inclusion of all persons, i.e. citizens and non-citizens including migrant workers, documented or otherwise.

Migrant workers, documented or undocumented, are entitled to a constitutional right in Malaysia. Article 8(1) of the Federal Constitution uses the word “persons” and not “citizen” and that the rights guaranteed by its equality is extended to documented and undocumented migrants.

Article 5(1) of the Federal Constitution states that “No person shall be deprived of his life or personal liberty save in accordance with law” and subsequent articles provide the right to a legal counsel and the right to appear in court within 24 hours. However, the article differentiates the right of liberty with respect to non-citizens who, pursuant to the proviso to the Article, can be detained up to 14 days.

It is therefore the duty of law enforcement officials to protect every victim of forced labour and TIP in Malaysia. Because the Constitution is the highest law in the country it sets the tone for other legislation and the principles in the Constitution are therefore applicable in all the other laws.

Anti-Trafficking in Persons and Anti-Smuggling of Migrant Act 2007 (Act 670)

In the current national legal framework, a potential case of TIP, whether for forced labour or other purposes, are covered under the ATIPSOM Act⁴. Part IV of ATIPSOM provides that the following officers may exercise powers of enforcement under the Act:

- (a) any police officer;
- (b) any immigration officer;
- (c) an Officer of customs;
- (d) any officer of the Malaysian Maritime Enforcement Agency; and
- (e) any Labour Officer.

⁴ The ATIPSOM Act was enacted pursuant to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime. Malaysia ratified the Convention in 2004 and the Protocol in 2009. Amendments in 2010 to add provisions related to smuggling of migrants were made pursuant to the Protocol Against the Smuggling of Migrants by Land, Air and Sea, which Malaysia has not yet signed.

These powers are further embodied under Section 27 of ATIPSOM 2007 which include (i) the power of investigation; (ii) the power to arrest without a warrant; (iii) the power to search and seize with a warrant; (iv) the power to search and seize without a warrant; (v) the power to access computerised data; (vi) the power to examine persons; and (vii) the power to forfeit conveyance and movable property.

The mandates of different enforcement agencies are provided by specific Acts. For example, MMEA is governed by Malaysian Maritime Enforcement Agency Act 2004 (Act 633); their powers, jurisdictions, and responsibilities are stated clearly in this Act. In addition, the Immigration Department is governed by Immigration Act 1959/63 and the RMP is governed by Police Act 1967. Although labour officers are considered 'enforcement officers' in Article 27 of the ATIPSOM, in practice their involvement is limited to situations where they carry out their statutory tasks under the labour laws, i.e. undertaking (routine or complaint-driven) inspections of workplaces.

An anti-trafficking unit has been created under the Royal Malaysian Police (RMP) and Ministry of Human Resources (MOHR). There are also specialized positions established in the Immigration Department and Attorney General's Chamber specifically to implement this law.

Part II of the ATIPSOM Act established the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, commonly referred to as MAPO, which consists of various government officials and five representatives from nongovernmental organizations. The 2015 amendments added a new Part IA to the Act, establishing a High-Level Committee of certain government ministers that is tasked with deliberating on and making decisions regarding recommendations made by MAPO.

Penal Code (Act 574)

Sections 359 to 374 of the Penal Code deal with the criminal activities of kidnapping, abduction, slavery and forced labour. Section 374 provides that "[w]hoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both." This provision of the Penal Code is

considered to provide too lenient a penalty to be applied to forced labour cases. It has not been used in practice to deal with forced labour cases and would require a revision of its terms so it is commensurate with Malaysia's obligations under the ILO Convention 29.

▶ 1.4. Questions for self-evaluation

- What are the elements of forced labour?
- What are the elements of trafficking in persons?
- When you find a forced labour case but does not meet the TIP criteria, what would you do?

▶ 1.5. Activities

Activity 1 - Definitions of forced labour, trafficking in persons and smuggling of migrants

Time: 20 minutes

Objectives

After this activity the learners should be able to:

- Identify the key elements of forced labour, trafficking in persons and smuggling of migrants as defined by the relevant ILO conventions and United Nations protocols;
- Contrast the elements of the definitions of forced labour, trafficking in persons and the smuggling of migrants;
- Explain the meaning of the elements "act, "means" and purpose" in trafficking in persons cases;
- Understand the issue of consent in a trafficking in persons case and how consent is vitiated

Presenter's note

1. Explain the objectives.
2. Introduce the topic

3. Discuss the definitions forced labour, trafficking in persons and migrant smuggling
 - Describe the key features of the definitions as found in the ILO Forced Labour Convention, Article 3 of the Palermo Protocol and the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air
 - Discuss the definitions of forced labour, trafficking in persons and migrant smuggling
 - Contrast the elements of the definitions of trafficking in persons and the smuggling of migrants in order to explain the difference between the two crimes;
 - Explain the meaning of the elements “act, “means” and purpose” in trafficking in persons cases;
 - Explain elements that have to be proven when children are trafficked and forced into labour
4. Conduct a general discussion
5. Summary

Things to use during the activity

- Power Point

Activity 2: Identifying the elements of forced labour and TIP

Time: 60 minutes

Objectives

After this activity the learners should be able to:

- Recall the elements of forced labour, trafficking in persons and smuggling of migrants as defined by the relevant international instruments;
- Identify the different forms of trafficking in persons.

Presenter’s note

1. Explain the objectives.
2. Introduce the topic
3. Show the ILO video on forced labour
Ask the participants to while watching the video

- Identify the examples of forced labour / trafficking
- 4. After the video ask the participants to break in groups of 5 and do the following:
 - Identify and write down the different forms of forced labour / TIP
- 5. Ask the groups to give feedback and conduct a general discussion
- 6. Summary

Things to use during the activity

- <https://www.youtube.com/watch?v=sOHq0MIN3PY&t=1s>

2 What other national and regional framework relate to forced labour and TIP?

▶ Learning objectives

At the end of the module, the participants will have the necessary knowledge to:

- Understand that aside from ATIPSOM, Federal Constitution and the Penal Code discussed in Module 1, the other Malaysian laws ATIPSOM that could be used to prosecute forced labour-related offenses, and prohibit practices that are considered indicators of forced labour.
- Identify the range of related crimes to forced labour and specify the articles within Malaysian legislation that criminalise them.
- Understand the regional frameworks on forced labour and TIP.

▶ Chapter outline

- 2.1. Other legislation that are relevant to forced labour and TIP
- 2.2. Regional frameworks on forced labour and TIP
- 2.3. Questions for self-evaluation
- 2.4. Activities

▶ 2.1. Other legislation that are relevant to forced labour and TIP

Other legislation have provisions that relate to specific indicators of forced labour and TIP, but not necessarily these two offenses. It is important for law enforcers to know about them, in particular for referral of cases, when the elements of TIP are not met and the case cannot be filed under the ATIPSOM, proper referral to respective agency should be made. This is an important ethics of victim protection – that law enforcers do not negate the needs of non-TIP victims.

These relevant laws include the Employment Act 1955, which contains some minimum labour protection standards and provisions related to domestic servants⁵; the Children and Young Persons (Employment) Act, which provides for limited employment of children in light work in certain sectors; the Private Employment Agencies Act 1981, which regulates recruitment agencies and grants the Director General of Labour investigatory and inspection powers; the Child Act 2001, which prohibits exploitative acts, custody transfers for any valuable consideration, and bringing a child into Malaysia on false pretences as well as taking a child out of Malaysia without parental consent; the Passports Act 1966, which criminalizes the withholding of passports; as well as the Immigration Act 1959, Maritime Enforcement Agency Act 2004, Customs Act 1967, Security Offenses (Special Measures) Act 2012, and the Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

! Establishing a case of TIP or forced labour will serve the justice system and the victim better, rather than focusing on one indicator. For example, where components of forced labour such as wage deduction and passport retention are treated separately under the Employment Act and the Passport Act, it is likely that the outcome will not adequately represent the totality of harm endured by the victim. In addition, prosecuting cases on multiple counts can be difficult from an investigative and prosecution perspective.

⁵ Not all the minimum standards of the Employment Act apply to domestic workers

Criminal and criminal procedure law

Criminal Procedure Code (Act 593)

Criminal Procedure Code (CPC) Act 593 provides the legal procedures to be followed to bring offenders to justice. This legislative procedure starts from reporting a crime to the police, the investigation and the trial in court, so that the perpetrators of crimes punishable based on their acts

Example of relevant provisions under CPC are:

SECTION 15 – ARREST

In making an arrest the Police Officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action. If such person forcibly resists the endeavour to arrest him or attempt to evade arrest such officer or other person may use all means necessary to effect the arrest. Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

SECTION 16 and SECTION 116 – SEARCH OF PLACE/PREMISES

There are two categories of search. One is with warrant of search. The other one is without a warrant of search. If any person acting under a warrant of arrest or any Police Officer or Penghulu having authority to arrest has reason to believe that any person to be arrested has entered into or is within any place the person residing in or in charge of such place, shall on demand of such person acting as aforesaid or such police officer or Penghulu, allow him free ingress thereto and afford all reasonable facilities for search therein. An arrest would be made and hand over the arrested person to the nearest police station who will be dealt in accordance with the law. The other search is, the Police can enter into any premises without a warrant and conduct a search in order to recover stolen properties or any valuable documents. Such officer shall, if practicable conduct the search in person.

SECTION 64 and SECTION 65 – SEIZURE

A list of all things seized in the course of search made under this section shall be prepared by the officer and signed by him. A copy of the list prepared and signed under this section shall be delivered to such occupant or person at his request.

Remember, the occupant must be present to witness the search.

Passports Act 1966

In accordance with the Passports Act 1966, all persons who enter and exit Malaysia must hold a valid passport and non-citizens must hold a valid visa. Section 12 (1f) of the Act states that that it is an offense for any person “without lawful authority, has in his possession any passport or internal travel document issued for the use of some person other than himself.” Violation is subject to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Pursuant to Section 10 of the Act, Customs, Police and Immigration Department are responsible for enforcement of the provisions of the Act.

Passport retention instills fear in the migrant worker preventing the worker from leaving employment involving exploitative and abusive working conditions. It is a means used to coerce workers into compliance with situations that, given a free choice, they would never consent to. Without their passport, workers are less likely to seek help from police forces or labour inspection and dare filing a complaint.

Immigration Act 1959/63

The Immigration Act 1959/63 (the Immigration Act) supplemented by the Immigration Regulations 1963 governs Malaysia's border controls and security. The Act empowers the Immigration Department to enforce its provisions including handing down penalties for violations of its provisions and creates regulations for detention and deportation. It requires that all persons wishing to enter Malaysia must enter and exit at designated checkpoints, and that all non-citizens hold either an entry permit or pass to enter Malaysia.

The Act confers wide powers to the immigration officers to arrest and detain non-citizens without a warrant if he reasonably believes that an immigration offence has been committed.

Victim-centric approach to law enforcement: Law enforcers must make sure that individuals who do not hold legal documents are properly screened to check if they are victims of forced labour or TIP. This is to avoid that victims of

forced labour amongst this population will be criminalised and made to endure unnecessary detention.

Employment Restriction Act 1968

The Employment Restriction Act 1968 establishes the principle that the employment of a non-citizen in any business in Malaysia must be subject to the issuance of a valid employment permit.

Section 10 of the Act restricts the employment permit to the particular employment and the employer stated on the permit with a validation period not exceeding two years. The Act is under the purview of the MOHR and confers enforcement powers to the Director General of Labour.

Immigration policy expressly prohibits a change of employer and employment.

Migrant workers entering in order to work in Malaysia are issued with a Visit Pass (VP) or Temporary Employment (TE) subject to passing the medical exam by the Foreign Workers' Medical Examination (FOMEMA), which authorizes the holder to enter Malaysia and remain for up to 12 months, subject to the conditions of the Pass. The Department may extend the Pass "for any further period or periods" as it thinks fit.⁶

A Special Pass is a temporary pass issued to a person who wishes to remain in Malaysia "for any special reason." The pass is valid for one month, and may, at the immigration officer's discretion, be extended subject to a monthly administration fee of RM100.22 Special passes are issued to migrant workers whose VP or TE's have expired or been cancelled by the employer but who wish to stay in Malaysia, for example to pursue a legal case.

Potential victims of forced labour may be coerced by their employer to stay in abusive working conditions with the threat of terminating their work permit or special pass. From a victim perspective, this is a strong coercive condition

⁶ The dependency on the employer and the consequences of stepping away from this dependency come at a very high cost that most workers can ill-afford. This creates a subtle systemic coercion that impedes the right of a worker to choose to change employer in the event of abuse.

because the migrant workers are dependent on the patronage of their employer to remain in legal status. Those who are unable to endure abusive working conditions and run away from their employers could end up being undocumented. As law enforcers, this is an important reason to make sure to properly screen for forced labour and trafficking those who are found undocumented. Penalizing the employers for the abuses would have a huge impact on ending the cycle of exploitation.

Private Employment Agencies Act 1981

Private recruitment agencies are regulated under the Private Employment Agencies Act 1981. The Act, administered by the MOHR provides for the licensing of any person or company that “acts as an intermediary” between employers and Malaysian workers for the placement of these workers in local positions or overseas.

Key features of the August 2017 amendment include the consideration of past convictions on trafficking in persons or forced labour for granting of licenses, as well as revocation and suspension of license if they have a history of detention in relation to trafficking in persons or forced labour. Allowable placement fees imposed on migrant workers are capped to not more than one month of basic wages.

Aside from the private recruitment agents regulated by the MOHR, outsourcing companies (contractor for labour) are also allowed by law to carry out both recruitment and supply of labour. These outsourcing companies are regulated by the Ministry of Home Affairs.

Labour laws that provide protection of workers' rights

Employment Act 1955

The Act is applicable to “Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person’s wages do not exceed RM 2,000 a month...or engaged in manual labour...or engaged as a domestic servant.”

Under Article 60A(4)(a) of the Employment Act, limitations on overtime are to be decided via implementing regulation. Limitations to overtime are under the “Employment (Limitations on Overtime Work) Regulations” laid out in 1980. The Regulations place a monthly ceiling of 104 hours on the quantity of time a person may be asked to work in excess of their normal working hours, in exceptional circumstances.⁷ **However, the Director General may inquire into in the event that there is a dispute relating to working in excess of the normal hours.**

It is illegal under the Employment Act for employers to include any provision in a contract of service which “restricts the right of any employee” to join a trade union, participate in trade union activities, or associate with other employees for the purpose of organizing a trade union. However, under article 10(1)(c) of the Federal Constitution, only citizens have the right to form associations. This means that migrant workers are not allowed to form associations but may freely join associations and bargain collectively in association with unions that have been formed by citizens. Also, Article 28 of the Trades Union Act prohibits non-citizens from being union office bearers.

An employer can also be a labour contractor who provides workers for labour to various individuals or companies. Known as outsourcing agencies, they could be both recruitment agent as well as employer.

Article 2(1) of the Employment Act⁸ also sets out a definition of a “contractor for labour” as a means of creating better accountability for employers who are responsible for hiring foreign migrant workers. This is particularly relevant in a context where outsourcing agencies or labour brokers often double up as employers and where accountability becomes difficult due to a web of complex contractual relationships between contractors and sub-contractors and employers.

⁷ This contradicts the *ILO Hours of Work (Industry) Convention* (No. 1) of 1919 which introduced a maximum standard working time of 48 hours per week and eight hours per day as an international norm. In several exceptional cases, working time is allowed to exceed these limits, as long as daily working time remains not higher than ten hours, and weekly working time not higher than 56 hours

⁸ There are currently some proposed amendments to the Employment Act.

Minimum Wages Order 2020

The Minimum Wages Order 2020 was gazetted on 10 January 2020 and took effect on 1st February 2020. It states that the minimum rate payable to employee who works within the 16 city councils and 40 municipal councils will be RM5.77 an hour or RM1,200 per month. The rates payable for a four-, five- and six-workday week will be RM69.23, RM55.38 and RM46.15 respectively (see Chart 1).

The gazette states that the minimum wage rates payable for those outside the listed areas will be RM5.29 an hour or RM1,100 per month, with the rates payable for a four-, five- and six-workday week being RM63.46, RM50.77 and RM42.31 respectively (see Chart 2)

Chart 1				
Monthly	Minimum wages rates			Hourly
	Daily			
	Number of working days in a week			
	6	5	4	
RM1,200.00	RM46.15	RM55.38	RM69.23	RM5.77

Chart 2				
Monthly	Minimum wages rates			Hourly
	Daily			
	Number of working days in a week			
	6	5	4	
RM1,100.00	RM42.31	RM50.77	RM63.46	RM5.29

Source: Human Resources Ministry

Workers' Minimum Standards of Housing and Amenities (Amendment) Act 2019 - (Act A1604)

The amendments to Act 446 were passed in the Dewan Rakyat on July 15, 2019 and in the Dewan Negara on July 31, 2019, and gazetted on September 18, 2019.

The workers' Minimum Standards of Housing and Amenities Act A1604 (Amendment) 2019 has been enforced since 1st June 2020 and would cover Peninsular Malaysia as well as Federal Territory of Labuan. The government of Malaysia has granted three (3) month suspension till 31st August 2020 to give employer an opportunity to make necessary preparations. The enforcement of the new amendment therefore will be fully effective 1st September 2020. Act 446 previously covers housing and accommodation of workers in the plantation and mining sectors. These include a requirement to obtain a Certificate for Accommodation from the Director General before providing accommodation for employee. Employers who provide accommodation are required to, among other things:

- (a) provide separate accommodation to employees of the opposite gender;
- (b) to take necessary preventive measures to ensure employees' safety and well-being;
- (c) to take fire safety measures in accordance with the relevant written laws;
- (d) to ensure that the electrical wiring systems comply with safety requirements in accordance with the relevant written laws; and
- (e) to ensure that the employees receive the necessary medical assistance

Under the amendment, the directors, compliance officer, partner, manager, secretary such individuals may be charged severally or jointly with the company for offences committed by the company. Employers may be liable to a fine not exceeding RM 50,000 for failing to transport safely and without delay employees employed on the estate who requires medical treatment to and from the hospital

The new amendment also seeks to improve the GUIDELINES FOR FOREIGN WORKERS ACCOMODATION 2018 by the department of Labour of Peninsular Malaysia (JTKSM), which covers the minimum standard accommodation space,

basic facilities for workers' accommodation and elements of security and hygiene.

Employment Injury Scheme

Effective 1 January 2019, employers in Malaysia that hire foreign workers (excluding domestic servants), including expatriates, with valid documents, must register their employees with SOCSO (the country's Social Security organisation) and contribute to the Employment Injury Scheme. Under the Employment Injury Scheme, foreign workers, including expatriates, are eligible for medical benefits, temporary/permanent disablement benefits, constant-attendance allowance, dependent's benefits, and rehabilitation. However, benefits from the Invalidity Scheme do not extend to foreign workers, including expatriates.

All employers whether principal or immediate employers, are required to register and contribute for their foreign workers starting from 1 January 2019. For existing foreign workers in Malaysia who have valid Foreign Workers Compensation Scheme (FWCS), they have to be registered with SOCSO by their employers a day after the expiration of FWCS, subject to the end of the cooling off period on 31 December 2019. Beginning 1 January 2020, all employers shall register with SOCSO despite their foreign workers are still covered under FWCS.

Occupational Safety and Health Act (Act 514)

The Occupational Safety and Health Act (OSHA) 1994 is the main law governing workplace safety and health issues in Malaysia and provides "for securing the safety, health and welfare of persons at work", to protect others from unsafe work practices. This act applies to all sectors listed in the Schedule 1 of the Act with exception to work on board ships or the armed forces because they are covered under other specific legislations. Requirement of this Act does not discriminate between local and migrant workers.

Industrial Relations Act 1967

Governs the relationship between employers, workers and their trade unions including setting collective bargaining rules, and procedures for handling trade disputes and guaranteeing the freedom of association.

Contracts Act 1950

Governs any kind of lawful agreement either by act, written or oral between two or more free consenting parties in exchange for a consideration. This includes employment contracts between agents or employers and migrant workers or domestic workers.

Forced labour and TIP-related crimes in Malaysia (Underlying offences)

Forced labour and TIP typically involves the commission of a range of crimes. Depending on available evidence, traffickers may be prosecuted for one or more of the crimes below, either together with or instead of being charged with trafficking.

PENAL CODE (ACT 574)

Offences relating to exploitation and violence:

CHAPTER XVI: OFFENCES AFFECTING THE HUMAN BODY (SECTION 299 - 377E)	
Offences Affecting Life (Section 299 - 318)	
Section 299	Culpable homicide
Section 300	Murder
Hurt (Section 319 - 338)	
Wrongful Restraint and Wrongful Confinement (Section 339 - 348)	
Criminal Force and Assault (Section 349 - 358)	
Section 351	Assault
Kidnapping, Abduction, Slavery and Forced Labour (Section 359 - 374)	
Section 359/363	Kidnapping
Section 374	Unlawful Compulsory Labour
Hostage Taking (Section 374A)	
Rape (Section 375 - 376B))	
Section 375	Rape
Section 375/511	Attempted Rape

Unnatural offences (Section 377 - 377E)
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CHAPTER XVII: OFFENCES AGAINST PROPERTY (SECTION 378 - 462)	
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Section 383 - 389	Extortion
Section 415 - 420	Cheating (Fraud)

CHAPTER XVIII: OFFENCES RELATING TO DOCUMENTS AND TO CURRENCY NOTES AND BANK NOTES (SECTION 463 - 489D)	
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Section 463	Forgery
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CHAPTER XXII: CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE (SECTION 503 - 510)	
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Section 503	Criminal Intimidation
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CHAPTER XXIII: ATTEMPTS TO COMMIT OFFENCES (SECTION 511)	
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Section 511	Punishment for attempting to commit offences punishable with imprisonment
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Policies and Procedures

In 2009, MAPO published the National Action Plan against Trafficking in Persons (2010–2015). The Plan contains several guiding principles: government ownership of the issue, civil society participation, human rights-based treatment of victims, interdisciplinary coordination at the governmental level and with international organizations and nongovernmental organizations, and systematic evaluation and sustainability. The nine program areas in the Plan include “strengthening legal mechanisms, joint action of law enforcement agencies, prevention, protection and rehabilitation, capacity-building and partnership.” It appears that a new plan for the period 2015 to 2020 has not yet been finalized or published.

In November 2013, Standing Operating Procedures (SOP) for enforcement agencies with respect to human trafficking, and a separate SOP document related to the prosecution of trafficking offenses, were issued by MAPO. MAPO also issue other policies as needed, such as a March 2014 policy statement regarding allowing labour trafficking victims to work in Malaysia. This preceded the 2015 legislative changes related to permission to work.

► 2.2. Regional frameworks on forced labour and TIP

<p>Regional framework ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)</p>	<ul style="list-style-type: none"> The aim of the ACTIP is to prevent and combat trafficking in persons and to ensure just and effective punishment of trafficking; protect and assist victims of trafficking in persons, with full respect for their human rights; and promote cooperation among the parties in order to meet these objectives.
<p>Regional framework ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)</p>	<ul style="list-style-type: none"> Overall objective is to improve quality of life for ASEAN people through workforce with enhanced competitiveness and engaged in safe and decent work derived from productive employment, harmonious and progressive workplace, and adequate social protection.
<p>ASEAN's Labour Ministers Work Programme 2016 - 2020</p>	<ul style="list-style-type: none"> Reduced incidence of workers in vulnerable situations, including forced labour, in ASEAN Member States is one of the intermediate targets by 2020.
<p>Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime</p>	<ul style="list-style-type: none"> The Declaration acknowledges the growing scale and complexity of irregular migration challenges both within and outside the Asia Pacific region and supports measures that would contribute to comprehensive long-term strategies in addressing the crimes of people smuggling and TIP as well as reducing

	<p>migrant exploitation by expanding safe, legal and affordable migration pathways.</p> <ul style="list-style-type: none"> • The Declaration affirms respective international legal obligations and encourages members to identify and provide safety and protection to migrants, victims of human trafficking, smuggled persons, asylum seekers and refugees, whilst addressing the needs of vulnerable groups including women and children, and taking into account prevailing national laws and circumstances. • Members are encouraged to “effectively criminalise people smuggling and trafficking in persons, in accordance with relevant international law, and regional instruments.” • The need to engage constructively with the private sector to combat TIP and related exploitation, including by promoting and implementing humane, non-abusive labour practices throughout their supply chains.
<p>ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children</p>	<ul style="list-style-type: none"> • The Plan of Action is intended to Strengthen the rule of law and border control among ASEAN Member States; • Intensify efforts to prosecute trafficking in persons cases; • Strengthen regional cooperation based on shared responsibilities to effectively address demand and supply that fosters all forms of trafficking in persons, especially women and children, that leads to trafficking; and • adopt and implement appropriate labour laws or other mechanisms that promote and protect the interests and rights of

	workers to reduce their risk
<p>Gender Sensitive Guidelines for Handling of Women Victims of Trafficking in Persons</p>	<ul style="list-style-type: none"> • Countries should review and modify policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws on women (section 4.8) • Countries of origin should examine ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by countries should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrants (section 4.9).
<p>ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases</p>	<ul style="list-style-type: none"> • One of the 2007 Senior Officials Meeting on Transnational Crime Work Plans was to implement the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children which commits ASEAN Member States to strengthen the legal and policy framework around trafficking in order to promote more effective national responses as well as greater regional and international cooperation especially in relation to the investigation and prosecution of trafficking cases and the protection of victims through the development of an ASEAN Handbook on International Cooperation. • The purpose of this Handbook is to provide criminal justice officials within the ASEAN region with an introduction to the key tools of international cooperation

	<p>and to provide guidance on how these tools might be relevant to the investigation and prosecution of trafficking in persons or related crimes.</p>
<p>ASEAN Practitioner Guidelines on an Effective Criminal Justice Response to Trafficking in Persons ASEAN</p>	<ul style="list-style-type: none"> • All forms of trafficking in persons and related crimes should be specifically criminalised in accordance with applicable international standards.
<p>Declaration on the Protection and Promotion of the Rights of Migrant Workers</p>	<ul style="list-style-type: none"> • Promote the full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with the laws, regulations, and policies of each country (para. 1) • Promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers (para.8) • Provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states (para. 9). • Establish and promote legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies (para. 14).
<p>ASEAN Declaration Against Trafficking in Persons Particularly Women and Children</p>	<ul style="list-style-type: none"> • Acknowledge social, economic and other factors that cause people to migrate making them vulnerable to trafficking in persons. • Adopt measures to protect the integrity

	<p>of their respective passports, official travel documents, identity and other official travel documents from fraud (para. 2)</p> <ul style="list-style-type: none"> • Intensify cooperation among our respective immigration and other laws enforcement authorities (para. 4)
<p>Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region (COMMIT)</p>	<ul style="list-style-type: none"> • Applying national labour laws to protect the rights of all workers based on the principles of non-discrimination and equality (para. 25) • Encouraging destination countries...to effectively enforce relevant national laws in order to reduce acceptance of exploitation of persons that fuels the continuing demand for the labour of trafficked persons... (para. 26)

▶ **2.3. Questions for self-evaluation**

- What are some of the underlying offences to labour trafficking?
- When is it useful to investigate and prosecute a trafficker for those underlying offences?
- Why is it important to know and understand the procedural laws involving trafficker and exploiter?
- In what situation that an enforcement officer may enter and search any premises without warrant and how?

▶ **2.4. Activities**

Activity 1: Case study and group discussion - National Legal Framework

Time: 15 minutes

Objectives

After this activity the learners should be able to:

- Become familiar with the National Legal Framework

Presenter's note

Provide each group with a copy of the case study or show it on the power point

Case study

W from Indonesia was told by a friend that there are well paying jobs in the oil palm industry in Malaysia. He was told that he would be provided with housing and medical care and that the children would be able to attend the local school. After paying a huge amount of money for the recruitment fee and transport to Malaysia, he and his wife and two young boys travelled to Malaysia to work on a oil palm plantation. Upon arrival, he was asked to sign a contract which was in English and that he did not understand. Their passports were also seized. They were given a small room without any running water or toilet and there was a communal kitchen and a pit toilet. The camp where W worked had a huge fence with a locked gate. They were limiting his freedom of movement and ability to leave the plantation on his days off. On top of the debt owed for recruitment fees and travel expense, he was told that he had to pay for lodging and food for himself and his family. He was told that he had to pay for his overall and gloves. During the harvesting season, his wife and children helped him harvest palm fruit to meet the employer's high harvesting quotas without any extra payment. W's wife fell ill but was not allowed to visit the local clinic which was 30 km away. When he went to the manager to ask if he can take his wife to the doctor he refused and also refused to pay W for the past 4 months. One evening W took his family and escaped. With no documentation he and his family were picked up by the police in the next town and arrested.

1. Explain the objectives.
2. Introduce the topic
3. Ask the participants to break up into small groups (between 4 and 6)
4. Ask them to identify the relevant crime that was committed and to list as many of the Malaysian laws as well as International Law that are applicable to this case study as possible to be able to prosecute perpetrators.

5. Ask each group to give feedback.
6. As one of the participants to list all the laws while the groups are giving feedback
7. Conduct a general discussion
8. Summary

Things to use during the activity

- Power point presentation

Activity 2: Brainstorm competition - Underlying offences

Time: 15 minutes

Objectives

After this activity the learners should be able to:

- List some of the underlying offences to trafficking in persons;

Presenter's note

9. Explain the objectives.
10. Introduce the topic
11. Ask the participants to break up into small groups (between 4 and 6)
12. Ask them to list as many of the underlying offences to forced labour as possible and to write them on a flipchart paper. Give them 5 minutes.
13. Ask each group to give feedback. See which groups has the most answers and is the most creative in their answers.
14. Conduct a general discussion
15. Summary

Things to use during the activity

- Power point presentation

3 How can law enforcers identify potential cases of forced labour and trafficking in persons?

▶ Learning objectives

At the end of the module, the participants will have the necessary knowledge to:

- Understand who are the victims of forced labour and TIP
- Understand who are the perpetrators of forced labour and TIP
- Understand and describe why rapid and accurate identification is critical to the whole effort of addressing forced labour and trafficking in persons
- Recognise the difficulties involved in identifying forced labour and trafficked victims and how to address them
- Familiarize with the national guidelines on TIP indicators
- Identify possible methods to control victims of labour exploitation and TIP

▶ Chapter outline

- 3.1. Potential victims of forced labour and TIP
- 3.2. Perpetrators of forced labour and TIP
- 3.3. Importance of victim identification
- 3.4. Challenges in victim identification and means of addressing them
- 3.5. Indicators of forced labour and TIP
- 3.6. Questions for self-evaluation
- 3.7. Activities

▶ 3.1. Potential victims of forced labour and TIP

Any person can be a victim of forced labour and trafficking in persons. Men, women, children, even professional people can be exploited. There are however certain groups or people who are more vulnerable to these abuses.

Below is a non-exhaustive list of economic sectors in which forced labour have been reported as significant problem in Malaysia:

- Agriculture and plantations
- Construction
- Domestic service and other care and cleaning work
- Factory work
- Restaurants and catering
- Sex and entertainment industry
- Various forms of informal economic activities, such as organised begging or hawking

A significant number of young women are recruited for work in Malaysian restaurants and hotels, some of whom migrate through the use of "Guest Relations Officer" visas, but subsequently are coerced into Malaysia's commercial sex trade. Such women from China are nicknamed "China Dolls".⁹ Many Malaysian labour outsourcing companies apparently recruited excess workers, who were then often subject to conditions of forced labour. Some Malaysian citizens are trafficked internally and abroad to Singapore, Hong Kong, France, and the United Kingdom for commercial sexual exploitation.¹⁰ There were approximately two million documented migrant workers in Malaysia in 2009, and an additional estimated 1.9 million who were undocumented.

⁹ Chan Li Leen (21 January 2011). "Even non-Chinese are falling for the charms of China Dolls". The Star, Malaysia. Archived from the original on 23 January 2011. Retrieved 19 January 2020

¹⁰ "Malaysia". Trafficking in Persons Report 20109. U.S. Department of State Office to Monitor and Combat Trafficking in Humans, retrieved 19 January 2020.

Many migrant workers in plantations, construction sites, textile factories, and employed as domestic workers throughout Malaysia experienced restrictions on movement, deceit and fraud in wages, passport confiscation, or debt bondage, which are practices indicative of forced labour. Some Malaysian employers reportedly did not pay their foreign domestic workers three to six months' wages to recoup recruitment agency charges, making them vulnerable to forced labour and trafficking.

Refugees were particularly vulnerable to trafficking, and Malaysians from rural communities and indigenous groups were also vulnerable as in the case of the Wang Kelian tragedy in 2015.¹¹ According to the 2010 US TIP report the People's Volunteer Corps (RELA) continued to conduct raids targeting illegal migrant communities and detained refugees, asylum seekers, and trafficking victims along with allegedly irregular migrants and foreign prostitutes.

▶ 3.2. Perpetrators of forced labour and TIP

While many of Malaysia's forced labour and TIP offenders are individual employers or businessmen, large organised crime syndicates are also behind some of the trafficking of foreigners in Malaysia.

- **Employers** – This can be large scale or small businesses, even individuals. The first part of the definition of forced labour emphasize that forced labour is work, meaning there is an employer and employee, and that indicators of forced labour are present in these employment. Therefore, all forced labour cases, whether trafficking or non-trafficking, involve employers.
- **Intermediaries or sub-agents** – In many forced labour cases workers rely on intermediaries or sub-agents to ensure job opportunities. This group of people may be involved in deceiving workers and may be part of the group who commit TIP crimes.
- **Informal Networks** – small criminal groups that include business owners, neighbours, friends even family members for TIP

¹¹ Wang Kelian is a name of a village located in the northern part of Malaysia. In May 2015, the Malaysian police announced the discovery of human trafficking camps and mass graves in this village. There were reasonable grounds to believe that a human trafficking syndicate had committed these crimes in Malaysia and Thailand from 2012 to 2015. Nation, 27 March 2019

- **Large-scale Organised Criminal Networks** – control all forms of trafficking and smuggling. Criminal networks recruit and transport victims from one country and sell them in another.

▶ 3.3. Importance of victim identification

The following are the main reasons why it is critically important to be able to accurately and quickly identify victims of forced labour and TIP:

Humanitarian duty

Analysis of cases from around the world overwhelmingly proves that forced labour and TIP victims repeatedly suffer grave levels of physical, sexual and psychological abuse at the hands of traffickers. This situation creates a duty on front-line law enforcement officials to take all possible steps to identify victims or potential victims of forced labour and TIP in order to rescue them from their exploitation and abuse or to prevent it from occurring in the first place.

Legal duty

International law provides victims of crime with a fundamental right of access to justice in respect to the crimes that are committed against them. If victims of forced labour and TIP are not quickly and accurately identified, they cannot be rescued from their exploitation and, if they are not rescued, they cannot exercise this right.

More specifically, in 2002, the United Nations High Commissioner for Human Rights (UNHCHR) published the Principles and Guidelines on Human Rights and Human Trafficking.¹² This document sets out the international standards by which victims of trafficking should be treated. Guideline 2 (i) calls upon States to

Develop guidelines and procedures for relevant State authorities and officials such as police, border guards and immigration officials and

¹² Text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1)

others involved in the detection, detention, reception and processing of irregular migrants to permit the rapid and accurate identification of trafficked persons

Guideline 2(ii) calls upon State authorities to provide appropriate training to those officials in the identification of trafficked persons and the correct application of the guidelines and procedures outlined above

The ILO Forced Labour Protocol (P29), which supplements the Forced Labour Convention 29, requires Members to take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support (Article 3).

Investigative Opportunity

At the practical investigative level, increased rates of identification and rescue of victims will provide greater opportunities to gather intelligence and or evidence with which to investigate and detain the exploiters and traffickers. This will in turn assist in stopping the practice of forced labour and TIP.

Victim protection

Protection begins with proactive identification, withdrawal of the victim from an exploitative situation, care and protection, sometimes followed by participation in legal proceedings against the trafficker, and ending with reintegration or safe repatriation. Identifying trafficked persons is vital to ensure that they are granted access to protection and support services.

If a victim of trafficking or forced labour is not identified as such, the victim may be treated as an irregular migrant or criminal (since many are forced by the traffickers to engage in various types of criminal activities), and not provided with protection and support. If basic needs are not met, a victim of trafficking may not recover from their victimization, and may not be in a position to provide evidence. Without evidence and testimony from trafficked persons, it is difficult to prosecute a case.

▶ 3.4. Challenges in victim identification and means of addressing them

Victims may not necessarily exhibit physical signs of abuse

Psychological coercion are not easy to recognize when dealing with victims. It is however, a powerful means of control for the abusers and they exploit the vulnerabilities of the victims. For instance, victims may be coerced to stay in abusive working conditions by threatening that their work permit will not be renewed, or salaries will be withheld if they don't obey the employer. Another form is that workers may be threatened that they will be reported to the authorities regarding their legal status. It's not because a worker can leave the work premises or has a mobile phone, that he or she is not in forced labour.

Law enforcers should be mindful of these psychological coercion when screening victims for forced labour or TIP. Interview questions should also include these indicators.

Forced labour and TIP victims are hard to see and reach

It is very difficult for any law enforcement official to identify victims of forced labour and TIP, in part because some are hidden from the public eye. Forced labour and TIP are violations that take place in private factories, private homes, on farms, plantations, brothels, geographically isolated areas and shifting workplaces such as construction sites. They often affect discriminated groups of the population, whose protection is of low priority to the government as well as society as a whole. For law enforcement officers as well as victim assistance organisations, it is difficult to reach likely victims who work in an isolated environment.

Cases in hard-to-monitor areas may only attract law enforcement attention through reports from outsiders. Law enforcers should take these reports seriously and investigate for forced labour and TIP to end the cycle of exploitation. Law enforcers should also strengthen its cooperation with trade unions and NGOs who are dealing with the vulnerable groups.

Forced labour may not happen at the beginning of the work relationship

With forced labour it is extremely difficult as workers may originally be in a situation that is legal with fair labour practices. Situations may change after they are employed when passports are taken away, workers are underpaid, forced to work long hours under dangerous or extremely bad working conditions, when they are faced with physical or sexual abuse.

This is especially true for female workers, especially domestic workers who work in private spaces who may suffer rape and sexual abuse in the workplace. Workers may receive loans at exorbitant interest rates that most migrant workers could not afford to pay back and could not return to their countries of origin that can result in bonded labour.

Enforcement authorities will often seek trafficking characteristics in a forced labour victim, despite some forced labour cases not meeting trafficking criteria. This may lead to a lack of identification of forced labour and more hardship for the victim.

Coordination between DOL and other law enforcement agencies is important as DOL would be able to distinguish labour violations throughout the employment of the worker. When screening for victims, look at indicators of abusive working and living conditions. No worker would voluntarily subject themselves into these situations, and perhaps there are forms of threats of penalty involved that could signify forced labour.

Organized crime might be involved

With TIP, traffickers, smugglers and labour exploiters increasingly co-operate closely with each other which makes it harder to distinguish between them. Labour exploiters and traffickers use methods that are deliberately intended to make it difficult for law enforcement officials to detect the forms of crime.

Dismantling organized crime takes time, expertise, resources and networks. Law enforcers should spot patterns in cases of FL and TIP involving certain individuals of group such as the methods and promises used in recruitment, transport, and exploitation in human trafficking cases. Work with specialized units in the government of Malaysia as well as countries of origin to investigate the cases. Ensure the safety of the victim and her/his family and loved ones.

Lack of cooperation from the victims

Forced labour often occurs when workers are not under the protection of the law due to their irregular status. They may ignore their rights and the assistance they are entitled to receive. Besides, they may be led by their exploiters to be afraid of law enforcement officers and avoid their contacts, even more if they belong to a discriminated group.

Victims' fear of authorities as well as the lack of faith in justice systems. Many victims are likely to be too scared and distrustful of law enforcement officials to honestly answer their questions.

The law enforcement agencies should apply the principle of non-discrimination in its operations. Understanding that abuses will continue unless the perpetrators are punished emphasize the importance of looking after the protection of the victim. Law enforcers should ensure that those who are found without legal documents are screened for indicators of forced labour and TIP, so the punishment of the perpetrator is realized. This is a victim-centric approach to enforcement.

Victims may be under the instructions of their traffickers and exploiters to provide misleading information to officials. The reluctance of victims to come forward due to fear for their life or for the life of their loved ones.

Exert all efforts to understand how the perpetrator may be controlling the victims. Apart from using the indicators of forced labour and TIP, use interview techniques that could reveal the relationship between the potential victim and the perpetrator, causes of potential victim's fear to cooperate, situations of family or loved ones. The law enforcer should not use intimidation or threats to get the information she/he needs and show empathy to the situation of the potential victim instead.

Victims’ lack of awareness of their rights and how to access justice. Some victims’ also fear of becoming undocumented and homelessness given the extensive dependency on employers for accommodation and work permit sponsorship.

Explain to the victim their legal rights to cooperate or otherwise, the protection allowed to them by the national laws, including the services provided to the victims from the ATIPSOM (e.g. shelter, right to work, etc) and the assessments that have to be made to determine eligibility for these services.

There are some indicators that can assist law enforcement officials to overcome this challenge. Indicators are signs that suggest a case may be one of forced labour or TIP. Indicators are not proof of the crime but they are the starting point for investigation.

▶ 3.5. Indicators of forced labour and trafficking

Forced labour

Recall in Module 1 that forced labour:

- ✓ Involves any type of work
- ✓ By any person, regardless of age, nationality and legal status
- ✓ **Done involuntarily**
- ✓ **Under the menace or threat of a penalty**

In terms of forced labour, the law enforcers’ duty is to check for presence of any indicator for both **involuntariness** and **menace/threat of penalty**, and in the end, these are how the information are used:

No involuntariness indicator, no menace/threat of penalty indicator	Not forced labour
With at least 1 involuntariness indicator, no menace/threat of penalty indicator	Not forced labour
No involuntariness indicator, with at least 1 menace/threat of penalty indicator	Not forced labour
At least 1 involuntariness indicator, at least 1 menace/threat of penalty indicator	FORCED LABOUR

Simply lacking alternative economic opportunities or not leaving because of poverty would not be considered symptomatic of forced labour unless the elements of coercion or lack of consent are present.

Key points on the indicators

- Indicators are **signs** that suggest a case may be one of forced labour or TIP.
- No single indicators on its own will answer the question of whether a person has been trafficked or exploited for labour purposes.
- Indicators are not proof of the crime; they are the starting point for investigation.

Indicators for involuntariness

(Any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.)

Involuntariness Indicators	Example of questions to ask	Example of evidence
<p>Deceived into entering that employment by false promises about work</p> <p><i>Deception involves deceit surrounding the nature of the work, working conditions, living conditions and/or wages.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> What was promised by the recruiter or employer in terms of type of work, identity of employer, working hours, pay, living arrangements, etc? Are any of these not fulfilled in the actual employment? 	<ul style="list-style-type: none"> <input type="checkbox"/> Contract / written communication about the job, including phone or social media messages <input type="checkbox"/> Embassy records about approved employment of the victim <input type="checkbox"/> Previous reports about recruiter or employer on deception/contract substitution
<p>If child: False promises made to the child or their parents, concerning school attendance or the frequency of visits by or to their parents.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> What was promised by the recruiter or employer in terms of type of work , working hours, pay, living arrangements, support for education? Are any of these not fulfilled in the actual employment? 	<ul style="list-style-type: none"> <input type="checkbox"/> If child, communication between parent and the recruiter/employer about work and living arrangement for child
<p>Contract substitution</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Is there a contract in the workers' language signed before starting work? <input type="checkbox"/> What are the terms and conditions of employment? 	<ul style="list-style-type: none"> <input type="checkbox"/> Copy of new contract / written agreement

	<input type="checkbox"/> Has these terms and conditions changed?	
Kidnapped / blackmailed to work for the employer	<input type="checkbox"/> How did the victim find the employer? <input type="checkbox"/> Did someone use force/blackmail to get he victim to work for the employer? <input type="checkbox"/> Has the worker attempted to run away? <input type="checkbox"/> Are the living area and workplace heavily guarded? <input type="checkbox"/> Has the victim contacted family members or friends?	<input type="checkbox"/> Police report filed by family members about missing person <input type="checkbox"/> Evidence about the blackmail
Excessive volume of work or tasks beyond what can reasonably be expected within the framework of national labour law	<input type="checkbox"/> How many hours of overtime per week did the victim incur? <input type="checkbox"/> Check if in compliance with the labour laws <input type="checkbox"/> How often is the victim asked to work overtime?	<input type="checkbox"/> Time card <input type="checkbox"/> Payslip with salary deduction <input type="checkbox"/> Contract / written communication from employer <input type="checkbox"/> Company notice boards about overtime
Degrading living conditions	<input type="checkbox"/> Pertaining to the dimension and provisions of the housing, does it comply with the Minimum Housing Standards and	<input type="checkbox"/> DOL report about the housing and accommodation

	<p>Amenities Act?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Are there separate rooms for male and female workers? <input type="checkbox"/> Are there available clean drinking water? <input type="checkbox"/> Is the accommodation, unhealthy and overcrowded? <input type="checkbox"/> Does the victim have privacy in the housing? 	
<p>Limitation on freedom of movement</p> <p><i>A common means by which labour is extracted by duress from workers is through their confinement. Workers are locked up, guarded to prevent them from escaping, have their movements controlled outside the workplace. Communication with family and friends are also restricted.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the victim have freedom of movement? <input type="checkbox"/> Is the worker locked up at the workplace? <input type="checkbox"/> Is the worker forced to sleep at the workplace? <input type="checkbox"/> Are there visible signs which indicate that the worker is not free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints? <input type="checkbox"/> Is the worker constrained to leave the workplace? <input type="checkbox"/> Does the worker have days off? <input type="checkbox"/> Can the victim freely contact 	<ul style="list-style-type: none"> <input type="checkbox"/> Photo of working, living and sleeping areas <input type="checkbox"/> Presence of armed guards or barbed wires <input type="checkbox"/> Worker has no mobile phone <input type="checkbox"/> If worker suddenly has mobile phone, check call logs <input type="checkbox"/> Logbooks for in/out of the workplace <input type="checkbox"/> Check with workers' closest friends in Malaysia how often they see the worker <input type="checkbox"/> Timesheets <input type="checkbox"/> Payslips (check no. of days

	friends and family?	used for computation – to see if there is no day off) <input type="checkbox"/> Check when the last time the victim contacted family members
<p>“Excessive dependency” on the employer</p> <p><i>The issue of dependency is difficult as some dependencies e.g. reliance on employer for food and lodging may be created by the law and could be systemic. For example, work permits tying workers down to one employer are also an example of dependency created by the legal framework.</i></p>	<input type="checkbox"/> Does the victim hold her/his own money from wages? <input type="checkbox"/> Can the victim freely choose where to buy her/his basic necessities? <input type="checkbox"/> Does the victim have the option to choose her/his accommodation? <input type="checkbox"/> Can the victim withdraw her/his own money anytime from bank account without asking permission from the employer?	<input type="checkbox"/> Payslip <input type="checkbox"/> Bank account <input type="checkbox"/> ATM with victim <input type="checkbox"/> Receipts of purchases from the employers’ store <input type="checkbox"/> Receipts for house rents
<p>Working under degrading and hazardous conditions in severe breach of national laws</p>	<input type="checkbox"/> Are there violations of occupational safety and health standards in the workplace? <input type="checkbox"/> Is the victim provided with PPEs and paid for by the employer (should be the case)? <input type="checkbox"/> Did the victim know about the hazardous nature of the job	<input type="checkbox"/> OSH report <input type="checkbox"/> Photo of work environment and PPEs provided <input type="checkbox"/> Payslip with PPE deduction <input type="checkbox"/> Contract/written communication mentioning about nature of the job

	before accepting the job?	
Overtime more than allowed by national law under some form of threat for non-compliance of the worker	<input type="checkbox"/> How many hours of overtime per week did the victim incur? <input type="checkbox"/> Check if in compliance with the labour laws <input type="checkbox"/> How often is the victim asked to work overtime?	<input type="checkbox"/> Time card <input type="checkbox"/> Payslip with salary deduction <input type="checkbox"/> Contract / written communication from employer <input type="checkbox"/> Company notice boards about overtime
Overtime in order to earn at least the minimum wage	<input type="checkbox"/> How many hours of overtime per week did the victim incur? <input type="checkbox"/> How much is the hourly rate? <input type="checkbox"/> Compute if normal 8 hours work-day give at least minimum wage	
Wage retention <i>This creates coercion that often acts to prevent a worker from exercising their right to leave an employer. Workers feel that they stand to lose already earned wages if they leave.</i>	<input type="checkbox"/> Does the worker have a regular employment contract? If not, how are wages being paid? <input type="checkbox"/> Is there any illegal wage deduction? <input type="checkbox"/> Has the worker received any wage at all? <input type="checkbox"/> Does the victim receive little or no payment? <input type="checkbox"/> What is the amount of the wage in relation to national statutory	<input type="checkbox"/> Employment contract <input type="checkbox"/> Emails/ messages from employer or recruiter <input type="checkbox"/> Payslips <input type="checkbox"/> Contract on debts to pay <input type="checkbox"/> ATM card should be with the worker <input type="checkbox"/> Check bank statements on wages paid <input type="checkbox"/> Interview transcripts of workers

	<ul style="list-style-type: none"> requirements? <input type="checkbox"/> Do the workers have access to their earnings? <input type="checkbox"/> Have the workers been deceived about the amount of their wages? <input type="checkbox"/> Are wages paid on a regular basis? <input type="checkbox"/> Is the worker paid in-kind? 	<ul style="list-style-type: none"> <input type="checkbox"/> Payroll review – check for double sets of “books” to mislead auditors
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Indicators for menace/threat of penalty

Menace/threat of penalty Indicators	Example of questions to ask	Example of evidence
<p>Physical violence, including sexual violence</p> <p><i>Forced labour is frequently exacted from workers by the threat and application of physical or sexual violence. Some physical abuses by their employers can potentially amount to torture. Some sexual violence by their employers can potentially amount to rape</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker have any sign of maltreatment, such as bruises? <input type="checkbox"/> Does the worker show signs of anxiety? <input type="checkbox"/> Is there any other sign of mental confusion or traces of violence? <input type="checkbox"/> Do supervisors/employers demonstrate violent behaviour? 	<ul style="list-style-type: none"> <input type="checkbox"/> Medical exam <input type="checkbox"/> Psychiatric test <input type="checkbox"/> Testimonies from neighbours or other co-workers <input type="checkbox"/> Interview family members/friends of the victims as to mental state of victim before and after abuse <input type="checkbox"/> Interview condo/subdivision guards and management <input type="checkbox"/> Interview previous employers of victim

<p>Psychological coercion and isolation</p> <p><i>Verbal and emotional violence, constant insult, isolation, denial of a private life and individual autonomy, prohibition of communication with their family and various forms of daily harassment and reproaches undermine the victim's sense of self-efficacy and personal dignity and increase their sense of vulnerability. This is just as effective as physical violence but much more difficult to identify.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker show signs of anxiety? <input type="checkbox"/> Is there any other sign of mental confusion? 	<ul style="list-style-type: none"> <input type="checkbox"/> Previous reports filed against the employer/supervisor <input type="checkbox"/> Photos of the workplace and living conditions
<p>Restriction on freedom of movement</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the victim have freedom of movement? <input type="checkbox"/> Is the worker locked up at the workplace? <input type="checkbox"/> Is the worker forced to sleep at the workplace? <input type="checkbox"/> Are there visible signs which indicate that the worker is not 	<ul style="list-style-type: none"> <input type="checkbox"/> Photo of working, living and sleeping areas <input type="checkbox"/> Presence of armed guards or barbed wires <input type="checkbox"/> Worker has no mobile phone <input type="checkbox"/> If worker suddenly has mobile phone, check call logs <input type="checkbox"/> Logbooks for in/out of the

	<p>free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Is the worker constrained to leave the workplace? <input type="checkbox"/> Does the worker have days off? <input type="checkbox"/> Can the victim freely contact friends and family? 	<p>workplace</p> <ul style="list-style-type: none"> <input type="checkbox"/> Check with workers' closest friends in Malaysia how often they see the worker <input type="checkbox"/> Timesheets <input type="checkbox"/> Payslips (check no. of days used for computation – to see if there is no day off) <input type="checkbox"/> Check when the last time the victim contacted family members
<p>Threats and intimidation</p> <p><i>Workers are threatened denunciation to the authorities, loss of wages or access to accommodation, further worsening of working conditions or withdrawal of "privileges" such as the right to leave the workplace.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker make statements which are incoherent or show indoctrination by the employer? <input type="checkbox"/> Do the workers report any threat against themselves, their co-workers or family members? <input type="checkbox"/> Is there any sign that the worker is subject to racketeering or blackmailing (with or without the complicity of the employer)? 	<ul style="list-style-type: none"> <input type="checkbox"/> Psychological report <input type="checkbox"/> Interview to colleagues and family members about threats made to the worker or to them <input type="checkbox"/> Undocumented status of the worker <input type="checkbox"/> Investigation report on the recruiter <input type="checkbox"/> Previous reports about the recruiter or the employer <input type="checkbox"/> Company notice boards on overtime and penalty for not carrying it out

	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker show anxious behaviour? <input type="checkbox"/> Are workers forced to work excessive (unpaid) overtime or to carry out tasks that they prefer not to do, and are the workers threatened if they refuse? <input type="checkbox"/> Is the worker in an irregular situation (e.g. migrant workers) and threatened with denunciation to the authorities? 	
<p>Debt bondage and other forms of bonded labour</p> <p><i>Occurs when a person becomes a security against a debt or loan; or when debts are inflated to cause the person to continue working.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker have to repay high/inflated recruitment or transportation fees? If so, are these deducted from the salary? <input type="checkbox"/> Is the worker forced to pay excessive fees for accommodation, food or working tools and safety gear that are directly deducted from the salary? 	<ul style="list-style-type: none"> <input type="checkbox"/> Receipts of recruitment fees and transport fees paid <input type="checkbox"/> Communication about how these fees are to be paid <input type="checkbox"/> Payslips with salary deductions <input type="checkbox"/> Loan receipts and terms and conditions <input type="checkbox"/> Complaints filed about the employer before

	<ul style="list-style-type: none"> <input type="checkbox"/> Has any loan or advance been paid that make it impossible to leave the employer? (Exorbitant interests) <input type="checkbox"/> Are work permits bound to a specific employer? Has there been any complaint about the employer before? 	
<p>Withholding of wages or no payment of wages</p> <p>Systematic and deliberate withholding wages in order to oblige workers not to terminate their employment or not paying the right amounts</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker have a regular employment contract? If not, how are wages being paid? <input type="checkbox"/> Is there any illegal wage deduction? <input type="checkbox"/> Has the worker received any wage at all? <input type="checkbox"/> Does the victim receive little or no payment? <input type="checkbox"/> What is the amount of the wage in relation to national statutory requirements? <input type="checkbox"/> Do the workers have access to their earnings? <input type="checkbox"/> Have the workers been deceived about the amount of 	<ul style="list-style-type: none"> <input type="checkbox"/> Employment contract <input type="checkbox"/> Emails/ messages from employer or recruiter <input type="checkbox"/> Payslips <input type="checkbox"/> Contract on debts to pay <input type="checkbox"/> ATM card should be with the worker <input type="checkbox"/> Check bank statements on wages paid

	<p>their wages?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Are wages paid on a regular basis? <input type="checkbox"/> Is the worker paid in-kind? 	
<p>Retention of identity documents</p> <p><i>Retention of identity or travel documents is a common form of coercion</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Are the identity documents of workers in their own possession? If not, are they kept by the employer or supervisor? Why? <input type="checkbox"/> Does the worker have access to the documents at all time? 	<ul style="list-style-type: none"> <input type="checkbox"/> Passport and other legal documents should be with the worker <input type="checkbox"/> If kept in the locker, worker should have the key to the locker <input type="checkbox"/> If kept by the employer or security guard, is the office accessible 24/7

Trafficking in persons

This section is taken from the National Guidelines on Human Trafficking Indicators. The NGHTI will be used primarily by the five enforcement agencies, namely, the Royal Malaysian Police, the Immigration Department of Malaysia, the Royal Malaysian Customs, the Department of Labour and the Malaysian Maritime Enforcement Agency. The NGHTI will form part of the SOPs for the enforcement agencies which will use the guidelines in the course of their work on the ground when it comes to identifying potential victims of human trafficking.

COUNCIL FOR ANTI-TRAFFICKING IN PERSONS AND ANTI-SMUGGLING OF MIGRANTS (MAPO) National Guidelines on Human Trafficking Indicators (MEANS)		
No.	Types & Definition	Indicators
1 THREATS OR USE OF FORCE OR OTHER FORMS OF COERCION		
1.1	<p>Threats An expression or intention to inflict harm, injury, loss or damage to another person (including financial loss or damage).</p>	<ol style="list-style-type: none"> 1 The person (his/her family, friends or community) is threatened. 2 The person (his/her family, friends or community) is threatened with force. 3 The person is threatened to be imposed with even worse living or working conditions. 4 The person is threatened with termination of employment. 5 The person is threatened with being turned over to authorities. 6 Threats to inform family/community/public.

<p>1.2 Use of force When someone, a situation or an event, forces a person to do something against their will. Use of force usually means that threats have already been inflicted upon the person.</p>	<p>7 The person displays signs of physical harm.</p> <p>8 The person shows signs of mental and psychological harm.</p> <p>9 The person shows signs of sexual assault and/or rape.</p> <p>10 Be disciplined through punishment.</p>
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<p>1.3 Other Forms of Coercion The action or practice of persuading someone to do something by using other forms of force or threats.</p>	<p>11 Debt bondage or unfair debt arrangements.</p> <p>12 Confiscation of documents (e.g. passport, identity documents), money or other possessions.</p> <p>13 Withholding of money and wages.</p> <p>14 Isolation, confinement or surveillance.</p> <p>15 The person's cultural or religious beliefs have been manipulated.</p> <p>16 Forced into illicit/criminal activities.</p>
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2 **ABDUCTION**

<p>2.1 Abduction The action of taking away of a person by persuasion, fraud, or open force or violence.</p>	<p>17 Abduction - the person was brought to Malaysia against his/her will.</p> <p>18 Forced marriage, forced adoption or selling of victim.</p>
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3 **FRAUD OR DECEPTION**

<p>3.1 Fraud or Deception (false, inaccurate, incomplete or misleading information)</p>	<p>19 Nature of the job/location/employer.</p> <p>20 Terms and conditions of work (including type, pay, wages, income, earnings).</p> <p>21 Family reunification (i.e. promise made that the person can be reunited with his/her family at country of destination).</p> <p>22 Housing and living conditions (e.g. poor quality of lodgings which is unhealthy and unsanitary, overcrowded etc).</p> <p>23 The legality of the person's documents, migration status, work or employment contract.</p> <p>24 Travel and recruitment conditions.</p> <p>25 Laws, attitude or conduct of authorities in relation to the person.</p> <p>26 Promises of marriage/adoption.</p> <p>27 Access to education opportunities.</p>
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4

ABUSE OF POWER OR ABUSE OF A POSITION OF VULNERABILITY

- 4.1 Abuse of power by the exploiter who is in a position of power, or the abuse of a person's position of vulnerability by the exploiter.
- "Abuse of a position of vulnerability occurs when an individual's personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believes that submitting to the will of the abuser is the only real or acceptable option available to him or her, and that belief is reasonable in light of the victim's situation. (UNODC 2012)"
- 28 Economic dependency on the exploiter.
 - 29 Psychological or emotional dependency or relationship with the exploiter/employer/family member.
 - 30 Migration documentation/status.
 - 31 Unemployment or economic destitution.
 - 32 Personal characteristics (age, sex, gender, sexual orientation, nationality, ethnic, social origin, mental or physical disability).
 - 33 Cultural or religious beliefs, rituals or practices.
 - 34 Lack of information, education (language) and/or illiteracy.
 - 35 Drug or alcohol dependency or addiction.
 - 36 Control or under strong influence by exploiters.
 - 37 Denial of medical treatment and/or food/drink.
 - 38 Isolation, unfamiliarity with new surrounding or difficulty to live in an unknown area.

5

GIVING OR RECEIVING OF PAYMENTS OR BENEFITS TO ACHIEVE THE CONSENT OF A PERSON HAVING CONTROL OVER ANOTHER

- 5.1 Giving/receiving payments or benefits to achieve the consent of a person having control over another person.
- 39 The person is placed in a situation through payment of fees, dowry, or giving or receiving of gifts to third persons.

1) SEXUAL EXPLOITATION

EXPLOITATION (shall include, at the MINIMUM, the exploitation of the following)

Sexual exploitation - "the obtaining of financial or other benefits through the involvement of another person in prostitution, sexual servitude or other kinds of sexual services, including pornographic acts or the production of pornographic materials". [1]

- 1 The person cannot refuse to service clients, to carry out specific sexual acts or to have unprotected sex.
- 2 The person does not receive money directly from clients or receives only a small portion of the fee paid.
- 3 The person is forced or coerced to use or not to use specific types of contraception.
- 4 The person is forced or coerced to receive medical/pregnancy testing/abortion.
- 5 The person is forced into a position of debt if he/she refuses to carry out the sex act.
- 6 The person was bought and sold for sexual exploitation.
- 7 Works as escort, exotic dancer, massage therapist/masseur, or other forms of work or area commonly associated with sex.
- 8 Works long hours, often leaves during unusual hours, and/or have few days off, if any.

Indicators for Maritime

- 9 The person on board the boat/ship has been kept isolated from the others.

Indicators for Maritime

- 10 The person has been on board the boat/ship for an extensive period of time without having access to land.

Additional indicators linked to sexual exploitation of children:

The Convention on the Rights of the Child identifies the following practices as "sexual exploitation of children":

- (a) *The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) *The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) *The exploitative use of children in pornographic performances and materials.*

- 11 The person being sexually exploited is underage (below 18 years old).
- 12 Engaged in work that is not suitable for children.
- 13 The child does not behave in a way typical of children of the same age (e.g. is showing sexually explicit behaviour).
- 14 The child is pregnant.
- 15 The child appears to be forming unhealthy relationship with adults.
- 16 The child uses drugs/alcohol provided by the exploiter or person related to the exploiter.

EXPLOITATION
(shall include,
at the
MINIMUM,
the
exploitation
of the
following)

Indicators for Maritime

17 The presence of toys, beds and children's clothing in inappropriate places such as brothels and places known for illicit activities.

18 Unaccompanied children carrying telephone numbers for calling taxis.

19 The child on board the boat/ship is accompanied by others who are not related to the child.

Indicators for Maritime

20 The child on board the boat/ship appears to be drugged.

2) FORCED LABOUR OR SERVICES (CONTINUED)

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. [2]

- 21 No employment contract, contract substitution or non-compliance of labour laws.
- 22 Works excessively long hours and/or no day off (not in accordance to relevant laws).
- 23 Does not receive salary or very limited one or have no access to earnings.
- 24 Bad living conditions (eg. unhealthy/unsanitary, overcrowded).
- 25 Very bad working conditions.
- 26 No social protection.
- 27 Hazardous work.
- 28 Wage manipulation.
- 29 Withholding of wages or refusal of payment.
- 30 Debt bondage/bonded labour - the person is expected to use his/her labour or services to repay a debt. The debt is often in excess of the costs involved and often unpayable.
- 31 Restriction of movement and/or confinement to the workplace or to a limited area.
- 32 Retention of passport and identity documents so that the worker cannot leave or prove his or her identity and status.
- 33 The person has to sign an agreement/contract/MOU to allow employer/third party to hold the person's passport and identity documents.
- 34 Threat of denunciation to the authorities (reporting to authorities that the person broke the law).
- 35 (Threat of) physical or sexual violence; this may also include emotional torture like blackmail, condemnation, use of abusive language and so on.

36 The person has been on board the ship for an extensive period of time without having access to land.

37 No access to education.

Additional indicators linked to labour exploitation of children:

38 Child is engaged in work that is not suitable for children (e.g. handling heavy machinery, poisonous chemicals etc).

3) SLAVERY OR PRACTICES SIMILAR TO SLAVERY

"Slavery" shall mean the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised; or "Slavery" shall mean the status or condition of a person over whom control is exercised to the extent that the person is treated like property. [1]

"Practices similar to slavery" shall include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents. [1]

39 The person is being bought and sold, and has no freedom to leave.

40 Debt bondage/bonded labour (the person is expected to use his/her labour or services to repay a debt. The debt is often in excess of the costs involved and often unpayable. A new debt may be incurred when the person is sold.)

41 Forced or servile marriage (Includes marriage in consideration of a payment without the woman's consent, the transfer of a wife to another for value and the inheritance of a wife by another on the death of her husband).

4) SERVITUDE

Servitude "shall mean the labour conditions and/or the obligation to work or to render services from which the person in question cannot escape and which he or she cannot change" [1]

Remarks:- Servitude commonly involves the ill treatment of the person in question. Ill treatment refers to the act of treating someone cruelly or improperly.

42 Person lives with a family which is not hers/his.

43 Never or rarely leaves the house.

44 Never leaves the house without the employer (or someone assigned by the employer).

45 Has no private space, may sleep in a shared or inappropriate space.

46 Be given only leftovers to eat or insufficient/poor quality food.

47 Subjected to insults, abuse, threats or violence.

48 Has to take care of all domestic tasks in the house and/or look after the children/elderly on a daily basis, denied breaks and free time.

49 Person denied or given limited access to communication with family members or people outside of the house.

50 Be reported missing by their employer even though they are still living in their employer's house.

6) ILLEGAL ACTIVITIES

Exploitation of illegal activities - should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, baby selling and other similar activities which are subject to penalties and imply financial gain. [4]

Forced begging, or the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur. [2]

- 57 Person with vulnerabilities (children, elderly, disabled, women who are pregnant or with small children) begging on the street or in public transport.
- 58 Person/Child is punished if he/she does not collect or steal enough.
- 59 Moves everyday in groups of several people/ children, usually of same nationality or ethnicity, especially in popular or touristic places.
- 60 Person/Child working on the streets - selling items, cleaning windshields at traffic lights etc.
- 61 Person/Child forced to engage in illegal activities (snatch-theft, pick-pocketing, shoplifting, burglary, car theft, drug dealing).
- 62 Person/Child have physical impairments - disabled or mutilated.
- 63 Evidence that the person/child in the group has been involved in begging or committing criminal activities in other states or another country over a period of time.
- 64 There appears to be money transferred to third party/parties for the activity of baby selling.

▶ 3.6. Questions for self-evaluation

- Who are the victims of forced labour and TIP?
- Why is it important to be able to identify victims of forced labour and TIP?
- What are the difficulties involved in identifying victims?
- Provide five examples of indicators of a victim of FL.

3.7. Activities

Activity 1: Group discussion - Indicators of forced labour and TIP

Time: 60 minutes

Objectives

After this activity the learners should be able to:

- Explain victims of forced labour and TIP may be identified by law enforcement officials;
- List the general indicators of forced labour and TIP;
- State why corroboration of trafficking in persons indicators is required.

Presenter's note

1. Explain the objectives.
2. Introduce the topic using a power point and discussion.
3. Ask the participants to move into small groups (4 to 6).
4. Ask them to discuss the following questions:
 - Who are the victims of forced labour in Malaysia?
 - How can you identify forced labour and TIP?
 - Make a list of general indicators for forced labour and the different forms of labour trafficking.
 - Provide each group with a different form and ask them to come up with as many indicators as possible
 - Explain why it is important to corroborate the indicators
5. Ask the groups to write their answers on a flipchart paper
6. Ask the different groups to give feedback
7. Conduct a general discussion and ass information that was left out
8. Summary

Things to use during the summary

- Flipchart paper and pens
- Indicators of trafficking handout
- Power point presentations.

Activity 2: Group discussion - Control methods in forced labour and trafficking in persons

Time: 30 minutes

Objectives

The purpose of this activity is to

- Recall the main forms of control of victims of forced labour or TIP cases;
- Describe how a blend of control measures may be used throughout the forced labour/ trafficking process;
- Explain the options for dealing with the main forms of control when investigating forced labour/ trafficking cases.

Presenter's note

1. Explain the objectives.
2. Introduction
3. Ask the participants to break up in small groups (4 to 6 people) Ask them to discuss the following:
 - Discuss the forms of control in forced labour / trafficking cases in Malaysia
 - Identify the evidence that need to be collected to prove these cases
4. Get feedback from each group
5. Discuss the feedback and add any information that was not discussed
6. Conduct a general discussion.
7. Summary

Things to use during the summary

- Power point presentations.

4 How can law enforcers care for the needs of the potential victims of forced labour and TIP?

► Learning objectives

At the end of the module, the participants will have the necessary knowledge to:

- Understand the legal provisions on victim support and protection
- Understand the principle of non-criminalisation of identified victims and describe what this means in practice
- Describe the range and potential consequences of the physical, sexual and psychological harm suffered by victims
- Summarise the assistance that victims are likely to require to address the above and how to provide these to potential victims

► Chapter outline

- 4.1. Legal provisions on protection of victims of TIP and forced labour
- 4.2. Key principles of victim protection
- 4.3. Needs of potential victims
- 4.4. Questions for self-evaluation
- 4.5. Activities

▶ 4.1. Legal provisions on protection of victims of TIP and forced labour

A trafficked person is immune from prosecution in relation to irregularly entering the receiving or transit country, unlawful residence in a country, or his or her procurement or possession of any fraudulent travel or identity document.

Part V of the ATIPSOM Act relates to the care and protection of trafficked persons and makes provision for the appointment of social welfare officers as Protection Officers. There are also provisions relating to protection orders, whereby a person is placed at a shelter home, and for the medical treatment and hospitalization of trafficked persons. A new provision, added by the 2015 amendment legislation, enables trafficked persons to be given permission by MAPO to move freely or to be employed outside of refuges.

Provisions in Part VI of the ATIPSOM Act prohibit media reporting and publication of certain matters and particulars of trafficked persons, and contain rules relating the admissibility in court of various documentary and testamentary evidence.

The 2015 amendment legislation added provisions to this Part that enable a court to order a person convicted of an offense under the Act to pay compensation to the trafficked person. Where there is no conviction, a person can still be ordered to pay any wages in arrears to the trafficked person. In relation to the order of the payment of compensation, subsections 426 (1A), (1B), (1C) and (1D) as well as section 432 of the Criminal Procedure Code shall apply. At the moment this is the judge's prerogative. The ideal situation should be that compensation should be guaranteed.

Non-criminalisation of identified victims of trafficking

Individuals that have been identified as victims of forced labour or trafficking are - in fact and in law - victims of grave crimes whose human rights will have been severely violated and they should be recognised and treated as such.

As victims of serious crime, it is essential that identified victims are not further criminalised as a result of coming to the notice of law enforcement officials.

A non-punishment clause was included in the ILO Forced Labour Protocol supplementing the ILO Convention No. 29:

“Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour”.

The language specifically addresses “unlawful activities” and not “criminal activities”, thus potentially include activities that not only violate criminal laws but also other laws such as administrative law or immigration law. This can include immigration-related, prostitution, drug offenses that are linked to victims’ forced labour situations.

It is common for officials to ignore complaints in relation to passport confiscation or withholding of wages in cases of domestic workers, thereby failing to recognise potential signs of forced labour and instead taking action against those who complained for immigration violations. Workers are most often penalised for being undocumented in the event their employer retains their passport and the employment arrangement ceases.

Given that the work permit renewal process is employer driven, there are also instances reported where employers fail to renew the permits and do not inform the workers about this, accordingly. In the latter case, workers caught are considered to be working “illegally” and criminalised by law enforcers despite the renewal failure being the employer’s fault. The ATIPSOM provides for the non-criminalisation of victims of trafficking in line with the requirements of the ILO Forced Labour Protocol. However, the same victim protection is not available for forced labour under the Criminal Code provision or those whose cases are heard under various different labour laws because they do not meet the ATIPSOM threshold.

International standards

International standards are clear on this point. The United Nations High Commissioner for Human Rights published the Principles and Guidelines on Human Rights and Human Trafficking in 2002. This document is acknowledged

as setting the international standards as to how victims of trafficking should be treated.

The Principles and Guidelines state:

Trafficked persons shall not be:

Detained, charged or prosecuted for:

1. *Their illegal entry into countries of transit or destination*
2. *Their illegal residence in countries of transit or destination*
3. *Their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons*

Duties of law enforcers

What this means in practice for front line law enforcement officials is this:

As soon as an individual either:

- a) Claims with reasonable grounds to be a victim of forced labour or TIP, or;
- b) Is identified as being such by the identification process;
- c) That individual should *not* be arrested or detained but provided with access to the support measures outlined above
- d) If it has been necessary to use temporary arrest or detention powers in order to remove the person from immediate harm and or to ensure their immediate safety, the period of detention should only be very short-term and only for as long as necessary to ensure safety.
- e) As soon as this has been achieved, the victim should be released from temporary arrest or detention and assisted.

Law enforcement officials should be aware that the victim of any crime is one of the most important components of any prosecution. This is normally your primary witness and can sometimes make or break your case.

As all victims of crime, forced labour and TIP victims have the right to seek legal redress for what they have suffered and to be supported and assisted while they navigate through the justice system. Law enforcement officials and all actors in the justice system must make every effort to respect the victim's rights including:

- To the speedy investigation and prosecution of their case. All measures must be taken to avoid unnecessary delays in investigation and prosecution.
- To be treated with compassion and respect for their dignity
- Treat them as a witness and not a perpetrator.
- To be informed about their rights and what protections are available to them
- It is important not to lead witnesses or influence their testimony. It is however important that all victims should be informed in clear and understandable language of the following :
 - Their role in legal proceedings
 - The scope, timing and progress of such proceedings
 - The disposition of their cases
 - Their basic human rights in a language that the victim understands.
 - Procedure to be followed in relation to the investigation and the trial.
 - Regular feedback during the investigation process
 - Date and the time of the trial of his or her case.
 - A basic outline on what is going to happen during the legal proceedings. In most cases victims have never seen the inside of a court room and they do not understand the process.
 - Postponement of any trial.
 - Date on which the accused will be sentenced
- To express their views and concerns whenever their interests are at stake.
- To be properly assisted and supported through judicial proceedings.
- To have their privacy protected
- To physical safety. Measures must be taken to minimize inconveniences to victims, protect their privacy and ensure their safety/the safety of their families from intimidation and retaliation.
- To restitution and compensation for the damage/harm suffered.

- To material, medical, psychosocial and social assistance through government or NGOs. Victims should be informed on the availability of such services.
- To be received by personnel properly trained and sensitized to the needs of the victims.

▶ 4.2. Key principles of victim protection

As a law enforcement officer it is important to realize that the victim of any forced labour or TIP case is your primary witness. They are the ones that can tell you everything about the crime. When working with victims of forced labour and trafficking, one must always remember that these victims are victims of a crime, they are not criminals themselves even though they may have committed offences such as irregular entry or may not have the necessary documentation to be in your country. This could be a challenging situation since the enforcement agencies officers might have different priority i.e. due to key performance indicators or raid operations, they need to take action against the victims for irregular entry, etc. A victim-centred approach puts the victim first and focuses on the needs and rights of the victim of forced labour and TIP. This requires that the victim is:

- not treated as an offender;
- not re-victimized;
- not stigmatized; and
- extended all help and assistance as a matter of right.

Confidentiality and data protection

All support measures are implemented under strict confidentiality rules which define the ways of storing, transferring and using information related to cases of forced labour and trafficking. These practices must conform with the conditions provided for by the national legislation regarding the protection of personal data and shall be used exclusively for the purposes for which they were originally compiled.¹³

¹³ UNODC, Model Law Against Trafficking in Persons, Article 25.

Non-discrimination

Appropriate protection and support should be extended to all victims of forced labour and trafficking without discrimination.¹⁴ Victims must be treated fairly regardless of their race or ethnicity, sex, sexual orientation, age, disability, religious beliefs and practices, political affiliations, social and cultural background, and without prejudice related to the fact that they were exploited or forced to engage in illegal activities.¹⁵

Respect for and protection of human rights¹⁶

According to the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, safeguarding the human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.¹⁷ As trafficking itself can lead to other rights violations, all assistance and protection efforts should seek to restore the victim's rights and prevent further violations without discrimination and re-victimisation.¹⁸

Unconditional support to victims of forced labour and TIP

Ideally, all trafficked persons and victims of forced labour have the right to receive support within the framework of referral mechanism immediately after they are identified as such. However, currently in Malaysia only victims of trafficking are entitled to such support. The provision of care and protection included in ATIPSOM should not be made contingent on the willingness of the victims to cooperate with the investigation/ prosecution of the alleged offender.

¹⁴ OHCHR Guidelines, Guideline 6.

¹⁵ Bulgarian Guidelines; East Africa Guidelines.

¹⁶ Hong Kong Guidelines; East Africa Guidelines; Animus Association Foundation and La Strada International (2010), National mechanism for referral and support of trafficked persons in Bulgaria ("**Bulgarian Guidelines**").

¹⁷ Office of the High Commissioner for Human Rights (OHCHR), Recommended Principles and Guidelines on Human Rights and Human Trafficking ("**OHCHR Guidelines**"), Principle 1.

¹⁸ IOM (2011), Guidelines for Assisting Victims of Human Trafficking in the East Africa Region ("**East Africa Guidelines**").

Principle 8 of the OHCHR Recommended Guidelines sets out obligations of States to protect trafficked persons from further exploitation and to ensure that they have access to adequate physical and psychological care. It is explicitly stated that the principle of care and protection should not be conditional on cooperation by the trafficked person in legal proceedings.

4.3. Needs of potential victims

Before you can work with a victim as your witness it will be important to understand the impact of forced labour and trafficking on such a person and also how to assist these victims.

Trauma inducing experiences include restriction of movement, physical and sexual assault, and threats of violence against a family member. Threats may be implied: for example arranging that the victim witness the abuse of another victim. The power of these threats should not be underestimated. As a result, victims of trafficking may fail to cooperate in the investigation because of fear of repercussions by their traffickers. Post-traumatic stress disorder occurs more in victims of trafficking than other victims because of their exposure to one or more traumatic events over a long period of time.

Traffickers control their victims by making them feel responsible for their own behaviour. As a result, victims often do not self-identify or view themselves as victims of trafficking.

Victims may react to the investigation in a hostile or aggressive way; and may suffer from memory loss resulting in the inability to recall details and discrepancies in story line.

An understanding of the trauma experienced by victims of trafficking and the effect of trauma on the behaviour of victims towards criminal justice practitioners, will prepare a police officer on how to get the testimony of a trafficked person suffering from a range of symptoms. Police officers should not misconstrue this hostility or hesitancy to cooperate as insubordination. Additionally, they should not misconstrue discrepancies in story line as intentionally misleading the police officer

Victims of forced labour and TIP may suffer different types of abuse suffer three types of abuse. They may suffer one or more kinds of abuse:

IMPACT ON THE VICTIMS	
TYPES OF ABUSE	HEALTH CONSEQUENCES
<p><u>Physical Abuse</u></p> <ul style="list-style-type: none"> • Murder • Physical assault • Torture • Deprivation - food, sleep, medical care • Unlawful imprisonment 	<p><u>Damage to Physical Health</u></p> <ul style="list-style-type: none"> • Loss of life • Severe physical injuries • Mutilation and physical incapacity • Malnutrition • Worsening of existing illnesses or injury
<p><u>Sexual Abuse</u></p> <ul style="list-style-type: none"> • Vaginal, oral and anal rape • Forced prostitution • Un-protected sexual intercourse • Un-wanted pregnancies • Forced abortions 	<p><u>Injury to sexual health</u></p> <ul style="list-style-type: none"> • Infection with HIV/AIDS • Other forms of sexually transmitted diseases • Damage to sexual organs • Damage to reproductive organs
<p><u>Psychological abuse</u></p> <ul style="list-style-type: none"> • Isolation - linguistic and social • Induced fear of authorities and isolation from assistance • Deprivation of liberty • Threats of violence and other forms of coercion • Substance dependency • Emotional manipulation 	<p><u>Damage to mental health</u></p> <ul style="list-style-type: none"> • Traumatization • Suicidal tendencies • Severe depression and nightmares • Feelings of isolation and mistrust • Loss of memory and perception • Severe fatigue and sleep loss • Emotional de-moralisation • Unable to make relationships • Feelings of guilt and shame • Loss of self-worth
<u>Coercion and control</u>	<u>Psychological impact</u>

<ul style="list-style-type: none"> • Loss of economic power • Threats • Emotional abuse • Intimidation • Branding or tattooing • Physical violence • Sexual abuse • Drugs or alcohol dependency • Identification papers withheld or taken away • Exploiting victims fear of the police • Exploiting victims vulnerability • Debt bondage • Withholding of wages 	<ul style="list-style-type: none"> • Loss of self -worth • fear, • reluctance to engage, • fabrications, • hostility, • denial, • misguided • loyalty to the perpetrator • it may also affect recollection of events
<p><u>Restriction of freedom of movement</u></p> <ul style="list-style-type: none"> • Isolation • Deprivation of liberty • Restricting movement • Not allowing access to family and friends 	<p><u>Personal impact</u></p> <ul style="list-style-type: none"> • Loss of self-worth • Loss of dignity • Lack of education • Lack of opportunities • Depression • Loss of income

The international standards are clear and specific:

The **United Nations Declaration on Victims** states:

“Victims shall receive all necessary legal, material, medical, psychological and social assistance and shall be informed of their availability”.

Meeting this legal duty is the most important task in the post-identification phase because trafficked victims will have a range of immediate needs that

have arisen directly as a result of the abuse that they have suffered. All assistance and protection efforts should seek to restore the victim's rights and prevent further violations without discrimination and re-victimisation.¹⁹

This does not mean that front-line officers are expected to acquire medical, psychological or social skills with which to assist the victims; on the contrary, front-line officials do not have the time, resources, training or skills to supply any of these needs. It is therefore important to identify all possible sources of victim assistance that are available in Malaysia and to inform the victims and to provide them with the means to access them.

The following table summarises the main tasks and the steps required to complete them:

<u>Immediate Needs of Victims</u>	
Safety	<u>DO NOT ARREST</u> - Remove from immediate harm, re-locate in a place of safety; i.e. police premises, victim shelter, hospital etc.
Health	Seek medical help to obtain examination for physical injury, symptoms of illness or malnutrition and sexual health screening
Counselling	Initial assessment of trauma and provision of psychological counselling and support
Advice	Explanation of legal options and responsibilities and rights of access to temporary residency visas and repatriation support
Assistance	Information on social, financial and welfare assistance measures <u>NB: Your job is to provide access to assistance, not to provide the assistance. Therefore it will be important to know and understand all other actors who play a role in supporting victims (see referral process in the next section).</u>

¹⁹ IOM (2011), Guidelines for Assisting Victims of Human Trafficking in the East Africa Region (“East Africa Guidelines”).

Once an individual is identified as a victim of forced labour and TIP, they should be immediately removed from the exploitative situation and moved to an appropriate, safe and secure environment. Referrals to the appropriate assistance and protection organisations are paramount to ensure successful assistance for the victims.

Important to note

- Safety of the victim is the duty of law enforcement officials and is not dependent on issues such as availability or cooperation with other partners.
- Access to these support measures is a fundamental right of victims, irrespective of whether they decide to co-operate with law enforcement officials or not.
- Access to help should never be made dependent upon agreement to co-operate with law enforcement officers.
- Law enforcement officials should assist victims to have access to these support measures.

Here are some of the basic guidelines on the needs of victim of forced labour and TIP.

Shelter²⁰

Shelters vary greatly in terms of type, capacity and resources. The assistance offered to sheltered victims may include: accommodation, meals, water, basic medical assistance and toiletries. Some shelters provide a full range of services including psycho-social assistance, legal counselling, extensive medical care, and empowerment opportunities. Once a victim is settled into a secure place, health and medical assistance, counselling and psychological services, and legal assistance can be provided directly by the shelter or by other local service providers. Note also that a determination may need to be made as to whether

²⁰ Hong Kong Guidelines.

a shelter comprises suitable accommodation for any given victim as some shelters may have mixed occupancy (males, females and children) or may not be specific to victims of trafficking.

Health services

It is important to immediately assess any victim's physical and psychological condition and provide appropriate help i.e. referring to specialists as required. Examination for physical injury, symptoms of illness or malnutrition and sexual health screening. Victims with diseases should be placed under compulsory isolation and hospital treatment.

Legal status

It is important to address the legal status of the individual in particular around immigration status which is often tied to a specific employment relationship with a particular employer and to check if there are any ongoing criminal proceedings involving the victim.

Voluntary return

The return phase aims at ensuring the safe and secure voluntary return from the destination place to their country of origin. The return is organised only after all necessary measures have been undertaken to guarantee the victim's safety and the possibilities to continue the process of re-integration. Safe return means a guarantee that the trafficked person will not become involved again in a situation of trafficking or forced labour and that he/she will receive the necessary support to meet his/her medical, social, and psychological needs.²¹ A necessary pre-condition of return and reintegration is an assessment of the home, family and community in order to ascertain if this option is appropriate.²² To respect the rights of victims of trafficking or forced labour, the return must be voluntary and based on an informed decision, and when possible, a written consent.

²¹ Bulgaria Guidelines.

²² Hong Kong Guidelines.

Reintegration support

The reintegration phase is long-term and involves various steps as well as various stakeholders e.g. social services, NGOs, local authorities, immigration, police and other law enforcement agencies and, in some cases, international organisation. The aim of the reintegration is to foster, nurture and strengthen the rehabilitation process of the victim into his/her community or host community to live a normal life and to reduce the vulnerability for re-trafficking and re-victimisation.

Examples of reintegration assistance include:²³

- Medical / health care services.
- Counselling & long-term psychosocial support.
- Financial assistance.
- Legal assistance and access to remedies.
- Access to education.
- Vocational training.
- Micro-enterprise and income generating activities.
- Job placement, wage subsidies, apprenticeship programs.
- Housing and accommodation.

In cases where returning to the country of origin is not the best option for the victim, organisations working on behalf of victims may consider advocating on behalf of a victim for a longer stay in the country of destination or for permission to move to a third country or possible local integration, depending on the wishes of the victim.²⁴ Assistance providers should also keep in mind that return to the country of origin should not require that the victim return to the community of origin unless that is the victims' preference. If possible, services should be provided to assist the victim in relocating to a community of his or her choosing.

Other needs

Other emergency matters vary according to the individual needs/situation of the particular person. For example, some individuals may have an emergency need to locate the whereabouts of missing family members.

²³ Ibid.

²⁴ Ibid.

Victims of forced labour and TIP might have long term needs that also have to be catered for.

▶ 4.4. Questions for self-evaluation

- Name at least five potential consequences of the physical, sexual and psychological harm that a victim of forced labour and TIP may suffer
- Explain the principle of non-criminalisation of identified victims and describe what this means in practice
- What assistance are provided to victims of forced labour and TIP in Malaysia

▶ 4.5. Activities

Activity 1: Group discussion and feedback - Responding to the victims' needs

Time: 45 minutes

Objectives

The aim of this activity is to enable law enforcement officials to appreciate:

- That victims of forced labour and TIP are usually faced with myriads of challenges;
- That some of these challenges are needs to be supported by different professionals;
- That effective addressing of these needs will facilitate the physical and psychological recovery of victims to enable them to participate effectively in the criminal justice process.

Presenter's note

1. Explain the objectives.
2. Introduce the subject
3. Ask the participants to break up in small groups (4 to 6 people) Ask them to discuss the following:
 - What are the challenges that victims of forced labour and TIP are faced with?

- What are the immediate needs of a victim of forced labour and TIP?
 - What kind of support can be provided to victims of forced labour and TIP trafficking by different professionals who work with trafficking victims?
4. Get feedback from each group
 5. Discuss the feedback and add any information that was not discussed
 6. Conduct a general discussion.
 7. Explain to the group how effective addressing of these needs will facilitate the physical and psychological recovery of victims to enable them to participate effectively in the criminal justice process.
 8. Summary

Things to use during the activity

- Power point presentations

Alternative activity: Role play (A role play can take up a lot of time and this can happen if you have time) - Dealing with victims of forced labour: Interagency cooperation

Time: 40 minutes

Objectives

The purpose of this activity to create a situation where law enforcement officials will understand the needs of victims and how to support victims of forced labour and TIP through working together with other agencies and role players.

Presenter's note

The trainer should explain that the purpose of the exercise is to create roles that express strong opinions and to discuss and/or challenge these opinions.

Step 1:

Ask three learners to volunteer to play following characters or roles. (Or you may assign a character to three learners in the group).

- **An Indonesian woman**

Background: She was forced to be a prostitute after she was promised that she would work as a waiter in a bar in Johor Baru. She was flown to Malaysia by the brothel owner. After she arrived she was told to pay back her flight ticket, visa and accommodation. She did not have any money and was then told she had to earn the money as a prostitute. Her visa expired. She was beaten and not paid. She was also made to get involved in petty crime in the brothel.

- **A Police officer:**

Background: He is an officer with a very hard-line approach and always focus on the crimes that the women committed in these situations. He does not view her as a victim but focus on the crimes that she committed.

- **A person working for an NGO**

Background: This person believes that the Nigerian women is a victim and should be treated as such. This person normally help and supports victim of Forced labour and TIP (Instruct this person to focus on the rights of the victim and responsibilities of the law enforcement officials)

The role play takes part in an office and each person has to play their roles for not more than five minutes. After the role play, debrief the role play by asking each of the role players how they felt.

Step 2

1. Ask the participants to break up in small groups (4 to 6 people) Ask them to discuss the following:
 - What are the immediate needs of a victim of forced labour and TIP?
 - What kind of support can be provided to victims of forced labour and trafficking by different professionals who work with trafficking victims?
 - What does non-criminalization mean?

2. Get feedback from each group
3. Discuss the feedback and add any information that was not discussed
4. Conduct a general discussion.
5. Explain to the group how effective addressing of these needs will facilitate the physical and psychological recovery of victims to enable them to participate effectively in the criminal justice process.
6. Summary

Activity 3: Brainstorm session - Child victims/witnesses

Time: 20 minutes

Objectives

After this activity the learners should be able to:

- Deal with children who are victims and witnesses
- Discuss the basic principles when dealing with children as witnesses

Presenter's note

1. Explain the objectives.
2. Introduce the topic
3. Ask the participants to break up in groups of two or three and discuss with the person next to them:
 - What are the basic principles to apply when dealing with child victim/witnesses of forced labour and TIP
4. Get feedback from the groups and write their feedback on a flipchart paper.
5. Conduct a general discussion
6. Summary

Things to use during the activity

Flipchart and pen

5 What can law enforcers do if they encounter potential cases of forced labour and TIP?

▶ Learning objectives

At the end of the module, the participants will have the necessary knowledge to:

- Explain why it is necessary for law enforcement officials to work together with other relevant role players when dealing with victims of forced labour and TIP.
- Identify all possible role players when dealing with victims of forced labour and TIP.
- Discuss the role that each of these role players can play in protecting and supporting victims
- Explain how law enforcement officials and other agencies can cooperate in dealing with victims of forced labour and TIP.

▶ Chapter outline

- 5.1. Understanding the roles of the different stakeholders
- 5.2. Identifying other stakeholders and establishing relationships
- 5.3. Overview about the referral system
- 5.4. Questions for self-evaluation
- 5.5. Activities

► 5.1. Understanding the roles of the different stakeholders

Forced labour and TIP are complex crimes that need holistic responses. When organised criminal networks are involved, cooperation with other agencies or organisations will often be necessary. Furthermore, likely victims need targeted assistance that law enforcement officials cannot provide. The scope of cooperation can vary across countries, from sharing information (including reports and data collected within each authority), participation in inter-agency commissions, joint investigations and joint support for victim protection programmes or awareness raising campaigns. Cooperation with workers' and employers' organisations is essential. It should be embedded in mechanisms of social dialogue through which labour inspectors and social partners can share information and take corrective action if necessary.

In short, cooperation ensures effective prosecution and victim protection, information management and overall policy implementation against the backdrop of scarce resources and competing priorities. But there are many obstacles to cooperation, such as language barriers, lack of awareness, competing mandates and lack of resources.

Law enforcement officials are not in a position to deal with all the needs of victims, therefore law enforcement officials need to collaborate with other role players such as the courts, prisons, healthcare, social service providers, NGOs, civil society, national and local government and local community and religious leaders. All of these may provide support to help victims and ensure their ongoing protection and it is therefore important that there is cooperation between all of them. They also have a role to play in restorative justice by helping offenders learn from their actions and successfully reintegrate into the community.

Each stakeholder has a very important and distinct role to play in ensuring the effectiveness of the other role players, by sharing information within the approved protocols that address privacy and confidentiality, and sharing and coordinating the available resources in the best interests of all.

Successful co-operation between all the relevant organisations who deal with forced labour and TIP require an understanding and acceptance of the

differing goals and roles of each other and it is vital that law enforcement officials understand this factor and build relationships based on trust. A clear separation between criminal investigation and court proceedings on the one hand and psychological and social welfare services on the other is required. Good cooperation does exist in many places between law enforcement officials, investigators, prosecutors and the support agencies because both sides recognise the value of the other and their mutual inter-dependency in the correct treatment of victims and their desire for a successful outcome for the survivor.

► 5.2. Identifying other stakeholders and establishing relationships

In an effort to be proactive about prevention MAPO can play an important role in coordinating a multi-disciplinary approach on a national level. At a local level law enforcement officials will need to take a leading role in developing multi-disciplinary approaches that involve other players. Cooperation should not only happen at national level where you need the cooperation and buy in from ministries. For example, when you deal with religious organisations the Prime Minister's Department in charge of religion affairs will be the best authority to include mosques in this effort. When you deal with youth groups, the Ministry of Youth and Sports would be a good organization to work with, when you deal with the media, The Ministry of Multimedia and Communication would be the department to deal with, Immigration, the Department of Home Affairs and Customs, the Department of Finance. On a local level it is just as important to work with courts, communities, health institutions, civic groups such as mosques, churches, youth groups, employers' associations, trade unions, women's organisations, local businesses, non-governmental organisations (NGOs) that offer counselling and support services, and others can help to ease what many perceive as a lack of resources in the law enforcement officials. Many potential partners have funding that can contribute to partnerships, or are willing to provide services on a volunteer basis. The media should be a strategic partner in propagating the policy of non-tolerance for forced labour and TIP. Local media, such as national/regional newspapers and radio stations, are often eager to devote space or airtime to community initiatives.

TIPS

It is important to regularly meet with different role players who can provide support to victims of forced labour and TIP.

It will also be a good idea to develop a contact list of all the people in your district with a short description of what services they can provide and to share this list with each and everybody on the list as well as with relevant law enforcement officials. See Directory of Service Providers in the Referral Guidebook for Trafficking and Forced Labour for an example.

PARTNERS	COLLABORATION ROLES WITH PARTNERS
Judiciary Prosecutors	<p>The effectiveness of the police depends to a large extent on the way in which judicial authorities deal with the case files referred to them. Close cooperation and coordination between police and the judicial authorities (e.g. labour or criminal courts) can be helpful to ensure effective sanctions. Collaboration is also a way to raise the awareness of judicial authorities of the role of police in the fight against forced labour and TIP.</p> <ul style="list-style-type: none">– Advise on what crime, if any, should be charged– Prosecute serious cases in court
Immigration authorities	<p>Close cooperation with immigration authorities is necessary to protect potential victims of forced labour and TIP from deportation, as many of them are irregular migrant workers. They will also be involved in granting temporary residence permits for victims of human trafficking. Such cooperation, however, should be designed in a way that it does not impede the basic objective of police officials to protect the rights and interests of all workers (whatever their legal status). Close coordination between immigration authorities and labour inspectors is therefore necessary to avoid possible tensions in the enforcement of different laws and to</p>

	protect workers from any reprisals.
Welfare Officers of Social Departments	<ul style="list-style-type: none"> – Accompany and advise victims during the investigation and trial process. – Transportation support for victims to attend court sessions, law enforcement officials stations to make statements or follow ups, hospitals for medical and other purposes – Provide counselling services for victims – Arrange for temporary shelter – Family tracing and reunification – Family mediation – Referral for legal, medical, educational services and provision of skills training
Border guards, customs and tax authorities	Forced labour and trafficking are often linked to other criminal activities, such as smuggling, tax evasion or money laundering. Border guards can have useful information about possible trafficking or smuggling activities while cooperation with tax or customs authorities is essential to seize assets of traffickers or criminal employers. Sometimes, investigations on tax evasion can lead to the detection of forced labour cases or vice versa provided that authorities are sensitized about the issue.
Medical authorities Hospitals / Clinics/ Doctors/ Nurses / Psychological Service	<ul style="list-style-type: none"> – Medical treatment, – forensic medical exam and medical certificate, – psychological service
Shelters Government and NGO shelters	<ul style="list-style-type: none"> – Temporary safe shelter – Counselling services – Medical treatment and medical certificates – Legal advice
Lawyers and	– Advise victims of their rights and assist victims to

paralegals	file applications for protection orders – Some NGO lawyers and paralegals provide free legal advice and representation for forced labour and TIP victims
NGOs	– Provide counselling and other support services to victims
Media	– Informing and educating the public ²⁵

▶ 5.3. Overview about the referral system²⁶

The following flowcharts are graphical illustrations of the existing referral system in general. The overall flowchart for the whole referral system is complex but here, for the sake of clarity it is broken down into sub-flowcharts, presented depending on steps that are undertaken, what tools and guidelines are to be used, referenced to the relevant sections in this guidebook.

To understand how to use this Flowchart, kindly refer to the Trafficking and Forced Labour Referral Guidebook. The Annexes referred in these diagrams are contained in the referral guidebook.


It is important that this flowchart would be updated once SOPs or laws are amended.

²⁵

Reporting on forced labour and fair recruitment: An ILO toolkit for journalists
<https://readymag.com/ITCILO/1292461/>

²⁶ ILO Referral Guidebook on Forced Labour and Human Trafficking, 2020

Flowchart A-1: Initial assessment and referral of potential forced labour and trafficking cases (current practice)

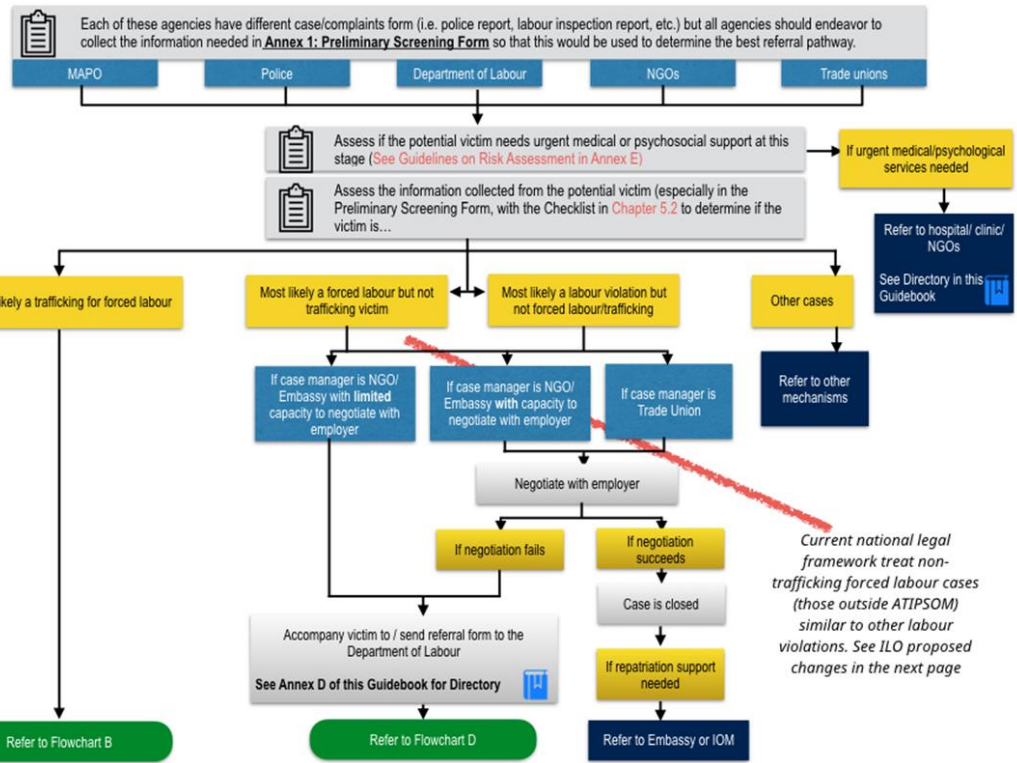
 Familiarization with the following is essential to the whole process:

Legal framework on forced labour and trafficking (Chapter 2)

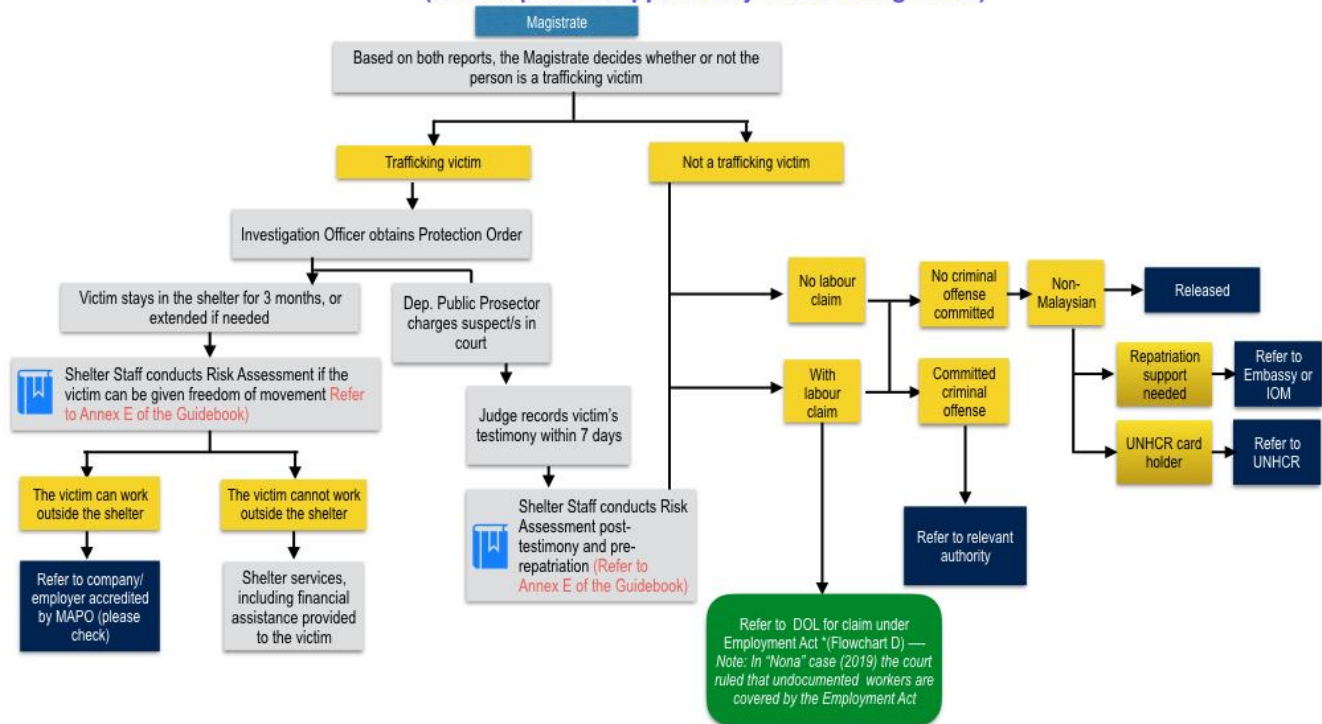
Principles on dealing with victims (Chapter 3)

National Guidelines on Human Trafficking Indicators (Annex B Part I)

Indicators of Forced Labour (Annex B Part II)

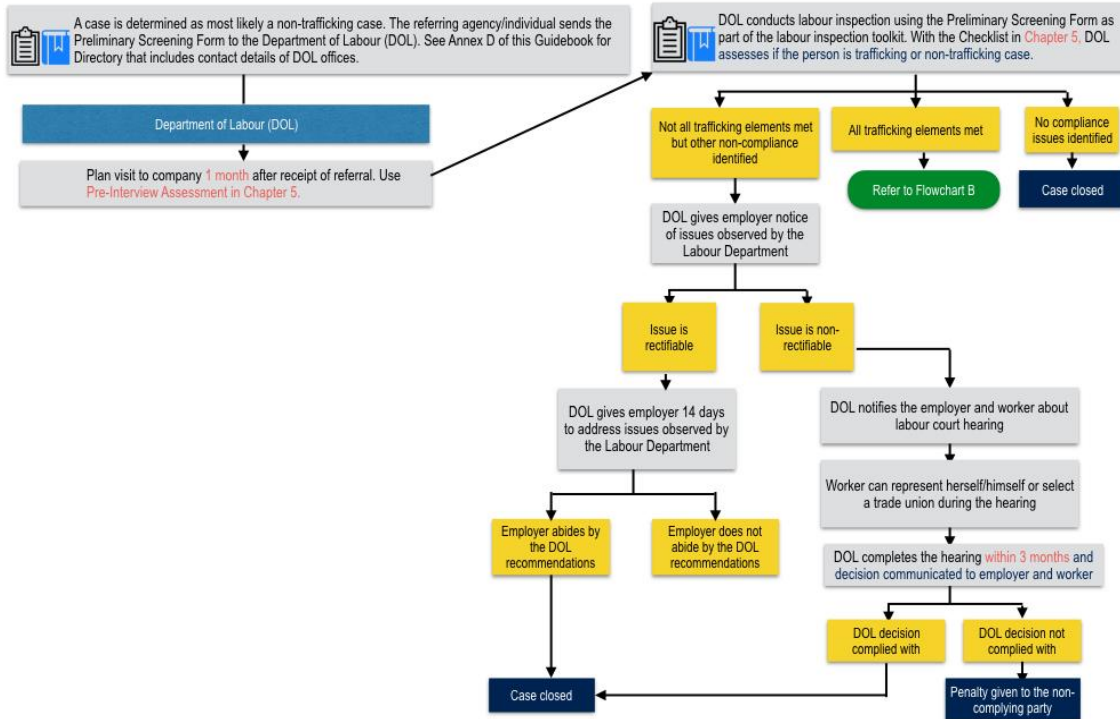


Flowchart C: Actions undertaken after Investigation and Protection Officer's Reports are submitted (current practice applies only to trafficking cases)



Forced Labour and Trafficking in Persons – Manual for Malaysian Law Enforcers

Flowchart D: Actions undertaken if most likely a non-trafficking for labour exploitation case (current practice)



▶ 5.4. Questions for self-evaluation

- Discuss why it is important for law enforcement officials and other agencies to work together in dealing with all aspects of forced labour and TIP.
- Explain how law enforcement officials and other agencies can cooperate in dealing with cases of forced labour and TIP.
- Joint training on the role of their different roles should be provided for both law enforcement officials and aid agencies. Discuss how best this could be done and continued.

▶ 5.5. Activities

Activity 1: Group discussion and feedback - Victim centred protection focus: Interagency cooperation

Time: 30 minutes

Objectives

The aim of this Chapter is to enable law enforcement officials and criminal justice practitioners to:

- Explain why it is necessary for law enforcement officials to work together with other relevant role players when dealing with victims of forced labour and TIP.
- Identify all possible role players when dealing with victims of trafficking in persons.
- Discuss the role that each of these role players can play in protecting and supporting victims

Presenter's note

1. Explain the objectives.
2. Introduce the subject
3. Ask the participants to break up in small groups (4 to 6 people) Ask them to discuss the following:
 - Why it is important for law enforcement officials and other agencies to work together in dealing with all aspects of trafficking in persons.
 - How can law enforcement officials and other agencies cooperate in dealing with cases of forced labour and TIP.
 - Who are the potential role players who can assist victims in a forced labour or TIP?
 - What is the role of each of these different role players in protecting and supporting victims?
4. Get feedback from each group
5. Discuss the feedback and add any information that was not discussed
6. Conduct a general discussion.
7. Explain to the group how effective addressing of these needs will facilitate the physical and psychological recovery of victims to enable them to participate effectively in the criminal justice process.
8. Summary

Things to use during the activity

Power point presentation

Activity 2: Group discussion - Interagency cooperation

Time: 30 minutes

Objectives

After this activity the learners should be able to:

- Explain why it is necessary for law enforcement officials to work together with other relevant role players when dealing with victims of forced labour and TIP.
- Identify all possible role players when dealing with victims of forced labour and TIP
- Explain how law enforcement officials and other agencies can cooperate in dealing with victims of forced labour and TIP.

Case study

J is an 18 year old girl from Myanmar. She was promised work in a clothing factory but after 3 months in the factory she ended up working as a dancer in a strip club/brothel after she could not pay for her transportation and accommodation in other costs that she incurred. She was severely beaten by a client and raped multiple times. With the help of another client she managed to escape when she was picked up by the police who was new at the police station and who found that she was in possession of a fake passport. She could not understand the police and was locked up. You are the commander of the police station and you have to instruct the new police officer what to do and which organizations to contact to assist the victim and why it is important to work with other organisations when dealing with victims.

Presenter's note

- Explain the objectives.
- Introduce the case study using a power point and discussion.
- Ask the participants to move into small groups (4 to 6).
- Ask them to discuss the following questions so that they would be able to inform the police officer:
 - Who are the possible role players that can assist the police in dealing with this victim.
 - Who are the possible role players who can assist the police?
 - What kind of assistance would she need?
- Ask the groups to write their answers on a flipchart paper
- Ask the different groups to give feedback
- Conduct a general discussion and add information that was left out
- Summary

Things to use during the summary

- Flipchart paper and pens

Power point presentations.

► References and recommended reading

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- United States 2010 Trafficking in Persons Report, <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> (retrieved June 2020)
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