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**Migrant Workers Policy  
and Vulnerability to  
Labour Trafficking in  
Malaysia: Lessons and  
Gaps from Existing  
Literature**

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## SUMMARY

Since 2018, with the first change of the federal government after 60 years of independence, Malaysia has seen notable policy shifts in labour policy. These include amendments of employment and social protection regulations, as well as the strengthening of national action plans in addressing trafficking in persons and forced labour. All of which aimed to further strengthen workers' protection and access to justice and remedies. Despite these efforts, forced labour and trafficking in persons continue to emerge.

**Research Question:** Given the complex interplay between such policy shifts and workers' vulnerability to labour trafficking, this study aims to understand how policies regarding migrant labour contribute to migrant workers' vulnerability to labour trafficking

**Research Methodology:** In order to respond to this research question, we set out to conduct a systematic literature review, allowing us to examine and interpret the existing body of literature. Literature was identified through internet searches using two databases, namely, (i) Google Scholar, and (ii) Scopus. A number of key search terms were used in the search strategy, and hits were screened using a list of inclusion criteria. From the total of 3,225 relevant articles identified from both databases, this study included and reviewed only 21 of them.

**Key Findings/Messages:** Key findings are divided into three sub-sections, each responding to the following sub-research questions: (i) what makes migrant workers in Malaysia vulnerable to labour trafficking?; (ii) do current regulatory and policy reforms really address migrant workers' vulnerability to labour trafficking?; and (iii) what hinders Malaysia's efforts to reduce and/or eliminate migrant workers' vulnerability to labour trafficking?

**Conclusion:** The past years have seen positive commitments made by the Government of Malaysia to address forced labour, including regulatory reforms with the aim to strengthen workers' protection in the country. However, stronger legislation does not always or necessarily result in increased protection of labour trafficking victims. Effective protection of victims is dependent on a range of other factors, including effective access to legal representation, remedies, and the ability of frontline enforcement personnel to exercise their duty and to apply humanistic judgement when dealing with vulnerable victims. This study presents five points of key observations, six points of implications to policy discourse, and five points for future research.

**Keywords:** Migrant workers; policy; vulnerability; labour trafficking; forced labour

# 1. INTRODUCTION

The past two decades have seen a steady increase of work permits issued to regular migrant workers from around 800,000 in 2000 to two million in 2019 (Ministry of Human Resources, 2019). In Malaysia, *regular migrant workers* or migrant workers with a visitor's pass for temporary employment (or VPTE), are allowed to work in five formal economic sectors in the country: construction, plantation, agriculture, manufacturing, and selected services. Migrant workers without VPTE are considered *irregular migrant workers* and their number is difficult to ascertain. Indonesia, Bangladesh, Nepal, Myanmar, and India are among the top five source countries of both regular and irregular migrant workers in Malaysia. In the past, vulnerability to labour trafficking and other forms of labour rights violations were commonly associated with irregular migrant workers (Hwok-Aun & Leng, 2018). However, given the current migrant worker policies, for instance, employer-tied permit system that limits workers' ability to change employment of their preference – regular migrant workers, too can easily become "irregular" and therefore, at risk.

Malaysia's migrant workers policy has been, for at least the last two decades, formulated and implemented to reduce the hiring of irregular migrant workers and to reduce dependency on a foreign workforce in general. In 2018, Malaysia saw its first change of federal government, about 60 years after it gained independence, at the 14<sup>th</sup> general election. Since then, Malaysia has seen notable developments that signal national efforts to reset migrant workers' governance in the country. Several months after the formation of the newly elected government in 2018, an Independent Committee on Foreign Worker Management (ICFWM) was established with the primary mandate to conduct a thorough study on the recruitment of migrant workers in Malaysia. Later in 2019, 2020, and 2021, several more regulatory reforms were initiated such as, (i) amendment of the Employees' Minimum Standards of Housing, Accommodations and Amenities Act (1990) in 2019; (ii) amendment of Employees' Social Security (SOCSO) Act (1969) in 2019; (iii) amendment of Employment Act (1955) in 2022; (iv) renewal of the third Malaysia's National Action Plan on Trafficking in Persons (2021-2025); and (v) establishment of the first National Action Plan on Forced Labour (2021-2025) – all of which aimed at further strengthening workers' employment protection and access to justice and remedies.

Concomitant with such notable developments mentioned above, there has been a proliferation of studies attempting to understand the everyday life of migrant workers, grounded on a range of academic disciplines such as law, sociology, public health, security, criminology, human rights and international relations (see Abdul Rahim et al., 2019; Hamzah et al., 2019; Mahalingam, 2019; Rahman, 2020; Rahman, 2020; Wahab, 2020; Shah et al., 2021; Bastide, 2021; Abdul Hamid, 2022). While these studies are useful in explaining workers' vulnerability, very little is known about the complex interplay between such policy and regulatory developments, and workers' vulnerability to labour trafficking. In addition, growing trade-related sanctions and public reporting of forced labour and other forms of labour rights violations indicate inadequacy and/or ineffectiveness of these national efforts and initiatives in addressing forced labour. Further adding to this complexity is the COVID-19 outbreak; its immediate and longer-term impacts have had negative implications for workers across supply chains, including in Malaysia.

Understanding the above, the main research question raised in this study: **how does policy regarding migrant labour contribute to migrant workers' vulnerability to labour trafficking?**

This study seeks to address the gaps mentioned above and is further broken down into several sub-questions as follows,

What makes migrant workers in Malaysia vulnerable to labour trafficking – e.g., is workers' vulnerability a result of policy failure in Malaysia, or beyond?

Do these regulatory and policy reforms really address migrant workers' vulnerability to labour trafficking?

What hinders Malaysia's efforts (i.e., policy design, implementation, and outcome) to reduce and/or eliminate migrant workers' vulnerability to labour trafficking?



## 2. METHODOLOGY

Conducting literature review allows researchers to understand and examine the breadth and depth of the existing body of work and knowledge and identify gaps and opportunities for improvement (Xiao and Watson, 2019). Broadly speaking, literature reviews can be categorized into two forms: (i) a review that serves as a background information for a particular empirical study and (ii) as a stand-alone piece (Templier and Pare, 2015). The former is commonly used to identify gaps in literature (Levy and Ellis, 2006), while the latter aims to interpret or explain the body of existing literature (Rousseau et al., 2008). In order to answer the main research question raised in the earlier section, we set out to conduct a systematic literature review that is related to the latter (i.e., a stand-alone piece). This method was chosen to enable us to examine and interpret the state of the literature related to the research question (Xiao and Watson, 2019). This method allows researchers to provide context and substance in explaining and reflecting the issues being raised, and to support the overall observations, conclusions, and recommendations. It is important to highlight that this method was chosen not to expand the existing literature but instead to provide an account of the state of the literature, identifying common understandings and knowledge, and identifying gaps.

### 2.1 Definition

Before proceeding, it is important to ensure the researchers and readers are on the same page regarding definitions used in this study. Based on the main research question above, these three terms are defined following working definitions,

#### (I) MIGRANT WORKERS' VULNERABILITY

Vulnerability in the context of human trafficking and/or labour trafficking is not a legally binding definition. It has been broadly defined and socially contextualized in many existing international instruments. For example, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) relates vulnerability to trafficking to a range of factors, including poverty, underdevelopment, and lack of equal opportunity. The International Organization for Migration (IOM) puts forth that "... some people are more susceptible to harm, relative to others, as a result of exposure to some form of risk. The type of harm to which they are more susceptible varies, it may be psychological, physical, environmental, etc." (IOM, 2019: 4). One

publication by Winrock International (2021: 8) describes vulnerability to human trafficking "... to mean that some individuals are more susceptible to human trafficking as a result of exposure to some form of risk". For the purpose of this study, we build on the references of vulnerability above, considering the local context and researchers' expertise on the subject, and expand vulnerability to be defined as,

Exposure to risks of becoming a victim of labour trafficking, and the inability to seek justice and remedies due to a victim's socio-economic conditions, immigration status and involvement in specific employment sectors.

*socio-economic conditions* of a victim of labour trafficking may include the level of education, local language proficiency, social norms and culture, participation in civil society, workers' unions, and social networks;

*immigration status* of a victim of labour trafficking includes the possession of valid travel documents and working passes, particularly among migrants' population; and

*employment sector-specific* refers to specific characteristics of the employment in which a victim of labour trafficking is engaged with. These include the remoteness and rurality of the workplaces, and live-in conditions or isolated nature of workplace settings. Two examples of such an employment include plantation and domestic service.

#### (II) MIGRANT WORKER POLICY

Here in this study, we refer to government policy or public policy as a set of decisions made by the government and other political actors to influence, change or frame a problem or issue that has been recognized by policy makers and/or the wider public to be addressed (Hassel, 2015). These public policy decisions can appear in many forms, including regulations, circulars, orders, and procedures. Given the purpose of this study, we limit such government policy to that which is related to the recruitment, hiring and return of migrant workers in/ from Malaysia. In actual terms such policy includes immigration regulations, employment laws, anti-trafficking policies and other national policies and procedures that aim to regulate and protect migrant workers in the country.

### (III) LABOUR TRAFFICKING

The term labour trafficking is not specifically defined in the existing international instruments such as the ILO Forced Labour Convention (1930) and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). Given the lack of conceptual clarity on labour trafficking, here in this study we adopt the ILO's definition of forced labour (ILO, n.d.) which is understood as,

*... a work that is performed involuntarily and under the menace of any penalty. It refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as manipulated debt, retention of identity papers or threats of denunciation to immigration authorities.*

## 2.2 Timeframe

The timeframe for the review of literature is limited to 2015 to 2022 (the time of searching), based on the following justifications,

2015 was the last year of implementation of Malaysia's first National Action Plan on Trafficking in Persons (NAP-TiP), from 2010 to 2015. It was also the year of drafting and finalization of the second 'NAP-TiP, which was implemented in the subsequent years (from 2016 to 2020);

2015 was the year that human trafficking issues gained much more international attention, especially upon the discovery of human trafficking camps and mass graves involving Myanmar's Rohingya refugees near the Malaysia-Thai border (for example, see Fortify Rights 2019); and

2015 was also the year when Malaysia's Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM) Act was amended for the second time. The first amendment was done in 2010 after it passed in 2007.

## 2.3 Search Strategy

### 2.3.1 DATABASE AND KEYWORDS

Literature was identified through internet searches using two databases: (i) Google Scholar and (ii) Scopus. They are deemed to be the most frequently

used databases by researchers across various disciplines, including social sciences (Xiao and Watson, 2019).

The key search terms used in the literature include: "policy", "labour trafficking", "human trafficking", "forced labour", "migrant workers" and "Malaysia". In our search strategy, we used AND/OR to make up the search terms.

Assuming that there has been a proliferation of studies written in the Malaysian language that are publicly available in Google Scholar particularly, similar key search terms, translated into the Malaysian language, were also used such as "dasar", "pemerdagangan orang bagi tujuan pekerjaan", "buruh paksa", "pekerja asing" and "Malaysia"

It is important to highlight that the selection of search terms mentioned above is grounded closely with the main and sub-research questions raised in the introduction. Though they may be seen limited in number, these key search terms have triggered a high number of existing studies (see Figure 1).

### 2.3.2 INCLUSION CRITERIA

Given the high number of studies identified using the search terms and strategy mentioned above, we employed a set of stringent inclusion criteria, covering both broad and specific criteria. Each literature to be selected for this study must meet these criteria, as shown in Table 1 below.



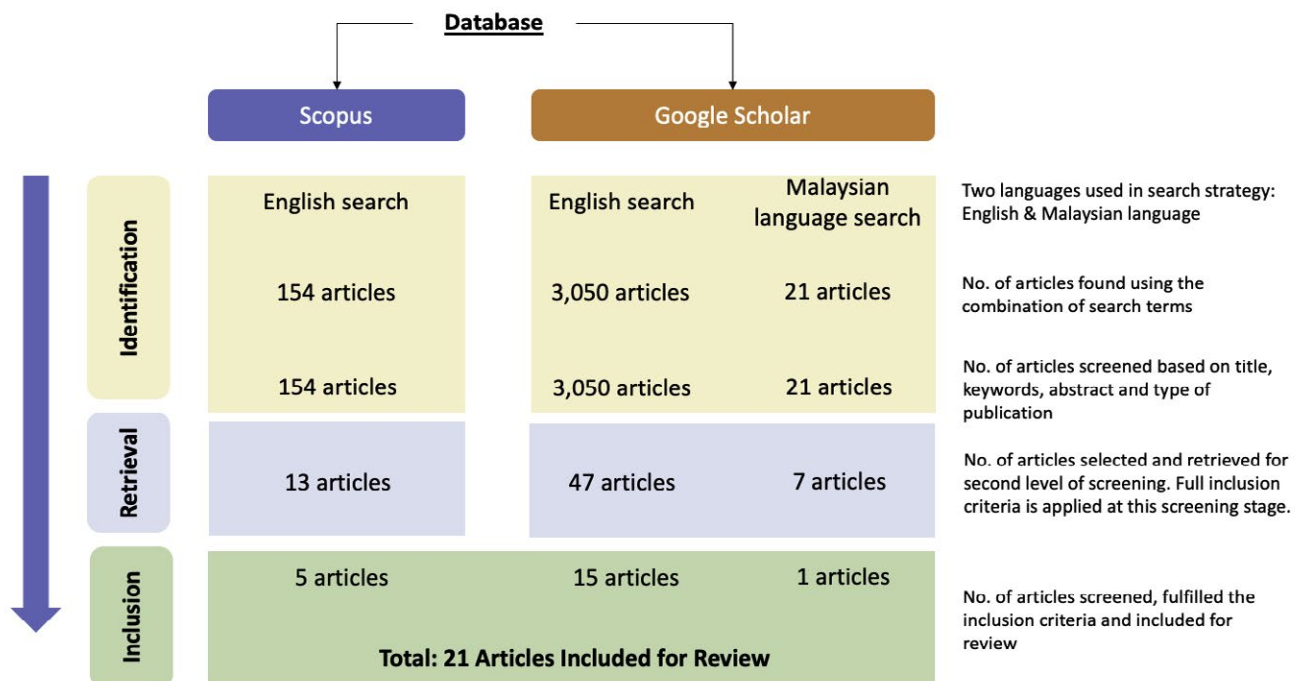
**TABLE 1: BROAD AND SPECIFIC INCLUSION CRITERIA**

Broad Criteria	Specific Inclusion
<b>Research published in peer-reviewed journals</b>	<ul style="list-style-type: none"> <li>• A study that derives from primary and empirical data, and published in a peer-reviewed journal</li> <li>• A study that derives from secondary sources, and published in a peer-reviewed journal</li> <li>• A study that is either theoretically driven or policy-oriented but published in a peer-reviewed journal</li> </ul>
<b>Migrant workers policy</b>	<ul style="list-style-type: none"> <li>• A study focuses broadly on Malaysia’s policies governing the recruitment, hiring and return of migrant workers</li> <li>• A study that connects the source country’s policies with Malaysia’s migrant workers’ policies (e.g., a study focuses on bilateral agreement between a source country and Malaysia)</li> </ul>
<b>Malaysia as a destination country</b>	<ul style="list-style-type: none"> <li>• A study focuses on Malaysia (broadly) as a destination country</li> <li>• A study focuses on specific regions or states in Malaysia</li> </ul>
<b>Nationality of migrant workers</b>	<ul style="list-style-type: none"> <li>• A study focuses on one particular nationality of migrant workers, or more, or in general.</li> <li>• A study focuses, either implicitly or explicitly, on other types of migrants, for example, refugees and asylum-seekers.</li> </ul>
<b>Labour trafficking, other forms of forced labour and modern slavery</b>	<ul style="list-style-type: none"> <li>• A study focuses on labour trafficking, or other forms of forced labour and modern slavery</li> <li>• A study focuses on human trafficking broadly but intersects with labour trafficking and Malaysia’s migrant worker’s policy</li> </ul>

**2.3.3 SEARCH RESULT**

Based on two databases (Scopus and Google Scholar) and keywords used in the search strategy, guided by the list of inclusion criteria, this study determined a total of 21 articles relevant and of sufficient quality to be included in this systematic review. Of the 21 articles, one of them is written in the Malaysian language. Figure 1 below depicts the search, retrieval and inclusion strategy applied in this study.

**FIGURE 1: SEARCH STRATEGY AND RESULTS**





### 3. TREND IDENTIFIED FROM THE SELECTED LITERATURE

The table below synthesizes the characteristics from the selected literature. They are discussed according to such broad topics research methodology, sample selection and subject specificity.

**TABLE 2: METHODOLOGY AND SAMPLE SELECTION**

Reviewed Literature	Research Methodology	Data Source	Method of Data Collection	Sample Informant	Sample Size
Devadason & Meng (2014/2015)	Qualitative	Secondary data (e.g., existing scholarly research)	Virtual database search and library research	N/A	N/A
Ajis et al. (2015)	Qualitative	Primary data	In-depth interview and focus group discussion	Government officials, and migrant workers	Unspecified number of government officials and migrant workers engaged
Lasimbang et al. (2016)	Qualitative	Secondary data (e.g., government official records).	Virtual database search and library research	N/A	N/A
Wahyudi (2017)	Qualitative	Primary data	In-depth interview, and participant observation	Indonesia's government officials / diplomats in Malaysia, and Indonesian migrant workers	Unspecified number of government officials and Indonesian migrant workers engaged
Wan Ismail et al. (2017)	Qualitative	Primary data	In-depth interview	Government officials; representatives of NGOs; and migrant workers	15 Government officials; 6 NGOs representatives; and 54 migrant workers
Iqbal & Gusman (2017)	Mixed: Qualitative and Quantitative	Primary data	Survey and in-depth interview	Indonesian migrant workers	150 Indonesian migrant workers
Jian-Xing Lim (2018)	Qualitative	Secondary data (e.g., scholarly articles, and NGO reports)	Virtual database search and library research	N/A	N/A
Juliawan (2018)	Qualitative	Primary data	In-depth interview	Indonesian migrant workers	12 Indonesian migrant workers
Sulaksono (2018)	Qualitative	Primary data	In-depth interview	Indonesian migrant workers (i.e., alleged victims of labour trafficking)	95 Indonesian migrant workers
Sok (2019)	Mixed: Qualitative and Quantitative	Primary data	Survey and in-depth interview	Cambodian migrant workers	122 Cambodian migrant workers

Reviewed Literature	Research Methodology	Data Source	Method of Data Collection	Sample Informant	Sample Size
Mahalingam (2019)	Qualitative	Primary data	In-depth interview and personal observation	Government officials, trafficking victims, and former traffickers	Unspecified number of informants
Wahab (2019)	Qualitative	Secondary data (e.g., sustainability reports of businesses, and governmental reports)	Virtual database search and library research	N/A	N/A
Arisman & Jaya (2020)	Mixed: Qualitative and Quantitative	Primary data	Survey and in-depth interview	Indonesian migrant workers (survey), and Indonesia's government officials (in-depth interview)	Unspecified number of surveyed respondents, and interviewed officials
Low (2020)	Qualitative	Secondary data (e.g., parliamentary reports and online media articles)	Virtual database search and library research	N/A	N/A
Ormond & Nah (2020)	Qualitative	Secondary data (e.g., existing scholarly research)	Virtual database search and library research	N/A	N/A
Suyanto et al. (2020)	Mixed: Qualitative and Quantitative	Primary data	Survey-interview (migrants) and in-depth interview (other key informants)	Irregular Indonesian migrant workers, and other key informants such as NGOs.	400 irregular Indonesian migrant workers
Low (2021a)	Qualitative	Secondary data (e.g., government official records, and parliamentary reports)	Virtual database search and library research	N/A	N/A
Low (2021b)	Qualitative	Secondary data (e.g., parliamentary reports)	Virtual database search and library research	N/A	N/A
Mak et al. (2021)	Qualitative	Primary data	In-depth interview	Nepali migrant workers (returnees)	42 Nepali returnees
Anam et al. (2021)	Qualitative	Secondary data	Review of online media articles	N/A	N/A
Dolhan et al. (2021)	Qualitative	Primary data	In-depth interview (life experience approach)	Bangladeshi migrant workers	5 Bangladeshi migrant workers



**TABLE 3: SUBJECT SPECIFICITY AND SYNTHESIZED TREND**

Subject Specificity	Synthesized Trend
Child and gender inclusion	<p>Of the total 21 articles, only one of them includes a child component in their study.</p> <p>As for gender inclusion, three articles (14%) specifically include women migrant workers (i.e., mostly as domestic workers). Four (19%) other articles exclusively study male migrant workers, and the other 14 (67%) articles are general (i.e., do not specifically indicate gender focus in their study).</p>
Immigrant Status	<p>Of the total 21 selected articles:</p> <ul style="list-style-type: none"> <li>• 16 (76%) articles include both regular migrants (i.e., migrant workers with proper documents) and irregular migrants (i.e., migrant workers without documents)</li> <li>• 5 (24%) articles focus exclusively on irregular migrants</li> </ul>
Nationality focus	<p>Of the total 21 selected articles:</p> <ul style="list-style-type: none"> <li>• 9 (43%) articles do not focus specifically on a particular nationality of migrant workers (i.e., general)</li> <li>• 7 (33%) articles specifically cover Indonesian migrant workers</li> <li>• 1 (5%) article focuses exclusively on Bangladeshi migrant workers</li> <li>• 1 (5%) article focuses specifically on Cambodian migrant workers</li> <li>• 1 (5%) article focuses specifically on Nepali migrant workers</li> <li>• 1 (5%) article focuses specifically on Myanmar migrant workers</li> <li>• 1 (5%) article that focuses on two nationalities, namely, Indonesian, and Filipino migrant workers</li> </ul>
Sector-specific	<p>Of the total 21 selected articles:</p> <ul style="list-style-type: none"> <li>• 15 (76%) articles do not specify a particular economic sector in their studies (i.e., general)</li> <li>• 2 (10%) other articles focus on the plantation sector</li> <li>• 1 (5%) article focuses specifically on domestic service</li> <li>• 1 (5%) article focuses on the manufacturing sector</li> <li>• 1 (5%) article focuses on the construction sector</li> <li>• 1 (5%) article that focuses specifically on four different sectors (i.e., mixed sectors), covering fishery, plantation, manufacturing, and domestic work</li> </ul>
Role of non-state actors	<p>Besides the government agencies, the selected articles highlight the roles of other non-state actors in their studies. These include the followings,</p> <ul style="list-style-type: none"> <li>• <i>Employers</i>, both large corporations and SMEs. In many of these studies, employers are commonly seen as perpetrators of labour trafficking and/or forced labour.</li> <li>• <i>Private recruitment agencies and intermediaries</i> are bridging aspiring workers from the source country to employers in Malaysia. Some studies attempt to convince that misconduct and the unethical and exploitative nature of the recruitment process contributes immensely to incidents of labour trafficking and/or forced labour in Malaysia.</li> <li>• <i>Emerging private firms in the recruitment industry</i> are recently linked to the digitalization of the recruitment industry in Malaysia. These include, for instance, IT firms and collecting agent companies that facilitate the registration and processing of immigration-related procedures.</li> <li>• <i>NGOs, social workers, and women groups</i> are often seen as proponents (of labour trafficking victims), policy advocates, and solutions providers to problems facing migrant workers.</li> <li>• <i>Trade unions</i>, which are deemed to be the voice of workers, provide social dialogue avenues for workers to raise complaints and grievances for resolution.</li> <li>• <i>Social networks and community leaders</i>, whose role is to connect migrant workers (among migrants), employers, consular offices, NGOs, and other relevant parties – through sharing of information and messages.</li> </ul>
Indicators of forced labour highlighted and/or discussed	<p>Across the 21 selected articles, the most common indicators of labour trafficking and/or forced labour highlighted include the followings,</p> <ul style="list-style-type: none"> <li>• Document retention, sometimes referred to as withholding of passport</li> <li>• High cost of recruitment, linked to heavy debt burden and risk of debt bondage</li> <li>• Physical and mental abuse, especially in the workplace</li> <li>• Restriction of freedom of movement, and rigid outing procedures (i.e., for those that live in employers-sponsored accommodation)</li> <li>• Poor conditions at the workplace and workers' accommodation</li> <li>• Non-payment of wages, and on some occasions, excessively delayed payment of wages</li> <li>• Working without proper travel and working passes is linked to the risk of rampant intimidation by employers and extortion by enforcement personnel.</li> </ul>

## 4. KEY MESSAGES FROM EXISTING LITERATURE

This section is divided into three sub-sections, each responding to a sub-research question raised earlier in the Introduction section, as follows,

- What makes migrant workers in Malaysia vulnerable to labour trafficking?
- Do current regulatory and policy reforms really address migrant workers' vulnerability to labour trafficking?
- What hinders Malaysia's efforts to reduce and/or eliminate migrant workers' vulnerability to labour trafficking?

It is important to highlight that we reviewed, analysed, interpreted, and synthesized the existing studies, and presented it in the following sub-sections. The aim was to highlight key messages for reflection in this study. Where a particular key message is derived from more than one literature, we listed the literature according to such a key message.

### 4.1 Migrant Workers' Vulnerability to Labour Trafficking: Why?

This subsection is divided into three levels of analysis, as follows,

**Structural:** factors that are driven by the rapid globalisation and advancement in technologies, complex migration pathways and push factors, and gender biases and stereotypes. These are the factors that are entrenched within systems and structures.

**Policy:** factors that are created by the existing gaps in policies. These gaps position migrants in highly vulnerable situations with weakened bargaining power and produce restrictive employment regulations despite Malaysia's high reliance on a foreign workforce.

**Individual:** factors which directly impact the agency of the individual, which are created by limited or restricted access to legal representation and effective remedies, the lack of awareness among the public to identify and report on potential labour trafficking cases, as well as the lack of ability among migrants themselves to raise their grievances for resolution.

Broad Theme	Key Messages	Reviewed Literature
<b>LEVEL OF ANALYSIS: STRUCTURAL</b>		
Source country factors: systemic push factors that increase the supply of foreign labourers	<p><b>Systemic forces such as globalization and advancement in technologies drive workers' vulnerability to labour trafficking.</b> Such forces are further compounded by deepened inequality affecting many different pockets of society in source countries (e.g., Bangladesh and India), forcing them to migrate cross-borders in search of decent work abroad.</p> <p><b>Complex push factors</b> in the source country (e.g., family pressure, poverty, and societal expectation) continue to drive workers' aspiration to migrate across international borders in search of decent work.</p>	Mahalingam (2019) Suyanto et al. (2020)
Gender factors: create another layer of vulnerability	<p><b>Female workers tend to be more vulnerable than male workers.</b> Such vulnerability includes the risks of physical and mental violence, sexual abuse, and commercial exploitation, at all levels of their migration experience.</p>	Lasimbang et al. (2016) Anam et al. (2021)



Broad Theme	Key Messages	Reviewed Literature
Poverty creates greater risk appetite and decreased oversight	<b>Migrating across international borders through a regular or legal pathway is costly and bureaucratic.</b> Consequently, aspiring workers who are economically disadvantaged, or without access to the financial market (e.g., loan) and authorized intermediaries – often resort to irregular migration pathways. Besides, lack of education and migration facilities cause certain pockets of society to rely heavily on unauthorized brokers to facilitate their migration, leaving them highly vulnerable to manipulation and exploitation.	Ormond & Nah (2020).
<b>LEVEL OF ANALYSIS: POLICY</b>		
Insufficient policies: All migrants are vulnerable due to policy gaps and poor policy enforcement	<b>Migrant workers who are legally allowed to travel and work in Malaysia are still made vulnerable to a range of labour exploitations</b> and trafficking cases in Malaysia. This is partly due to persistent gaps in employment policies that do not adequately protect migrants' rights and well-being in the country.	Ajis et al. (2015) Lasimbang et al. (2016) Wan Ismail et al. (2017) Juliawan (2018)
	Despite the high level of dependency on foreign labourers, different <b>policies governing immigration and employment of migrant workers are not coherent</b> (e.g., Employment Act 1955 is not coherent with Immigration Act 1959). Such (in)coherency creates more possibilities for regular migrant workers to become irregular.  Malaysia's policies governing the hiring of migrant workers, and their social security are deemed to be "outdated" and are not aligned with key international labour standards (e.g., social protection floor)	Jian-Xing Lim (2018) Wahab (2019) Low (2021a)
	Malaysia's policies that rely heavily on "labour intermediaries" and "labour contractors" to support employers in filling up gaps in the workforce have <b>weakened workers' bargaining power</b> . The lack of bargaining power, in the meantime, contributes to poor working conditions and employment benefits enjoyed by workers.	Devadason & Meng (2014/2015) Wahab (2019) Low (2021a)
	While migrant workers' policies are widely known to be inadequate to protect vulnerable workers, these <b>existing policies are also not well enforced on the ground</b> .	Devadason & Meng (2014/2015) Sok (2019) Low (2021a)
Policy gaps create a tiered system of vulnerability, with the undocumented, stateless, and refugees as the most vulnerable	<b>Malaysia's immigration system is rigid, restrictive, and complex.</b> It does not only create different classes and categories among the migrant population but tends to produce segments of migrants who are highly vulnerable than others. For example, unlike regular migrant workers – irregular migrants, refugees and asylum-seekers are excluded from many of the existing protection mechanisms, including the right to lodge their labour-related grievances to labour authority.	Ajis et al. (2015) Wahab (2019) Ormond & Nah (2020)
	Workers without travel and working documents (i.e., irregular migrant workers) are not only seen to be among the most vulnerable groups of migrants but being an <b>easy target for extortion and bribery by irresponsible authority personnel and employers</b> .  <b>Irregular migrant workers are seen as "disposable people"</b> , and they are excluded from the state protection, as well as the welfare and social security system in Malaysia.	Juliawan (2018) Wahab (2019) Dolhan et al. (2021) Ormond & Nah (2020) Sok (2019)
Gender factors: Policy gaps leave domestic workers extremely vulnerable	Malaysia's policies do not recognize domestic work as a form of work, regulated under the employment regulations. Consequently, <b>female migrants who work as domestic workers are continuously excluded from a range of employment-related benefits and protection mechanisms</b> , making them highly vulnerable to many forms of labour trafficking and forced labour.	Devadason & Meng (2014/2015) Sok (2019)

Broad Theme	Key Messages	Reviewed Literature
<b>LEVEL OF ANALYSIS: INDIVIDUAL</b>		
Lack of agency: victims and survivors struggle to navigate the system and find no support from the community, who lack awareness.	<b>Malaysia's anti-trafficking policies and victim support mechanisms are lacking and inadequate</b> to respond to the immediate needs of victims/survivors. Consequently, victims or survivors continuously face systemic barriers, including limited and/or restricted access to legal representation, social welfare benefits and consular services.	Juliawan (2018) Sok (2019)
	<b>Lack of awareness among the public, including local community hinders action and cooperation to identify and address labour trafficking.</b> Authors highlighted that the lack of awareness among the public allows for labour trafficking cases to occur within their community or surrounding environment, and unreported. Even when the members of the public know such cases occur, they do not know how to report it.	Iqbal & Gusman (2017)
	Existing studies also point out that <b>migrant workers fear and lack the ability (both awareness and knowledge)</b> to raise their complaints and grievances to employers and other third parties for resolution.	Mak et al. (2021)

Overall, the research shows that systemic push factors and gender biases create a system where there is a large supply of labour force participants who are in need of economic/livelihoods opportunities. Due to an increased risk appetite, caused by these push factors, many migrants must travel, navigating complex migration facilities, including relying on individual intermediaries and brokers. However, these individual intermediaries and brokers can act with impunity, as they operate in a parallel market or informal economy where all parties are taking part in illicit activities, leaving migrants outside of any protective systems.

With such a large supply of labour, migrants tend to be treated as disposable, and policies fail to protect them, leaving them exposed to risk of mistreatment and labour abuses. The victims and survivors themselves are unable to navigate the system and seek remedies, due to several reasons such as fear of retaliation or negative repercussions, and lack of knowledge of the correct recourse.

## 4.2 Current Regulatory and Policy Reforms

This sub-section corresponds to the second sub-question: do current regulatory and policy reforms really address migrant workers' vulnerability to labour trafficking? The literature shows us that many gaps in policy and practice leave migrants vulnerable.





Broad Theme	Key Messages	Reviewed Literature
Policies are far from holistic and lack a human rights approach	Despite various efforts initiated by the government to address labour trafficking, it will never meet its objective if such efforts only focus on strengthening prosecution and leaving behind the protection aspect (of the victims). <b>Incorporating the human rights aspect in anti-trafficking measures will help the government to address labour trafficking holistically.</b> Other literature stresses the importance of mainstreaming human rights aspects in migrant workers' policies and protection mechanisms, as a whole.	Wan Ismail et al. (2017) Lasimbang et al. (2016) Wahab (2019) Ormond & Nah (2020)
Social welfare system falls short to protect victim of trafficking	Amending social security legislations is one significant step towards strengthening workers' protection. However, to address labour trafficking holistically, one must consider the importance of <b>re-orienting the social welfare system and approach in dealing with complex issues involving trafficked victims.</b> This also requires the government to build the capacity of bureaucrats, enforcement personnel and social workers to deal with real cases in their daily routines.	Wan Ismail et al. (2017)
Policies, although growing in number, still fail to protect those who are not documented	The past five years and so has seen Malaysia amended several legislations in view of strengthening social security and the overall protection of migrant workers. These include the amendments of the Employees' Social Security Act 1969, Employment Act 1955 and Workers' Minimum Standards of Housing and Amenities Act 1990. These amendments further convince that the government is serious about addressing labour standards non-compliance in the business sector, including eliminating risks of labour trafficking and/or forced labour. However, studies caution that <b>such reforms in legislation are yet to address issues affecting irregular or undocumented migrant workers</b> in the country. This pocket of the migrant population remains vulnerable to labour trafficking.	Ajis et al. (2015) Wahab (2019) Sok (2019) Low (2021a) Dolhan et al. (2021)

Overall, the literature shows that the government fails to address trafficking in a rights-based way and even when implementing policies and practices that should address vulnerability, the lack of a well-thought out, holistic approach leads to continued labour abuses and trafficking.

### 4.3 Barriers and Hindrances

This final sub-section corresponds to the third sub-question raised earlier that is – what hinders Malaysia's efforts to reduce and/or eliminate migrant workers' vulnerability to labour trafficking? Similar to sub-section 4.1 above, we divide the key messages from the body of literature into several levels of analysis (i.e., structural, policy and individual). In this sub-section, we introduce another stand-alone level of analysis, namely business/enterprise level.

**Structural:** barriers and hindrances that are driven by the complex structure and lucrative nature of the migration industry;

**Policy:** barriers and hindrances that derive from the gaps in national regulations and law enforcement, complex bureaucratic process, private monopolization of the migration industry, lack of victims-centred measures and the limited role of CSOs;

**Business/enterprise:** barriers and hindrances that derive from the growing market standards, lack of awareness and knowledge on labour standards and practices, and other capacity gaps among small and medium-sized enterprises; and

**Individual:** barriers and hindrances that derive from the persistent stereotypes perceiving migrants as disease vectors, financial burdens, and a less deserving community.

Broad Theme	Key Messages	Reviewed Literature
<b>LEVEL OF ANALYSIS: STRUCTURAL</b>		
Trafficking is embedded in the economy, with few incentives for its eradication	The <b>migration industry is a lucrative business with complex profit and loss accounts, featured by institutionalized networks</b> . Other literature highlights that migration industry is filled by unstructured, complex, and multi-layered agencies and brokers, both licensed and unauthorized by the state, to recruit and facilitate migration across borders. This makes conventional crime prevention measures inadequate to address these complexities.	Ajis et al. (2015) Wan Ismail et al. (2017) Hwok-Aun & Leng (2018) Low (2020)
<b>LEVEL OF ANALYSIS: POLICY</b>		
Businesses are poorly regulated, while, at the same time, the lack of government's integrity and transparency persists	Despite growing allegations of forced labour in various economic sectors in Malaysia (e.g., plantations), there has been the lack of accountability and transparency among businesses to report and remedy such allegations. This is partly contributed by the <b>lack of national regulations requiring businesses to perform due diligence and public reporting</b> with respect to labour standards compliance.	Wahab (2019)
	Literature highlights that the existing recruitment policies have not only failed to reduce the number of intermediaries involved in recruitment in source countries but <b>triggered excessive monopolization in the migration industry</b> .	Low (2020)
	<b>Political interference</b> has been one factor that leads to <i>monopolization</i> in the migration industry in Malaysia. Political parties and senior politicians are allegedly involved in the top-level decision-making process and the selection of firms to serve as a few exclusively licensed agencies to perform recruitment of migrants. This further amplifies the lack of integrity and transparency in the recruitment processes and creates unfair competition in the labour market.	Jian-Xing Lim (2018)
The government's approach is overly focused on crime control, as opposed to human rights focused	Effective policy implementation on the ground has been hindered by the <b>lack of discretion, flexibility, and strict bureaucratic procedures</b> among the frontline personnel (including enforcement officers and social workers) in dealing with labour trafficking cases. Such rigid procedures and bureaucracy discourage frontline officers from applying a humanistic approach in dealing with unique and sensitive cases.	Wan Ismail et al. (2017)
	Despite several improvements in migrant workers' and anti-trafficking's policies in Malaysia, the government's approach in addressing labour trafficking still relies on <b>crime control and security-oriented measures rather than victim-centric</b> . Such an approach tends to diminish or ignore humanitarian aspects, including the need to protect victims' welfare and rights.	Wan Ismail et al. (2017) Juliawan (2018) Low (2021a)
There is a lack of coordination among government entities and other non-state actors	The failure to address labour trafficking in Malaysia has been mostly attributed to the <b>lack of effective coordination</b> (including sharing of information and expertise) between different law enforcement agencies whose mandate is to prosecute, convict, investigate and protect victims of trafficking.	Wan Ismail et al. (2017)
	The government is seen to exclusively implement some policies, with <b>less or no involvement of non-state actors, primarily, the civil society organizations (CSOs)</b> . Though some policies exist, for instance, the anti-trafficking policies which have included CSOs in the anti-trafficking consultative council, there is a lack of collaboration and partnership between government agencies and CSOs in the actual implementation of the policies.	Wan Ismail et al. (2017)
	In the business sector, the literature claims that the <b>lack of workplace inspection, compounded by lax inspection methodology and expertise</b> to investigate complex cases such as debt-bondage – contributes to lack of enforcement of labour standards compliance at the workplace level.	Devadason & Meng (2014/2015) Wahab (2019)



Broad Theme	Key Messages	Reviewed Literature
<b>LEVEL OF ANALYSIS: BUSINESS / ENTERPRISE</b>		
Actors in the private sector, particularly the SMEs are unaware and not sufficiently exposed and pressured to comply with international labour standards	Businesses, especially small and medium-sized enterprises (SMEs), who form the majority of employers in Malaysia often <b>lack the awareness and knowledge on labour standards and practices</b> , including the prohibition of labour trafficking and forced labour. Besides, for business survival, they often prioritize the need to maintain production/service and stable workforce to support production, instead of investing resources to comply with the expected standards. Any policy intervention introduced to prohibit and prevent labour trafficking should aim at balancing productivity and labour standards compliance.	Wahab (2019)
	While there have been <b>growing market pressures and consumer demands to ensure supply chain that is free from forced labour</b> , the SMEs are often-times not directly targeted by these pressures. This makes them unaccountable to act responsibly, including in addressing workers' precariousness in the supply chain.	Wahab (2019)
	Businesses in Malaysia, particularly the <b>SMEs, are not adequately exposed to a range of market and sustainability standards</b> , which assure business compliance with, among others, international labour standards. Though these standards do not fully guarantee a supply chain that is free from forced labour, they provide a risk management system in place to prohibit, monitor and remedy when such incident occurs.	Wahab (2019)
<b>LEVEL OF ANALYSIS: INDIVIDUAL</b>		
The public perception of survivors is extremely negative, further limiting their agency	There have been persistent <b>stereotypes against migrants</b> , perceiving them as disease vectors and financial burdens to the government of Malaysia.	Juliawan (2018) Sok (2019) Ormond & Nah (2020)
	There has been a general tendency among bureaucrats and enforcement personnel that <b>perceive female migrants are willingly (or voluntarily) being trafficked</b> .	Wan Ismail et al. (2017)
	There have been common public perceptions that perceive <b>migrants as less "deserving" and less entitled to human and labour rights</b> .	Ormond & Nah (2020)

Overall, the literature tells us that there are a number of reinforcing factors that act as barriers to protect vulnerable migrants. First, politicians, bureaucrats, and employers have few incentives to regulate the recruitment industry and enforce the practice ethical recruitment. This is further compounded by poor public perception of migrants and the inability for victims and survivors to access their rights, leading to limited pressure to actively put a stop to labour abuses and trafficking.

Second, businesses are poorly regulated, and policies can have adverse consequences, such as over-monopolization. While, at the same time, the government does not sufficiently regulate the hiring of migrant workers and recruitment industry, and politicians and bureaucrats are at times involved in businesses in a non-transparent way. This eventually creates perverse incentives to fail to regulate the migration and recruitment industry and protect vulnerable groups.

Third, the government's approach is overly focused

on crime control rather than the protection of migrants, leaving them vulnerable at all times. Further and related, there is a lack of coordination among government entities and other non-state actors. A lack of sharing of information and expertise means that individuals fall through the cracks and remain with unmet needs in precarious situations.

Fourth, actors in the private sector, including the SMEs tend to lack awareness and exposure to international labour standards. Given their position further down the supply chains, the SMEs do not feel the pressure and urgency to comply with international labour standards.

Finally, with such a poor public awareness on labour trafficking, victims and survivors are affected two-fold. First, with a lack of public support, there is no incentive for politicians to push protective policies, especially at the expense of the taxpayer. Second, in general, the public can serve as informal service providers and gatekeepers – with a lack of support, a path to services is generally eliminated.

# 5. KEY OBSERVATIONS, POLICY DISCOURSE AND FUTURE RESEARCH

## 5.1 Key Observations of the Existing Literature

Overall, the body of literature available on trafficking/labour policy in Malaysia has obvious trends and gaps that should be highlighted:

The literature tends to be **empirical and policy-oriented research with very little connection to the genesis of international migration studies**. It is not a problem per se, but it certainly limits our understanding of mobilities and migration-related diversities – on why people migrate; how migration takes place; and most importantly, how migrants are particularly vulnerable to labour trafficking – in a broad sense.

The variety of academic disciplines and lenses among the available literature (e.g., sociology, political science, security and criminology, health, and policy studies) indicates the **evolution and importance of migration and labour trafficking research, which cuts across the different aspects of life, employment, and migration trajectory**. This also indicates migration and labour trafficking research is taking on a multidisciplinary perspective.

Many studies apply a **migration corridor approach** – that is a study that assesses and analyses a particular migration phenomenon between two countries (i.e., a source country and a destination country). While this approach can help identify and explain similarities, differences, and lessons learned, within and between two different corridors, such an approach tends to overlook a non-linear migratory pathway, which is often the norm. For example, an Indonesian migrant who is initially migrating to Singapore finds him/herself migrating onwards to Malaysia. This particular scenario (i.e., non-linear migratory pathway) is relatively common phenomenon in many labour trafficking cases – and this problematizes a migration corridor approach in addressing labour trafficking involving more than one destination country.

There is still a **tendency in the literature to link migrant workers' vulnerability to labour trafficking in a specific sector of the economy** (e.g., domestic work, plantation, and manufacturing), in isolation from one another. Such a sectorial approach has its merits and reasonable justifications, but they limit our understanding of labour trafficking cases that cross more than one economic sector. For instance, a labour trafficking case that is transitioning from plantation to manufacturing sector.

A handful of the available literature has included gender components in their respective studies but almost none (i.e., except one article) explains the **impacts of migration or labour trafficking on children**, either as victims of labour trafficking or dependents of migrant worker victims.

## 5.2 Implications of Migrant Workers' Policy Discourse

Existing literature has already highlighted a significant policy change governing the recruitment of migrant workers, amongst others, the digitalization of recruitment processes through the implementation of the Foreign Workers Centralized Management System (FWCMS). The intention was to seamlessly manage recruitment processes, but it also led to a few drawbacks, including commercialization and monopolization by a select few private firms that dominate the industry. This is seemingly linked to increased costs of recruitment, migrants' dependency on private recruitment agencies, and the risk of debt-bondage (Low, 2021b).

In connection to the first policy gap area discussed above, a few works of literature have already highlighted the complex and systemic nature of the recruitment industry. The recruitment industry generates millions of dollars, featuring complex profits and loss accounts (including due to lack of transparency and accountability), and complicated networks of enterprises and intermediaries across source, transit, and destination countries. Existing policy tools and regulations do not address these complexities, making aspiring workers at higher risk of manipulation, deception, and exploitative recruitment processes.

Literature points out other regulatory and policy changes with the aim to improve the social security and workplace conditions for migrant workers (e.g., changes in the SOCSO act, and the Employees' Minimum Standards of Housing act). Though this indicates that Malaysia begins to value migrants' contributions to the labour market, such efforts are limited to only covering migrants with proper travel and work passes. Undocumented migrant workers, whose presence is not recognized and counted, are continuously left behind in existing forms of the state protection mechanisms and social welfare system.

Some literature has highlighted constant policy enforcement issues, for example, the lack of labour inspectors with limited knowledge to investigate complex labour trafficking cases involving migrant workers. Such gaps continue to hinder the effective implementation of the existing policies governing the hiring of migrant workers.

Literature explained the lack of social compliance and market-driven due diligence mechanism to address labour trafficking issues in the supply chain. They also highlighted that while these initiatives have gained interest and participation from large industry players, other industry players (i.e., small, and medium-sized enterprises) who form the largest number of businesses – are often left behind. There is no legislative framework that requires businesses, regardless of their sizes of operations – to perform social (including labour) compliance due diligence in the country.

Finally, literature highlighted the constant negative public perceptions and stereotypes against migrant workers. Such negative perceptions and stereotypes, amongst others, perception of migrant workers as less deserving of the same rights and benefits afforded to local citizens – do not only influence policy-making space among bureaucrats but also during policy implementation – resulting in continuous abandonment and exclusion of actual victims of labour trafficking to seek justice and remedies.



## 5.3 Final Conclusion and Future Research

Malaysia first ratified the ILO's Forced Labour Convention (C029) more than half a century ago (on 11 November 1957). Only very recently, in March 2022, Malaysia decided to ratify the ILO Protocol to the Forced Labour Convention (2014), further strengthening Malaysia's legal commitment to address labour trafficking. Prior to making this international legal commitment, in June 2021, Malaysia renewed its National Action Plan on Trafficking in Persons for a third five-year term (NAP-TiP, 2021-2025). On 26 November 2021, the very first National Action Plan on Forced Labour (NAP-FL, 2021-2025) was launched, which sets the ultimate goal of ending forced labour by 2030.

The past decade and so has seen positive commitment made by the Government of Malaysia to address forced labour, including regulatory reforms with the aim to strengthen not only enforcement and prosecution initiatives but access to protection, social justice, and effective remedies. For instance, amendment of the Employment Act (1955) in 2021 had created a new offence related to forced labour, carrying a penalty of a fine up to RM100,000 (approximately US\$25,000), or to imprisonment for a term not exceeding two years, or both.

In response to our research question: **how does policy regarding migrant labour contribute to migrant workers' vulnerability to labour trafficking?**, the available literature shows us that the stronger legislations do not always or necessarily result in increased protection of labour trafficking victims (Devadason & Meng, 2014/2015). Effective protection of victims is dependent on a range of other inter-related and complex factors, including effective access to legal representation, remedies (Wahab, 2019), and the ability of frontline enforcement personnel to exercise their duty and to apply humanistic judgement when dealing with vulnerable victims (Wan Ismail et al., 2017). Further, with an overwhelming lack of public support and migrant agency, there is little incentive for increased protections.

This overview of available research shows a clear picture of the policy gaps and factors that perpetuate vulnerability. However, to further strengthen our understanding, and complement this decade-long goal of eradicating labour trafficking in the country, this study proposes several areas of future research as follows,

Studies that further examine the financial and non-financial implications of the trade-related sanctions (e.g., the US's Customs and Border Protection), and the state and firms-level commitment in addressing labour trafficking in Malaysia.

Studies that assess the current state of workers' and labour trafficking victims' access and voices in the state and non-state protection and remedial mechanisms.

Studies that critically examine political and socio-cultural barriers that hinder effective law enforcement in source and destination countries of foreign migrant workers.

Studies that further examine the privatization of migration industry and the emergence of new recruitment actors such as IT firms. The alleged monopolization and lack of integrity and transparency in the appointment of selected few companies, and the recruitment processes, warrant further study.

Studies that explore the potential application of voluntary labour standards compliance system by businesses. This private-driven compliance system may serve as a due diligence process to prevent labour trafficking cases in the business sector.

Finally, from the literature review strategy perspective, this study strongly suggests the broader scope of databases (i.e., beyond Scopus and Google Scholar) to be used in search strategy, with the inclusion of grey literature. This is to ensure adequate coverage and fair representation of knowledge produced by scholars, independent experts, and international organizations.

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