

Challenges in Prosecuting Human Trafficking Cases: The Role of Expert Witness

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ABSTRACT

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To be ranked at Tier 1 in the Trafficking in Persons (TIP) report, Section 108 of the Trafficking Victims Protection Reauthorization Act requires the state parties to comply with its minimum standards in combating human trafficking. Unfortunately, some states parties, including Malaysia failed to meet the minimum standards in curbing the monstrous crime fully. Their failure to be in Tier 1 is contributed by a few reasons, including the lack of success in prosecution. According to the United Nations Office on Drugs and Crime, the low number of convictions of traffickers is due to the absence of anti-legislation, lack of trained law enforcers and prosecutors and corruption among the stakeholders. In 2021, the U.S State Department has downgraded Malaysia's ranking in TIP report from Tier 2 to Tier 3. The main reason for the decline was that the government did not adequately address credible allegations from multiple sources alleging labour trafficking involving refugees, migrants, and domestic workers. To be in Tier 1, Malaysia should consider having expert testimony to secure convictions. Using qualitative research method, this paper examines the relevance of expert witness in human trafficking cases from Islamic, Malaysia and international perspectives. This paper further recommends its use in court to secure conviction against traffickers and protect the victims.

Contribution/Originality: This study contributes to the existing literature on human trafficking issues, focusing on expert witnesses and their role in providing testimony against traffickers. Using qualitative research method, it was suggested that inviting expert witnesses would ensure the trafficker's conviction and protect the rights of trafficking victims.

1. Introduction

Generally, "expert opinion" refers to a person who is an expert in a particular field, such as law, science, or religion. An expert may also be defined as an individual with some advanced expertise, education, skills, training, and experience beyond the knowledge of ordinary members of the general public (Rajamanickam & Rahim, 2014; Anderson et al., 2004). The expert witness illustrates and provides opinions on complicated issues beyond most people's general knowledge. His testimony is highly regarded and persuasive; such evidence is generally allowed under the strictest consideration (Stygall, 1994), and the court will call for rebuttal evidence if appropriate. Likewise, expert opinion can assist the court in drawing a judgment if the court lacks the expertise to accept such facts in decision-making (Sarkar, 2018; Rajamanickam & Rahim, 2014). He should attend the court with a properly formulated and reasoned opinion (Burn, 2005; Notley, 2000), and he must recognise the inconsistency and change the opinion accordingly in the event of inconsistency (Beran, 2009).

A pathologist, a physician in the medical field who studies the causes, nature, and effects of disease would be called as an expert witness to clarify the cause of death in murder cases. In supporting the opinion of the pathologist, a chemist¹ will be required to testify about DNA analysis. In sexual offence cases such as rape and molestation, medical experts will assist the court by presenting a medical opinion on the victim's physical and mental condition and giving a medical opinion on the question of whether a victim was subjected to sexual abuse.

In nations such as the United States, South Africa and the Philippines, the use of expert witnesses to support the court is not a new phenomenon. Due to the increase in "newer" and more sophisticated crimes, it is gaining prominence in Malaysia and other jurisdictions. There is a growing body of literature regarding expert witness testimony in the United States of America, the United Kingdom and Australia, but this is not Malaysia's case (Ibrahim, 2007; Moreno, 2019).

2. Literature Review

In Malaysia, there is no empirical research on this topic. Despite the fact that several writers have attempted to write about the subject, the majority of the works are limited to a general discussion of human trafficking in Malaysia, with a focus on women and children as victims. The authors of this paper have referred to articles, journals, books, and publications of foreign writers. Even though Malaysia is geographically and legally distinct from other countries, its practices are relevant in the Malaysian context. Some authors (Zheng, 2010; Holmes, 2010) provide a thorough and comprehensive study of the laws governing human trafficking in other nations, including both international and domestic legislation.

Human trafficking victims come from various countries and backgrounds. Burma has become a significant source of trafficked persons, especially for sexual purposes in Thailand (Holmes, 2010). Some of the victims are also borrowers to debtors (Ranjan, 1999). The debt-bondage relationship exposes them to trafficking. Once bonded, the borrower lost his freedom of movement to the debtor, tied with works and instruction by the debtor (Miers, 2003).

Any gender, colour, or age can be a victim of human trafficking, regardless of citizenship or position. Migrants, including refugees, who are both documented and undocumented, are exposed to exploitation. Malaysia has been a key transit country for refugees for four decades, making them a vulnerable demographic for exploitation (Ahmad et al., 2016). Article 1 of the United Nations Convention and Protocol Relating to the Status of Refugees has defined the term "refugee" as any person who;

"...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

Despite continuing to admit a large number of refugees under its care, Malaysia has no specific legal framework governing the refugee. It has yet to ratify the 1951 United Nations Convention on Refugees and its 1967 Protocol (Seet, 2013). Since refugees' rights under international human rights law are not recognised in Malaysia, they are exposed to exploitation. Their salaries are denied after the works were done, a syndicate forces children to beg money from people, and their women are forced into marriages.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children is the key tool in the fight against human trafficking. Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children, defines "trafficking in persons" as:

"The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".

The United Nations Protocol has outlined three elements that constitute an offence of human trafficking. There must be an act carried out by the perpetrator in cases of trafficking, such as the recruitment, moving, harbouring, receipt of victims; that there must be a process involved, such as force, deception, coercion, abuse of power or vulnerability; and that there must be at least a motive or intention for exploitation such as for sexual service and forced labour. The majority of state parties, including Malaysia, have further adopted this interpretation. In the case of *Siti Rashidah binti Razali & Ors v PP*, the court decided that Section 2 of the Anti Trafficking in Persons and Smuggling of Migrants Act 2007 (ATIPSOM) requires the prosecutor to prove the "exploitation"; "trafficked person", and "trafficking in persons". Like other criminal cases, the standard of proof for human trafficking case is beyond a reasonable doubt.

Human trafficking in Malaysia comes in various forms of exploitation, including forced labour, sexual service, and the trafficking of babies. The expert testimony would assist the prosecutor in considering any method, scheme or pattern designed to cause victimisation in proving such cases. Failure to conduct an act will result in harm as required by the statute. The presence of the expert will also help the court to determine whether the victim

is trafficked for exploitation by the accused. Among the experts relevant to human trafficking cases are medical experts, psychologists, criminologists, anthropologists, cultural experts, and religious experts.

For example, experts in sex trafficking cases will explain how sex trafficking cases are uniquely different from other criminal cases because the victims suffer layers of trauma. Many sex trafficking victims experience emotional, physical, and sexual abuse. The expert can restore the victim's credibility by explaining her reluctant testimony and mistaken involvement in the crime due to manipulations by the traffickers.

Therefore, in cases of human trafficking, expert opinion on medical issues can be a significant source of evidence. By presenting a medical opinion on the age of a victim, by reporting injuries or the victim's psychological state or providing a medical opinion on whether a victim was subjected to sexual assault, medical experts will assist the court. Expert testimony in the field of psychology in general and victimology, in particular, is considered by some courts and some clinicians to be a particularly valuable source of evidence in cases of human trafficking, since the victim's personality and psychological condition is often central to understanding the case.

However, not all expert opinions are reliable. Expert evidence can misrepresent the fact-finding process by using analytical terminology unfamiliar to the judge, which can be embraced as infallible or with greater weight than it deserves. For example, in the case of *R v Mullins-Johnson*, the defendant was convicted of first-degree murder based on the evidence presented by Dr. Charles Smith, a paediatric pathologist. After twelve years in prison, the convict was acquitted by the Ontario Court of Appeal. Fresh expert evidence revealed that the expert in the original case had no formal training or education in forensic pathology was unreliable and that the pathology evidence was inconclusive of murder.

The same situation happened in the case of *R v Broomfield*. Dr. Gideon Koren, a clinical toxicologist who lacked formal forensic toxicology training, used hair analysis procedures in an uncredited lab. In a multitude of criminal and family affairs, he testified as a forensic specialist. For forensic purposes, Dr. Koren's hair-strand studies were inadequate and should not have been accepted in court. In the Tamara Broomfield case in 2009, his opinion was also denied on different charges due to insufficient evidence given by the Motherisk drug-testing lab (MDTL).

3. Methodology

This paper takes a qualitative approach when it comes to writing. Data about human trafficking issues and prosecution is gained through library research and received from various sources. The content of regulating laws, legislation, statutes, and policies connected to human trafficking in Malaysia was also examined in this study, which included content analysis and critical legal studies. This form of data gathering is crucial because it provides qualitative data that is reliable, authentic, and valid. Then, secondary data was gathered by doing research on written sources such as textbooks, official reports, statistics, seminar papers, and articles from peer-reviewed publications. The material is also sourced from publicly available electronic sources, such as government websites and reputable organisations. The researcher was able to supplement and complete information that was not available from the primary data using secondary data. This type of analysis is significant because it allows the researcher to analyse the above texts to grasp the research problem better.

4. Results and Discussions

4.1. Expert Witness in Islam

Expert witness or expert opinion is also known as *Ra'yu al-Khabir* in Arabic. The term refers to a testimony containing an opinion given by an expert in any field (Rajamanickam & Rahim, 2014). It is a method of evidence given by academics or experts, requested by judges to provide their opinions on particular issues concerning several parties conflicts, which will help the judges make a wise decision. For cases outside of their competence, judges will request some assistance from a forensic specialist and it will be easier for the court to examine each case fairly and accurately (Syiniur, 2006).

The Judiciary system in Islam acknowledges the existence of expert opinion since the time of Khulafa'ar-Rasyidin. For instance, a woman claimed that a man raped her and proved it by the semen spreading on her clothes and between her thighs. Saidina Ali was of the opinion that the white patches were not semen but egg whites. Upon a request from Saidina Umar, this case was resolved by Saidina Ali (Ismail, 2015).

Furthermore, it was agreed by all four Imams, Imam Hanafi, Imam Maliki, Syafie and Hanbali that, in difficult situations, the expert opinion should be referred to the judges, allowing the experts to provide clarification to facilitate the judicial process (Syiniur, 2006).

There are many Qur'an verse authorities concerned with expert opinion (Ismail, 2017). Among the authorities can be seen in the Qur'anic verse, which states:

"So ask the people of the message if you do not know." (Quran: al-Nahl, 16: 43)

Sunnah also proves the law of expert opinions as a method of proof, including assessing the validity of a text. For example, Rasulullah SAW recognises the expert opinion that can be seen from confirmation of Madjaz al-Madlaji's of the validation of Zaid and Usmah's lineage through Qiyafah by covering their heads and showing their feet.

As the hadith narrated by Aisyah:

"One day the Prophet (pbuh) met Aisyah with happiness that was reflected in his face: Madjaz al-Madlaji observed Zaid and Usamah after their heads were covered and feet were shown. After observing and examining their feet, he said: These feet belong to the same family." (Muslim, 1997)

In addition to that, the Muslim scholars agree that the judges must call the experts in a specific field to testify in the courts to clarify the problems in which the courts are having difficulty dealing with technical issues such as video, DNA, and fingerprint.

In the case of ijthihad, the Director of the Islamic Center of America, Imam Hassan Qazwini, considered that the right to participate in ijthihad belongs to a person who is a recognised expert jurisprudence and who is eligible to derive Islamic law from original sources. It includes extensive expertise and several years of study of jurisprudence, the fundamental of jurisprudence, hadiths, hadith narrators' biographies, Qur'an commentary, Arabic

grammar and eloquence, and logic. Also, knowledge of philosophy, sociology, and economics is more important and increasingly necessary in this era. A mujtahid should also demonstrate qualities like piety and moral integrity.

The Islamic legal system recognised the concept of an expert witness. Depending on the judicial option, an expert opinion is obtained through a direct appearance in court or through a report. Islamic Court requires an expert witness to be a Muslim for both civil and criminal cases. Muslim and non-Muslim witnesses will testify in a Muslim court against non-Muslim defendants (Chaleby, 1996). For example, in the case of damages, the Islamic scholars agreed that a person is entitled to total compensation for the whole body if the damage is caused to his mind. The percentage of loss could be equated in terms of loss. A psychologist or psychiatrist should determine this percentage (Chaleby, 1996).

4.2. Expert Opinion in Malaysia

Like other countries, Malaysia recognises expert witnesses in its legal framework. The main section governing expert opinion is stated under the Evidence Act 1950. Section 3 states that the facts include:

- (a) "any mental condition of which any person is conscious;
- (b) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact."

Section 45 of the same Act further explains on the opinion of experts:

- (1) When the court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions, are relevant facts.
- (2) Such persons are called experts.

The function of Subsection (2) is further explained under the illustrations. The person who testifies as an expert witness must first prove to the court that he is an expert as specified by Section 45(1) of the Evidence Act 1950. The burden of proof lies on the person who produces such an expert witness. Upon the court's satisfaction, the expert witness will give an opinion on the matter relating to his knowledge to assist the court in forming an independent opinion.

In the case of *Yong Szee Fatt v Pengkalan Securities Sdn Bhd* cited dictum of Brown, acting C.J. in *SimAh Song & Anor v. Rex*:

"The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the court lacks, the court is in no better position than it was before to determine the question which is its duty to determine, and if the court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the court."

The opinions of experts can be given in (2) forms: orally or in writing. In cases where the expert is absent or is not required to attend the proceeding, he can present his findings in the form of a report. This is expressly specified in Section 399 of the Criminal Procedure Code, where, unless so ordered by the judge, a report prepared by an expert can be produced in court without his presence; or the accused, in which case the accused shall notify the Public Prosecutor not less than three clear days before the start of the trial. In the case of *Mohammed b Abdul Rahman v PP*, the court held that the Prosecuting Officer is obliged to produce the document from the maker if the notice is given by the accused or the court requires the presence of the maker.

However, there are situations where the court is not in a position to render a correct decision without the assistance of individuals who have gained specific expertise or experience in a particular subject-matter, such as where the subject-matter in question is outside the reach of common experience or common knowledge, or where it involves special study of subject-matter or special experience. In such instances, the assistance of experts is needed. The rule is relaxed in these cases, and expert testimony is admitted to allowing the court to make a fair decision. Below are some examples of cases that have used witness opinion in Malaysia.

In the case of *Dato Seri Anwar bin Ibrahim v Pendakwaraya & Rayuan Lain*, the Federal Court confirmed experts finding in determining the DNA profile "male Y" was a match with the sperm DNA taken by the victim. The judgment's literal understanding shows that courts are now prepared to consider all sorts of expert testimony on its face value without the need to analyse the practical specifics of how the research process was performed (Muhamad & Rahamanickam, 2016). In *Syed Abu Bakar bin Ahmad v PP*, the Appellant was convicted of a public servant's criminal breach of trust of such funds entrusted to him. There was a dispute about the handwriting of the words "*tiga ratus sahaja*" and the figure \$300 on a cheque. The court held that the principle is settled that while it is true that a judge sitting alone is entitled to consider all the facts, to use his magnifying glass to assess the probability, so to speak, and to shape his own opinion or decision, it would be wrong for him to conclude a matter that could only be properly concluded with the aid of expert evidence. Since an expert in handwriting did not review the text, the trial court's decision was challenged. In this case, the Appellant was acquitted and discharged and the conviction was quashed.

In *Chandrasekaran & Ors v PP*, the appellants were charged and convicted of abetment with the crime of defrauding the government relating to such forged documents. On identifying the typewriting created from the same typewriter (Exhibit P21) used by the appellants to produce the forged paper, a typewriting expert was invited to testify (Exh. P4C). After conducting the identification, the expert was of the opinion that Exh. P4C was produced from the Exh. P21. Therefore, the court admitted P21. The court held that the word 'science or art' is sufficiently elastic to be granted a literal meaning. The expert opinion on typewriting is as much a matter of science as handwriting and fingerprint evidence. The Appellant was convicted.

In *PP v Mohamed Sulaiman*, the respondent was accused of murder. A chemist's evidence that the bullet recovered from the deceased's body was fired from the rifle delivered to the respondent was the only evidence linking the respondent with the killing. However, the chemist's evidence was inadmissible in the trial court on the grounds of the chemist's incompetence as an expert in firearms and the identification of the rifle from which the

bullet had been fired. Contrarily, the Federal Court rejected the trial court's decision and admitted the evidence of the chemist. The respondent was convicted. Although the witness had no formal training in forensic ballistics, the court held that he should be considered an expert to determine whether the respondent's rifle fired the bullet because of his qualifications, scientific qualifications, and practical experience in the Department of Chemistry. Although the specialist must be eligible, he may not need to be so; he can be so by experience, and the fact that he has not obtained his expertise professionally goes only to weight and not admissibility. As an expert witness, a semi-skilled or semi-professional may qualify. Therefore, the learned trial judge was mistaken in considering him as a non-expert in this situation.

In *Pathmanabhan a/l Nalliannen & Others v PP*, the Respondents were charged with murder (3) victims. Medical experts and chemists were called. After conducting morphological examination, they testified that the bones found were human bones and the body to which the bones belonged would have been burnt with extreme heat. An Expert Cremator (SD12) who had been exposed to the procedures of open air cremation according to Hindu rites from the age of six was also called to testify on the effective materials used in carrying out open burning and also on effective burning of bodies that are laid one on top of another. The court held that the medical and chemistry experts' evidence was admissible; however, the evidence of the expert cremator was rejected because the opinion given was based on his personal view and he had never done any experiment before. The appeal was dismissed and all the Respondents were sentenced to death.

In *PP v Roslee bin Tamrin*, the accused was initially charged with the murder of his five-month-old son under Section 302 Penal Code. Later, this charge was reduced to Section 304(a) after representation was made to the Attorney General. The accused admitted that he had shaken the baby while the baby was in his cloth cradle, slapped the child twice and shook him. A paediatrician testified that the baby had died due to what is referred to as "Shaken Baby Syndrome." A pathologist gave evidence that the cause of death, in his opinion, was a head injury due to blunt trauma. After conducting psychological tests on the accused, a psychiatrist testified that it showed that he was of borderline mental retardation. The court admitted the experts' opinions. The accused was convicted under Section 304 (a) and sentenced to 4 years imprisonment.

All of the abovementioned cases showed that Malaysian courts had accepted testimony given by expert witnesses in proving cases. Their attendance is also welcome to help the courts in reaching a decision. In regards to human trafficking cases, TIP 2020 announced that Malaysia is growing the number of trafficking-specialist prosecutors from 56 to 59, providing a specialist trafficking enforcement team and finding two volunteer victim assistance specialists who have worked with more than 100 victims. Despite several demands from judicial officers, no expert witness has been called to testify in human trafficking cases in Malaysia (Moreno, 2019). The U.S. Department of Justice has attempted to organise a training programme and form a panel of expert witnesses composed of enforcement officials and academics. They are selected based on their experience, knowledge and recognition in relating to the human trafficking cases. MAPO acknowledges the existence of this programme and group of experts; however, no one is called to give testimony in court.

5. Expert Witness of Human Trafficking Cases in Foreign Countries

Due to the relevance of expert testimony in human trafficking cases, numerous countries, including the United States, the Philippines, and South Africa, have adopted the practise of calling the expert.

5.1. The United States (U.S.)

The U.S government entirely complies with the minimum standards for the abolition of human trafficking. Considering the impact of the COVID-19 pandemic on its anti-trafficking capacity, the government continued to exhibit serious and persistent efforts during the reporting period; thus, the United States remained on Tier 1 ([U.S Department of State, 2021](#)). Expert witnesses in human trafficking cases are widely accepted in the U.S. Victim advocates trained in trauma worked closely with prosecutors and law enforcement to support survivors as they went through the criminal justice system. Prosecutors also called drug counsellors and other experts to explain how addiction affects the brain and body and the hazards of withdrawal to the jury.

In the United States, the Federal Rules of Proof were amended to codify the structure of the Daubert Standard (which governs the admissibility of expert witness testimony). Rule 702 reads:

"A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialised knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case."

Courts in the U.S. accept testimony given by expert witnesses who come from various fields. As in the case of *United States v Alzanki*, ([UNODC, 2017](#)) the court accepted the testimony given by the victimologist. The defendant was convicted for holding the victim in involuntary servitude. She was subjected to numerous abusive acts and inhumane treatment. The court held that, while its probative value was in doubt, the expert victimologist's testimony was significant. At trial, this specialist testified that abusive victims sometimes harbour overwhelming fear of their perpetrators and do not escape at the first chance. The defendant argued that this evidence was not beneficial to the jury because it only concerned the victimology of sexual assault, while the case revolved around alleged involuntary servitude. The court denied this claim, stating that "while the more generalised nature of the proffered testimony may temper its probative value to the fact finder, we do not think it can be said that its relevance is negated entirely." The conviction of the defendant of involuntary servitude was affirmed.

Testimony from a sociologist was also accepted in the *Hammond v Commonwealth of Kentucky*, where he was found guilty of unlawful using electronic tools to induce a minor to participate in sexual acts or other forbidden activities. Hammond testified that he did not believe Jenna was fifteen and instead believed he was chatting with an adult who was role-playing. He introduced an expert witness, Dr. Beggan to explain sexual role-playing and fantasies to support his testimony. The trial court excluded this evidence, but the Court of Appeal overturned it. The court held that the expert testimony would have helped

the jury determine whether Hammond was engaging in role-playing behaviour and would have aided the jury in determining whether Hammond knew Jenna was fifteen, a necessary element of the crime. Therefore, the trial court abused its discretion in not conducting a full Daubert hearing in which the relevance and reliability of Dr. Beggan's testimony was considered before excluding this testimony.

Another example of anthropologist testimony can also be seen in *Farrell v United States*. In South Dakota, the defendants were the owners and managers of a hotel. The defendants arranged for the foreignworkers to come to the United States (Filipino nationals) and pressured them to work to discharge a debt. The defendants were each convicted of peonage, peonage conspiracy, false claims, visa fraud and document servitude, all of which were in breach of 18 U.S.C. An expert in anthropology was called, and the court acknowledged the evidence of the expert. The Defendants were found guilty on all charges. The specialist testified about a "climate of fear" frequently present in cases of modern-day human trafficking. This climate of fear is a type of psychological coercion arising from certain strategies and circumstances used or exploited by human traffickers. She went on to state in this case that all of these signs existed. In affirming the peonage convictions, document servitude and other charges, the court found portions of the expert testimony essential and relevant as long as they did not usurp the jury's fact-finding role.

In *United States v Cook*, an anthropological or cultural expert was called to testify on the victim's back with the letter "S" on the tattooed tribal tattoos to mark her as a slave and on her ankle with the Chinese symbol for slave. Expert testimony identified the significance of the Chinese symbols. By intimidation, deceit, or coercion, the defendant was found guilty of commercial sex trafficking.

5.2. Philippines

The Philippine government completely complies with the minimal requirements for the abolition of human trafficking. Because of the impact of the COVID-19 epidemic on the Philippines' anti-trafficking capacity, the government continued to make persistent efforts during the reporting period; as a result, the Philippines remained on Tier 1. More drug traffickers were prosecuted as a result of these measures than in the previous year (U.S Department of State, 2021).

In the case of the *People of the Philippines v. Jeffrey Hirang y Rodriguez*, the defendant was found guilty of sexual exploitation against four Filipino girls. To determine their ages, the victims were tested by a dentist. The dental test showed that all of them were minors. The court relied on the review's findings to decide that the trafficking in minors is deemed to be "qualified" as trafficking in persons. The defendant appealed to the Supreme Court Manila, and his conviction was upheld in 2017.

In the *People of the Philippines v Rose Magroy Pisaryt*, the accused was found guilty of human trafficking. According to the medical examination conducted, a physician testified that the victim had forced sex as she had several marks around her breasts, marks made by a blunt object in the ano-genital area, and her hymen was torn apart.

5.3. South Africa

South Africa's government does not yet achieve all of the minimal standards for the elimination of human trafficking, although it is working hard to do so. These measures

included continuing to prosecute and convict traffickers, sending convicted traffickers to prison for long periods, and continuing a few investigations into authorities suspected of being engaged in trafficking. In 2021, South Africa is listed in Tier 2 Watch List in TIP report. However, the country has made significant efforts to secure the conviction against the traffickers and enforces the laws of human trafficking.

In the case of *The State v Onyekachi Okechukwu Eze*, a psychology expert was called. According to her, victims addicted to drugs are easier to control and manipulate and are less likely to attempt to run away. Therefore, the defendant was found guilty of trafficking two (2) female victims for sexual purposes under Section 71(1) of the Sexual Offences Act, 32 of 2007-read with Section 51 and Schedule 2 of the Criminal Law Amendment Act, No.105 of 1997. The two victims were exposed to physical and sexual abuse, threats and support for their drug addiction.

In *The State v Mabuza and Chauke*, both accused persons were convicted of several counts of trafficking for sexual purposes and several counts of rape against four (4) children. The court found the children's testimony corroborated in the expert testimony of a registered nurse and a doctor who specialised in examining victims, especially children, in sexual assault cases. Both experts addressed evidence of sexual penetration. Besides, the doctor testified as to the ages of the child victims, which accorded with their testimony.

6. Conclusion

In a criminal trial, it is proven that certain cases require expert witnesses' testimony to assist the court in understanding specific issues and forming an independent finding. Expert's opinion is generally required in cases involving particular evidence such as human trafficking, murder, drug trafficking, and rape. Based on the discussion, the expert witnesses' testimony has advantages to prosecution cases in securing convictions. It is why the practice is widely accepted in the U.S, Philippines and South Africa.

As for Malaysia, it recognises expert opinion in its legal framework. This recognition is in line with international practice and Islamic principles. The expert opinion will assist the court in understanding the exploitation of the victim by trafficker regardless of whether the earlier is a refugee or asylum seeker, legal or illegal migrant, domestic or foreign worker. Malaysia also is making efforts to recognise the expert of human trafficking cases. In July 2019, a Malaysian Human Trafficking Experts Bureau, which consists of 8 expert witnesses, was formed, resulting from the cooperation of the U.S. Department of Justice and the Malaysian government. However, Malaysian courts and prosecution do not seem ready to call expert witnesses in human trafficking cases to date. Therefore, this paper proposes that the UN state parties, particularly Malaysia, consider calling these expert witnesses for such cases. Their roles may be different based on the nature and facts of the cases. Still, their attendance will help the judge understand the crime and decide whether the accused person has trafficked the victim for exploitation.

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Conflict of Interests

The authors declare no conflict of Interest.

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