Gender, globalisation and the gallows: women sentenced to death for drug trafficking in Malaysia

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Abstract

A disproportionate number of foreign national women are sentenced to death for drug trafficking in Malaysia, where there is the largest recorded female death row in Southeast Asia; latest disaggregated statistics suggest that there are 141 women on death row, 95% of whom for drug trafficking and 86% of the female death row population are non-citizens. Accordingly, this thesis seeks to address the notable dearth of scholarship on women under sentence of death, particularly for drug trafficking (current analyses focus on the death penalty for homicide). In so doing, it addresses the gap in the literature on the death penalty in Asia, as despite 95% of the world's executions occurring on this continent, it has received far less attention than other capital punishment regimes. Overall, this thesis engages with the theorising on the criminalisation of women in a globalised era, the literature on the feminisation of migration, existing work on female cross-border informal traders, as well as research on the criminalisation of female migrant workers in the Asian context. It draws upon findings from 47 'elite' interviews with lawyers, judges, Non-Governmental Organisation (NGO) activists, consular officials, police, prosecutors and religious counsellors involved with these women's cases, as well as systematic searches of legal and media databases which provide information on 146 women's cases between the years 1983-2019. The analysis of the empirical data involves a conceptual engagement with notions of gendered precarity (chapter 5), gendered disposability (chapter 6), and an examination of the connection between drug trafficking and human trafficking in Southeast Asia

(chapter 7). It draws on these findings to examine the undue impact of the mandatory death penalty for drug trafficking on economically precarious foreign national women (chapter 8), contributing to the burgeoning death penalty abolitionist literature.

Table of Contents

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List of Abbreviations

ADPAN	Anti-Death Penalty Asia Network
ASEAN	Association of Southeast Asian Nations
CAFTA	Central American Free Trade Agreement
CNB	Central Narcotics Bureau (Singapore)
COVID-19	Coronavirus Disease 2019
DPRU	Death Penalty Research Unit
ECHR	European Court of Human Rights
EPA	Economic Partnership Agreement
GBV	Gender-Based Violence
GBP	Pound Sterling
HMP	Her Majesty's Prison
ICCPR	International Covenant on Civil and Political Rights
ICJR	Institute for Criminal Justice Research
IMF	International Monetary Fund
IO	Investigating Officer
ILO	International Labor Organization
IT	Information Technology
KL	Kuala Lumpur
KLIA	Kuala Lumpur International Airport
KPIs	Key Performance Indicators
MADPET	Malaysians Against Death Penalty and Torture
MCA	Malaysian Chinese Association
MCO	Movement Control Order

NGO	Non-Governmental Organisation
PDEA	Philippines Drug Enforcement Agency
RM	Malaysian Ringgit
SAPs	Structural Adjustment Programmes
SER	Standard Employment Relationship
SUHAKAM	Human Rights Commission of Malaysia
UN	United Nations
UNHRC	United Nations Human Rights Committee
UNODC	United Nations Office on Drugs and Crime
USD	United States Dollars
WADS	West African Drug Syndicates

Table of Cases

Alma Nudo Atenza v. Public Prosecutor [2019] 3 MLRA 1

Chan v. Guyana (2006) 13 IHRR 369

India Harm Reduction v. The Union of India [2012] Bom C R (Cri) 121

Letitia Bosman v. Public Prosecutor and other appeals [2020] MLJU 1186

Mohamed Yusof Bin Haji Ahmed v. Public Prosecutor [1983] 2 MLJ 167

Pratt and Morgan v. Attorney General for Jamaica [1994] 2 AC 1

Public Prosecutor v. Herlina Purnama Sari [2017] 1 MLRA 499

Soering v. United Kingdom (1989) 11 EHRR 439

Venkatesan Chinnasami v. Public Prosecutor [2011] 1 LNS 1736

Table of Statutes

Dangerous Drugs Act 1952

Internal Security Act 1960

Laws of Malaysia Act 574 Penal Code

Malaysian Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007

1. Women, drug trafficking and the death penalty in Malaysia

<u>Prologue</u>

In October 2021, a video went viral on the social media channel, *TikTok*. This video was recorded and posted by the Sabah[1] news outlet, *Seehua Daily*, and depicted an inconsolable Hairun Jalmani, a 55-year-old Malaysian woman, who at that moment had just been sentenced to death for trafficking 113.9 grams of methamphetamine. Jalmani is an impoverished fishmonger and single mother of nine children. This video 'triggered heated online discussions about women's rights and capital punishment in Malaysia' (Koh, 2021). As the Malaysian criminal defence lawyer Samantha Chong made clear in a recent interview, the Malaysian public started to question: why did this woman have to resort to drug trafficking to support her children? Where is the social security net? She added, 'people started to realise that this is the face of a drug trafficker' who faces the death penalty not 'the drug lords that have a luxurious car or stay in a five-star hotel' (Women Beyond Walls, 2022).

This video comes at a time when the future of the Malaysian death penalty is uncertain. Amnesty International Malaysia (2022) reported that the government was due to consider the future of the *mandatory* death penalty by the end of February 2022. At the time of writing, there is no news on their verdict. This thesis examines the cases of predominantly foreign national women sentenced to the mandatory death penalty for drug trafficking in Malaysia. In so doing, this research adds to the scant literature on women, drug trafficking and the death penalty, and while it focuses on Malaysia, its findings

[1] Sabah is a Malaysian state in northern Borneo.

are relevant to the wider region of Southeast Asia where the death penalty is retained for drug offences, particularly where the punishment can be mandatory (for example, Singapore).

Gender and the death penalty

Within the existing capital punishment scholarship there is a notable lack of information regarding the experiences of women under sentence of death, beyond a few rather superficial accounts of women on death row for homicide in the United States (US) (Streib, 2006). Furthermore, despite the fact that Asia is the site of over 95% of the world's executions, this region has received little academic attention as compared to other capital punishment regimens (Johnson & Zimring, 2006:91). Additionally, there is little by way of scholarship on the death penalty for drug trafficking save for the work of civil society groups such as Harm Reduction International who find that four of the seven states that have a 'high application' of the death sentence for drug trafficking are located in Southeast Asia (Indonesia, Malaysia, Singapore and Vietnam) (Girelli & Larasati, 2022). Over the past 20 years the global female prison population has increased by 50%, largely due to imprisonment for low-level drug offending (Cornell Center on the Death Penalty Worldwide, 2021:15).

Since 2018, we have witnessed the rise of gender-based approaches to capital punishment. The catalyst for this trend was the publication of Cornell Law School's report, *Judged For More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, which found that the approximately 500 women facing the death sentence worldwide are an 'invisible' death row population (Cornell Center on the Death Penalty Worldwide, 2018). That same year, the United Nations (UN) announced the prioritisation of a gender-based approach to death penalty abolition:

> Women and girls are an invisible death row population whose plight and needs are too often ignored. Today, we call on States to address the multiple violations of human rights and gender-based discrimination faced by women and girls on death row… In some countries women have been sentenced to death for drug-related offences. Women are criminalised for drug offences at an extraordinary rate, representing around 30 percent of worldwide arrests for drug trafficking. The majority of women on death row for drug offences are poor and foreign nationals or migrants; most appear to be so-called drug mules, or street sellers. The disproportionate use of the death penalty against them reflects excessively tough criminal policies and violent public discourses in the context of the so-called "war on drugs" which involves severe and widespread violations of human rights, including torture, enforced disappearances and arbitrary deprivations of life (Callamard, 2018).

The Cornell Report (2018) finds that in Asia and the Middle East, drug trafficking is the second most common offence for which women receive the death sentence after homicide (12). The limited evidence that exists about women, drug trafficking and the death penalty in Southeast Asia finds that many of the women imprisoned are 'foreign, from poor countries; many are mules' (Fleetwood & Seal, 2017:364). A more recent report by Cornell Center on the Death Penalty Worldwide (2021), specifically focused on women sentenced to death globally for drug offences, found these cases are characterised by several features: the over-representation of foreign national women; women's backgrounds being defined by economic insecurity; the presence of manipulative or coercive relationships with male co-defendants; the courts' refusal to consider gender-specific mitigation and the prevalence of gender stereotypical narratives; an over-use of legal shortcuts to conviction and sentence; and a lack of access to legal representation and translation (for foreign national women) (6-7).

A report published by Amnesty International (2019) revealed that of the 1281 people on death row in Malaysia, 141 are women. This is the highest recorded female death row population in Southeast Asia[2]. Crucially, a higher proportion of women are on death row for drug trafficking (95%) as compared to men (70%), and a higher percentage of women on death row are foreign nationals (86%) as compared to the male death row (39%), and 90% of the women sentenced to death for drug trafficking are foreign nationals (Amnesty International, 2019:18-20). A unique feature of the Malaysian jurisdiction is the *mandatory* nature of the death penalty: judges do not have the scope to consider mitigation. My research is the first of its kind to consider the gendered impact of the mandatory death penalty for drug trafficking.

The death penalty: a key arsenal in the Southeast Asian 'War on Drugs'

According to the latest reporting, 35 countries around the world retain the death penalty for a range of drug offences and at least 3,000 people are currently on death row worldwide for drug offences, with 131 confirmed executions of drug

[2] Of the other retentionist states in the region: there are currently five women under sentence of death for drug trafficking in Indonesia; latest figures suggest there are 31 women on death row for drug trafficking in Thailand; and statistics on the number of people on death row in Singapore are hard to come by, and especially data that are disaggregated by gender; likewise, the death sentence is a state secret in Vietnam and thus the data are unavailable (Cornell Center on the Death Penalty Worldwide, 2021; Pascoe, 2016).

offenders taking place in 2021 and at least 237 death sentences passed during this year for drug-related offences (Larasati & Girelli, 2021). Significantly, the death sentence for non-violent drug offences is in contravention of international law, as the International Covenant on Civil and Political Rights (ICCPR) stipulates that the death sentence should only be used for the 'most serious offences', which is generally understood to mean crimes with lethal consequences i.e. intentional homicide. The death penalty for drug trafficking is utilised as a key arsenal in the so-called Southeast Asian 'War on Drugs'. Southeast Asia, encompassing the 'Golden Triangle' region of Thailand, Myanmar and Laos, was previously one of the world's greatest producers of opium, but in recent years production has switched to synthetic drugs such as amphetamines (United Nations Office on Drugs and Crime, 2021). In 2020 at least 169 tons of methamphetamine were seized in the region, and Myanmar has become the second largest producing country of the drug after Afghanistan (Agence France Presse, 2020). Malaysia, a hub of low-cost airlines, has become a key transit country in the Southeast Asian drugs trade (R.AGE, 2019).

Influenced by policies originating in the United States (US), Southeast Asian leaders have framed drug offences as the most serious offences, warranting the harshest penalties, including the death penalty, corporal punishment, long terms of imprisonment and compulsory detention (Leechaianan & Longmire, 2013). Yet the regional drug market has continued to grow unabated (Stoicescu & Lasco, 2019). Populist leaders have framed drug offences as worse than homicide, because drug addiction can destroy an entire generation: President Widodo of Indonesia claimed that between 40 to 50 young people in Indonesia die every day due to drugs – albeit statisticians have shown that these figures are wildly unsound (Stoicescu, 2015). Retentionist governments argue that the death penalty will deter future drug traffickers, but again, experts have highlighted that these claims are methodologically flawed (Fagan, 2019). Further, some commentators suggest that the death penalty is inextricably linked to 'Asian values', both cultural and religious (Cho, 2004). Most famously, in 2002 the former Prime Minister of Singapore, Lee Kuan Yew, asserted that:

> [T]he basic difference in our approach [to capital punishment] springs from our traditional Asian value systems which place the interests of the community over and above that of the individual (quoted in Johnson & Zimring, 2009:22-23).

More convincingly, scholars have argued that recourse to the 'Asian values' argument is merely an 'attempt by authoritarian governments to legitimize their corrupt regimes' (Bae, 2008:54). Indeed, research has shown that the retention of the death penalty is closely tied to political authoritarianism in Asia (Zimring & Johnson, 2008). And, as my research will show, the death penalty for drug trafficking disproportionately impacts low-level couriers; not major drug kingpins.

The extant evidence on women, drug trafficking and the death penalty in Southeast Asia

There is a dearth of information on women facing the death penalty for drug trafficking in Southeast Asia, beyond a few examples from the 'grey literature'. With regards to Malaysia specifically, the Amnesty International (2019) report on the death penalty in this jurisdiction found that women's cases were characterised by 'coercion and deceit':

> In most cases, the women said they were not aware that they were carrying illicit drugs. During the trial, some women argued that they were asked to carry a bag containing items for sale, such as clothes or shoes, for a person known to them, without obtaining any financial compensation. In other cases, the women had agreed to travel to Malaysia to transport fashion items, for example, for a business contact or a known person, in exchange for some money (in several cases it was indicated as the equivalent [to] approximately USD500), but stated that they were not aware they were transporting drugs, or the plan was changed at the last minute. Even those found with drugs tied to their bodies told the police and judges that they were not informed of the contents and weight of the drugs found in the packages. Several of these women were meant to travel to Malaysia with their partner or a friend, who at the last minute had to pull out of the trip for visa or other reasons. In some cases, the women claimed that they had gotten into financial trouble and were coerced by the circumstances to take on or continue the job (20,21).

In keeping with these findings, a recent report from Monash University found that many of the women sentenced to death for drug trafficking claim to be 'innocent carriers' who, in their defence, claim that they were not aware of the drugs in their possession (Antolak-Saper et al., 2020). Further, the research found that many of the cases involved so-called 'vulnerable defendant[s]', who are ‘misinformed’, both about the nature of what they are carrying and their travel plans, as highlighted by the following vignette:

> The young, poor and unmarried Chinese woman from the Guangxi province worked as a waitress in Guangzhou up until January 2014. It was there, she says, that she met “She Be”, a Nigerian man who offered her a job with a monthly salary of 10,000 yuan. All she had to do was take suitcases filled with children’s items and clothing overseas. In or around January 2014, She Be met [her] at a restaurant in Guangzhou, gave her a luggage bag, and instructed her to travel to Malaysia. It was to be her first overseas trip… When she arrived at Kuala Lumpur International Airport, the luggage [she] was carrying was scanned, and showed the presence of suspicious substances (Antolak-Saper, 2020).

Similarly, a Malaysian lawyer, ChowYing Ngeow, wrote about the plight of women on death row in Malaysia in the Southeast Asian news publication *New Narratif*, and included the case of a Hong Kong woman she calls ‘Joey’ who was sentenced to death in August 2011 for drug trafficking, and explains the circumstances leading up to her offence:

> She got married when she was in her late 20s and had a son a few years later. Like her father, Joey’s husband was rarely at home, and their relationship grew strained. He ran a business in mainland China with a local partner, and Joey helped out. They drew paychecks from the business, which sustained the family. Eventually, fraudulent activities by her husband’s business partner caught up with them, and they owed a huge amount of tax and other liabilities to the Chinese tax authority. They were on the brink of financial collapse and facing legal charges. To evade personal responsibility, Joey’s husband and his partner transferred ownership of the business to her alone, despite the fact that their marriage had already fallen apart. Overnight, Joey shouldered all the legal liabilities. She was in a dire financial situation, and she felt desperate. In her darkest hour, she met an old friend from Hong Kong who convinced her that she could get out of the mess quickly if she would “do the job”. Joey immediately

> regretted her decision when she was held captive in a hotel room by a few men, her handlers. She could not escape or challenge them. They dictated all of the logistics involved in the smuggling scheme she would be forced to carry out (Ngeow, 2021:no page number).

Likewise, Cornell Center on the Death Penalty Worldwide's (2021) most recent report on women and the death penalty for drug offences worldwide includes several case-studies of women's cases, including the case of 'Avalie', a foreign national woman on death row in Malaysia:

> Avalie, a single mother to two daughters, was working as a beautician when she met Darrius in 2009. They began a romantic relationship. When Darrius moved to Malaysia, where he owned a restaurant, they maintained a long-distance relationship and called each other often. After they had been dating for a year, Darrius invited Avalie to visit him in Malaysia. Avalie was thrilled with the invitation: she had never traveled abroad before, and the trip felt like a dream come true. Darrius bought plane tickets for Avalie and her eldest daughter, who was about nine years old. According to Avalie, Darrius also sent her a bag with instructions to use it to pack for her trip. When Avalie and her daughter arrived at the Kuala Lumpur airport, security officers detected drugs in the bag Darrius had provided (Cornell Center on the Death Penalty Worldwide, 2021:46).

The common thread running through all of these cases is that women turned to drug trafficking (whether wittingly or unwittingly) due to gendered economic factors, as we find in other studies of women and drug trafficking more generally (Del Olmo, 1986; Huling, 1995 & 1996; Green, 1996; Sudbury, 2005b; Bailey, 2013; Fleetwood, 2014; Constant, 2017; Jeffries & Chuenurah, 2019). And indeed, this theme continues in studies of women on death row for drug trafficking elsewhere in the Southeast Asian region. In the British journalist, Alan Shadrake's (2010) controversial exposé of the Singaporean death penalty (for which he was imprisoned for five and a half weeks) he depicts the execution of a female drug offender:

> The sad story of Angel Mou Pui-Peng is all too familiar - a teenage girl who gets pregnant at sixteen is forced to leave her neighbourhood out of shame and inevitably drifts into poverty and petty crime to survive. She becomes an easy target for exploitation by more sophisticated people who make a fortune from drugs and do not care who suffers along the way. Mou was a twenty-five-year old single mother, originally from the then Portuguese province of Macau, but living in Hong Kong. She was arrested at Singapore's Changi Airport on 29 August 1991 with a suitcase containing twenty packets filled with 4.1 kilograms of heroin, according to the Central Narcotics Bureau. She had flown to Singapore from Bangkok. At her trial she claimed she did not know the false-bottomed suitcase contained the drug. She thought she was carrying contraband watches given to her by a couple she met by chance (110).

There are yet more accounts from neighbouring Indonesia. In particular, the case of Mary Jane Veloso, a Filipina former migrant worker and single mother, who is currently imprisoned on death row for drug trafficking in Indonesia, has gained much traction. A single-mother of two, Veloso was formerly a domestic worker in Dubai, but left following an attempted rape. In pursuit of further employment to support her children, she was duped into smuggling heroin to Indonesia in 2010 by the woman who recruited her for a job overseas, and was intercepted and sentenced to death (Cornell Center on the Death Penalty Worldwide, 2018:12-13). In 2015, Veloso was scheduled to be executed, and this ignited international activism around her case, including a viral petition #SaveMaryJane (which attracted over 200,000 signatures and at the time was the fastest growing petition on change.org) (Tupaz, 2015).

Veloso's plight spoke to the Philippine population. As one of the lawyers who assisted on her case stated: 'Filipinos can recognise themselves in a woman so impoverished she had to go overseas to support her children' (Reynolds, 2015). Additionally, commentators argued that she was in fact a victim of human trafficking and so should be granted reprieve on these grounds[3], and these efforts culminated in her receiving a temporary stay of execution (Gerry et al., 2018). Research has shown that migrant domestic workers are especially vulnerable to drug trafficking syndicates in the region as 'they are typically poor and uneducated, but hold passports' (Cornell Center on the Death Penalty Worldwide, 2018:12).

Also on death row in Indonesia is another former migrant worker, Merri Utami, an Indonesian woman who was convicted of smuggling heroin in 2003, and who also came close to execution in 2015. Her story is one of romantic deception: she left her abusive partner and fell in love with a Canadian man who groomed her and invited her on a trip to Nepal with him, where he gave her a new suitcase lined with heroin to take home with her, on a separate flight to his own (Cornell Center on the Death Penalty Worldwide, 2021:11-12). A British woman, Lindsay Sandiford, was also sentenced to death in 2013 for smuggling cocaine to Indonesia. Criminologists have conducted a media framing analysis of her case, and conclude that as an older woman she has received less public attention because '[t]he absence of spectacular femininity, or of the appearance of vulnerability due to youth, leads to lower cultural visibility' (Fleetwood & Seal, 2017:374).

[3] I will explore this issue in further depth in chapter 7.

Elsewhere in the region, there is some, albeit limited and somewhat outdated, research on women sentenced to death for drug offences. In particular, research has been conducted on the plight of women formerly on death row in the Philippines (capital punishment was most recently abolished there in 2006). The Philippine Human Rights Information Center (2006) conducted a study with a total of 28 women on death row, five of whom were sentenced for drug trafficking. A later study of women formerly on death row in the Philippines reviewed a sample of 27 cases, nine of which were drug offences (Veloso, 2016). This research examined the key 'pathways' to death row of the women, and found they centred around four key themes: direct or symbolic retaliation for abuse or victimisation; 'hard living' and economic need; substance abuse issues; and deception and betrayal in intimate relationships (Veloso, 2016).

A Thai Non-Government Organisation (NGO), Union for Civil Liberty, has also conducted research on women on death row within the Kingdom. They produced a short booklet on '4 Cases leading to Capital Punishment in Thai Criminal Justice' which included one case involving two women who were sentenced to death for drug offences (Union for Civil Liberty, 2007). One of the women was Thai and the other Cambodian, and they came from a low socio-economic background, with one working as a migrant domestic worker, and they claim that they were framed for a drug offence over an issue with a small business loan (Union for Civil Liberty, 2007:25-26). This NGO has also produced another booklet on women and the death penalty more generally, and finds that '[w]omen's involvement in drug smuggling is usually as mules, transporting and delivering drugs' and that many 'may indeed not have known the content of goods they were told to deliver' (Union for Civil Liberty, 2018:23,24).

In terms of executions of women sentenced for drug offences in Southeast Asia, the data are unclear. In Malaysia, data on executions are not disaggregated by gender (Amnesty International, 2019). In Singapore, the death penalty is shrouded in state secrecy, but we do know that women have been executed for drug offences, as indicated by the account from Alan Shadrake above (Shadrake, 2010). Public statements suggest that women are not at risk of execution in Thailand: at a 2005 UN Congress on Crime Prevention, a member of the Thai Ministry for Justice announced that 'Thailand does not execute women', and on 5 December 2011, in honour of the King's birthday, all women under sentence of death at that time had their sentences commuted (Sarret, 2015). In Indonesia, women are executed for drug offences: by way of examples, in 2015 and 2016 Indonesia executed 18 people, all for drug offences, two of whom were women, and as mentioned above, Mary Jane Veloso and Merri Utami were also at risk of execution at this time (Cornell Center on the Death Penalty Worldwide, 2021:35). Irrespective of whether they are at significant risk of execution, for those women held on death row for indefinite periods of time, this becomes tantamount to 'cruel and inhuman treatment'[4], with research evidence and established international jurisprudence

[4] This is reference to a prohibition in international law, established by the United Nations' (UN) 'Convention against Torture and Other Cruel, Inhuman or Degrading Punishment', which was adopted in 1984.

on so-called ‘death row syndrome’ suggesting that prolonged periods on death row leads to unique and detrimental psychological impacts (Batra, 2013)[5].

Overall, the existing, brief representations of women on death row for drug trafficking in Southeast Asia highlight that there are commonalities between the cases, revolving around gendered economic pressures and deceit and coercion, particularly in intimate relationships. Clearly, this is a topic that warrants study. However, the existing discourse emphasises women’s vulnerability and victimisation, and seems to disavow their individual agency. This thesis seeks to add a more nuanced perspective on the subject matter by providing a critical review of women’s criminalisation in this context, by exploring the socioeconomic conditions that shape their decisions to commit drug offences, as well as the penal culture that criminalises these actions.

The Malaysian jurisdictional landscape

The mandatory death penalty in Malaysia is a colonial inheritance, as is the method of execution by hanging (Novak, 2014). While there is evidence of the use of capital punishment in pre-colonial societies of what now make up Malaysia, the modern death penalty is a direct legacy of British rule from 1819 onwards (Berrih & Ngeow, 2020). Following independence in 1957, the death penalty - which was ordinarily used for the crimes of homicide and treason under colonial rule - was preserved and *expanded* to include the crime of drug

[5] A prominent case of the European Court of Human Rights (ECHR) which accepted the ‘death row phenomenon’ is *Soering v. United Kingdom* (1989) 11 EHRR 439. The court refused to extradite the accused to the United States (US) as he would not only be executed but also be exposed to cruel and inhuman punishment due to prolonged periods spent by convicted persons on death row in this jurisdiction.

trafficking in 1975, and later in 1983 the death penalty for drug offences was made *mandatory* in response to an emerging 'drugs crisis' in Malaysian society (Jabbar, 2019; Harring, 1991). Pertinently this drugs 'emergency' was framed as an 'external' threat to 'national development' and consequently the 'mandatory death penalty for trafficking was to rid Malaysia of foreigners using Malaysia, particularly Penang, as a trafficking center' (Harring, 1991:403-404).

The current scope of the death penalty in Malaysia incorporates 33 offences, including 12 crimes for which it is the mandatory sentence, but its application is mainly restricted to the offences of murder and drug trafficking (Amnesty International, 2019:6). As mentioned above, the latest disaggregated statistics[6] on the Malaysian death row population are as follows: there are 1,281 people on death row, of whom 1,140 are men (89%) and 141 are women (11%) and 44% of the total death row population (568 people) are foreign nationals (Amnesty International, 2019:19). Significantly, a higher proportion of women are on death row for drug trafficking (95% as against other capital offences) as compared to men (70% as against other capital offences), and a higher percentage of women on death row are foreign nationals (86%) as compared to the male death row (39%) (Amnesty International, 2019:18-20). This rises yet again when we consider the percentage of foreign national women on death row for drug trafficking (90%) (Amnesty International, 2019:18-20). In terms of

[6] More recent statistics have emerged that suggest that in 2020 there were 1,324 inmates on death row, of whom 536 are foreign nationals and 129 are women (9.74%) (Anti-Death Penalty Asia Network (ADPAN) et al., 2021). However, these data are not disaggregated by gender, offence type and foreign nationality and thus I rely on the earlier figures from Amnesty International (2019).

executions, the data are hard to come by. However, Amnesty International (2019) reports that since Malaysian independence in 1957 there have been 469 executions, including 229 for drug trafficking (15)[7]. Moreover, Amnesty International (2019) reports that they have recorded 30 executions between the years 1998 and 2018 (15). For statistics on the number of executions and death sentences passed in recent years, see Table 1 below.

Table 1: Data on recent executions and death sentences in Malaysia (Amnesty International, 2021:15; Amnesty International, 2020:11,13; Amnesty International, 2019:16; Sander, 2018:27; Gallahue & Lines, 2015:15).

Year	Total number of executions	Number of executions for drug trafficking	Total number of death sentences passed	Number of death sentences passed for drug trafficking
2020	0	0	22	3
2019	0	0	26	18
2018	0	0	190	136
2017	4	0	38	21
2016	4	Unknown	14	5
2015	1	0	39	24
2014	2	Unknown	38	16
2013	2	1	76	47

In Malaysia, those charged with capital offences at the Magistrates Court will be sent for a trial at the High Court by judge without a jury, followed by appeals to the Court of Appeal and the Federal Court. Accused persons facing the death penalty in Malaysia are entitled to free legal representation (Antolak-Saper et al., 2020:20). Completion of the process of appeals up to the level of the Federal Court can take up to 10 years (Berrih & Ngeow, 2020:63). Following the exhaustion of judicial appeals, accused persons may apply for mercy from

[7] The 469 executions also includes 114 people executed under the Internal Security Act 1960, 106 for murder, 19 for firearms offences and 1 for kidnapping (Amnesty International, 2019:15).

the sovereign (either the heads of the particular Malaysian state or the King in the case of federal cases) (Pascoe, 2019:133). This process is opaque, and it usually takes about 10 years to hear back on the outcome of a clemency petition (Pascoe, 2019:134). The application includes information such as the prisoner's written petition, the Federal Attorney General's views on the case, police, psychologists' and Prison Department files on the case, as well as notes from the trial and appeals (Pascoe, 2019:134). Compared to other Southeast Asian states, Malaysia has a 'high' clemency rate, which suggests that the 'mandatory death penalty laws have more of a symbolic rather than a practical value within Malaysia's criminal justice system' (Pascoe, 2019:157). However, it was only from the 1990s onwards that those sentenced to death for drug trafficking were eligible to apply for clemency (Cornell Center on the Death Penalty Worldwide, 2021:42).

Those sentenced to death in Malaysia may be held on death row for decades indeterminately. Women are held on death row at nine different prisons in Malaysia (Amnesty International, 2019:19). Research highlights that the conditions on death row are deplorable, with inmates being held in solitary confinement for up to 23 hours per day, with no access to programmes nor work opportunities in prison, and many of the foreign nationals held on death row have never received a visitor, nor do they speak the language of their jailors (Berrih & Ngeow, 2020:78). There is no access to gender-specific healthcare, such as a gynaecologist, whilst on death row (Berrih & Ngeow, 2020:251). A recent report from the Anti-Death Penalty Asia Network (ADPAN) provides a first-hand account of a woman on death row's restrictive daily routine (Berrih &

Ngeow, 2020:79). While the conditions on death row for women are beyond the remit of this thesis, they should form the subject of future research.

Notably, Malaysia has not ratified the International Covenant on Civil and Political Rights, nor the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment and Punishment, both of which have clauses relating to the restriction of the use of the death penalty (Antolak-Saper et al., 2020:6). However, there are some exemptions from capital punishment in Malaysia, in particular people under the age of 18 (in accordance with Malaysian law and their obligations as signatory to the Convention on the Rights to the Child), those who offend whilst mentally incapacitated (however, this does not preclude the execution of persons who develop mental health conditions whilst on death row), and pregnant women and mothers of young children (generally understood to refer to children up to the age of 2 years) (Antolak-Saper et al., 2020:9). Women are also exempt from caning as a form of punishment.

The key legislation that governs the death penalty for drug trafficking is the Dangerous Drugs Act 1952, in particular section 39B:

> (1) No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Malaysia –
> (a) traffic in a dangerous drug;
> (b) offer to traffic in a dangerous drug; or
> (c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug.
> (2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Act and shall be punished on conviction with death.

As mentioned above, this legislation was inherited from British colonial rule, but amended after independence to include the death penalty for drug trafficking. Whether or not a person is deemed to have trafficked drugs (as opposed to being 'in possession' of drugs – an offence which crucially does not carry the death sentence) is determined by the weight of drugs with which they are caught; for example, more than 50g of methamphetamine, more than 15g of heroin, 200g of cannabis, and 40g of cocaine[8]. This is known as the 'double presumption' whereby if one were arrested and found to have 'custody' and 'control' of *x* amount of drugs one would automatically be assumed to have been trafficking (rather than the state having to prove possession and then trafficking separately). This contravenes the legal norm of 'innocent until proven guilty' as the burden shifts onto the accused person to prove that they were not trafficking drugs. Recently this 'double presumption' was deemed unconstitutional in the case of *Alma Nudo Atenza v. Public Prosecutor* [2019], but Parliament is yet to amend the legislation to reflect this ruling (Antolak-Saper et al., 2020:15).

Following similar changes in neighbouring Singapore, an amendment was made to the Dangerous Drugs Act in 2017 in order to afford judges a *limited* amount of discretion when sentencing low-level drug couriers[9]. The amendment to Section 39B includes the following sub-clauses:

(2a) In exercising the power conferred by subsection

[8] For full details of the threshold values see Appendix 1.

[9] In Singapore, this legislative change in 2012 was prompted by the case of a young Malaysian man, Yong Vui Kong, who was sentenced to death for drug trafficking under a mandatory regime, and whose sentence was later reduced to life imprisonment and caning on appeal. This case prompted changes to the law governing drug trafficking whereby a limited amount of discretion can now be afforded in drug *courier* cases (Hood, 2013:iii).

(2), the Court in imposing the sentence of imprisonment for life and whipping of not less than fifteen strokes, may have regard only to the following circumstances:

(a) there was no evidence of buying and selling of a dangerous drug at the time when the person convicted was arrested;

(b) there was no involvement of [an] agent provocateur; or

(c) the involvement of the person convicted is restricted to transporting, carrying, sending or delivering a dangerous drug; and

(d) the Public Prosecutor certifies in writing to the Court that in his determination, the person convicted has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.

However, research has revealed several issues with this amendment, including its unclear wording (as it is not obvious how many sub-sections of the amendment an accused person must satisfy in order to benefit from the exercise of the discretion); the fact that the amendment inadvertently gives enforcement agencies a judicial power; that the ‘double presumptions’ issue is still in place; and that the reform is not retroactive so does not benefit anyone on death row who was sentenced under the previous legislation (Antolak-Saper et al., 2020:29-32). This is not to mention the fact that drug couriers, by the very nature of their low-level role in the drug trade, are unlikely to possess information which could ‘disrupt’ wider drug trafficking activities, and indeed my data show that many of the women claimed they did not even know they were trafficking drugs in the first place. Thus, the death penalty still operates mandatorily in practice. Indeed, research reveals that since this amendment was introduced, it has only been considered and applied in three cases (Anti-Death Penalty Asia Network (ADPAN) et al., 2021: no page number).

This amendment has given rise to an 'innocent carrier' defence, a defence characterised by:

> [A] state of affairs where an accused person acknowledges carrying for example a bag or box… containing the dangerous drugs but disputes having knowledge of the drugs' (*Venkatesan Chinnasami v. Public Prosecutor* [2011]) (Antolak-Saper et al., 2020:32).

This defence is often invoked by women and foreign nationals, but is rarely accepted by judges who dismiss it by claiming that the accused person was 'wilfully blind'[10] (Antolak-Saper et al., 2020:32). In general, NGOs have raised concerns over fair trial violations in Malaysian death penalty cases, including issues with legal representation: many accused persons do not receive legal representation at the time of their arrest or while held in police custody, but are only entitled to legal aid once the trial has commenced, and the *quality* of representation is not guaranteed (Amnesty International, 2019:6). Foreign nationals facing the death penalty in Malaysia are also disadvantaged by the fact that their embassies and consulates are usually not notified without delay, and they may lack language interpretation support at all stages of the legal

[10] This refers to an established legal doctrine, explained in *Public Prosecutor v. Herlina Purnama Sari* [2017]: '[w]ilful blindness necessarily entails an element of deliberate action. If the person concerned has a clear reason to be suspicious that something is amiss but the embarks on a deliberate decision not to make further inquiries in order to avoid confirming what the actual situation is, then such a decision is necessarily a deliberate one. The key threshold element in the doctrine of wilful blindness itself is that of suspicion followed by (and coupled with) a deliberate decision not to make further investigations'.

process (Amnesty International, 2019:6). Finally, the clemency process is said to be ‘opaque and arbitrary’ (Amnesty International, 2019:6).

There is a growing death penalty abolitionist movement within Malaysia. This movement is led by the Bar Council of Malaysia as well as the Human Rights Commission of Malaysia (SUHAKAM), in addition to other organisations such as Lawyers for Liberty, Amnesty International Malaysia, the Civil Rights Committee of the Kuala Lumpur and Selangor Chinese Assembly Hall, Malaysians against the Death Penalty and Torture (MADPET), and the National Human Rights Society of Malaysia; as well as regional actors such as the Anti-Death Penalty Asian Network (ADPAN) (Hood, 2013:vii). These groups’ campaigning efforts culminated in an announcement from the then Law Minister Dato Liew Vui Keong in October 2018, stating the government’s intention to completely abolish the death penalty, and he confirmed a moratorium on executions pending the legal change (Ibrahim, 2018). However, following public backlash, the government slightly reneged on this promise, and in March 2019 announced they were only considering abolishing the *mandatory* death penalty for 11 offences (crucially, this did not include drug trafficking) and in August 2019 the Minister appointed a Special Committee to research alternatives to the mandatory death penalty, headed by former Chief Justice Tan Sri Richard Malanjum (Antolak-Saper et al., 2020:5).

The Special Committee submitted their report to the Cabinet in February 2020, but at the time of writing it is yet to be published and the Government have not announced their position on the matter (Malay Mail, 2020). This is largely due to an uncharacteristic period of political upheaval in early 2020 (at the time of my fieldwork) during which Prime Minister Mahathir Mohamad's government collapsed and a new government took office, which raised some concerns as incumbent party members were active advocates for retaining the death penalty (Anti-Death Penalty Asia Network (ADPAN) et al., 2021). In spite of this, the current government has maintained the moratorium on executions.

In February 2022, Amnesty International Malaysia announced that the Cabinet would review the findings of the Special Committee on alternatives to the mandatory death penalty by the end of the month, but at the time of writing there has been no news on these deliberations (Amnesty International Malaysia, 2022). Moreover, recent legal challenges to the death penalty have failed: in August 2020 the Federal Court dismissed appeals relating to the constitutionality of the mandatory death penalty for drug trafficking and murder in *Letitia Bosman v. Public Prosecutor and other appeals* [2020], and the court held this was a matter for the legislature, not the judiciary, to decide upon (Anti-Death Penalty Asia Network (ADPAN) et al., 2021).

Public opinion is not a barrier to death penalty abolition in Malaysia. In 2013 The Death Penalty Project conducted a survey of Malaysian public opinion on the death penalty with the late Professor Roger Hood (Hood, 2013). Crucially, this study found that, of the 1,535 Malaysians interviewed, 56% said they were in favour of the mandatory death penalty for murder, 25%-44% said they were in favour of the mandatory death penalty for drug trafficking[11], and 45% were in favour of the mandatory death penalty for firearms offences (Hood, 2013:10). The study found that people were less likely to support the death

[11] The level of support varied by drug type.

penalty ‘in practice’ than they were ‘in theory’. Participants were given different ‘scenario’ cases to assess, and crucially for this research, when presented with the case of a *21-year-old Malaysian woman*, caught at the airport with 100g of heroin hidden within her suitcase, only 9% of people thought that the death penalty was the appropriate sentence, and 80% of those who had previously stated they were in favour of the mandatory death penalty did not impose it in this case (Hood, 2013:13). Conversely, work from the Penang Institute found that women are less likely to be acquitted in drug trafficking cases, suggesting possible gender-bias within the Malaysian judiciary in these cases (Lim & Ngeow, 2018:7). This thesis offers an opportunity to further explore the intersections between gender, drug trafficking and the death penalty in Malaysia.

Overview of thesis

My research approach is qualitative, and my data were gathered through 47 ‘elite’ interviews with lawyers, judges, NGO activists, consular officials, police, prosecutors, journalists, academic researchers and religious counsellors involved with the women’s cases in Kuala Lumpur, Malaysia, as well as remote interviews I conducted in the UK (during the COVID-19 pandemic). Additionally, I triangulated my data through media and legal database searches for information on women’s cases (in total, I compiled information on 146 women’s cases between the years 1983-2019). I have one over-arching research question, informed by the academic literature (Sudbury, 2005b; Franko Aas, 2007; Barberet, 2014; Carrington, 2015), followed by four sub-questions:

1. What is the relationship between gender, globalisation and criminalisation in this context?
    a. How many women have been sentenced to death for drug trafficking in Malaysia between 1983 and the present?
        i. What are the characteristics of these cases?
        ii. What are the nationalities and socio-economic profiles of the women?
    b. Why do women become involved in drug trafficking that leads to the death penalty in Malaysia?
        i. What is the relationship between women, crime and economic factors in this context?
    c. How do women become involved in drug trafficking that leads to the death penalty in Malaysia?
        i. What is the relationship between drug trafficking and human trafficking in this context?
    d. How does the mandatory death penalty for drug trafficking impact on women, and especially foreign national women?

The thesis is structured as follows: in the following chapter, I evaluate the existing literature on women's criminality in a globalised world, beginning with a critical review of the evolution of feminist criminological work – from women's offending being viewed as an individualised pathology towards more structural accounts of female criminality – before moving onto research on globalisation, gender and crime and women's involvement in international drug trafficking in particular (chapter 2). The next chapter provides an overview of the concepts that will be engaged with in this thesis: precarity and disposability (chapter 3), before moving onto a review of my methods, including reflections on conducting international research on vulnerable women (chapter 4). Next, I turn to the first of three empirical chapters: I examine the 'continuum of precarity' experienced by women facing the death penalty for drug trafficking, the data showing that many were engaged in precarious and feminised employment prior to arrest, and I make the argument that drug couriering can be considered an extension of this precarious labour (chapter 5). The second empirical chapter highlights how the female drug couriers arrested in Malaysia can be conceived of as ‘disposable’ workers in the Southeast Asian drug trade, and their disposability is exacerbated by Malaysian law enforcement treating them as ‘scapegoats’ in their ‘War on Drugs’ (chapter 6). The final empirical chapter evaluates claims made by activists in the region that the women on death row for drug trafficking in Southeast Asia should instead be viewed as victims of human trafficking (chapter 7). Following this, there is a discussion chapter which draws together the findings to focus on the disproportionate impact that the mandatory death penalty for drug trafficking has on economically precarious foreign national women in Malaysia (chapter 8). Finally, the concluding chapter describes the overall contribution this thesis makes to the academic literature, provides recommendations for future research, and makes a case for death penalty abolition on the grounds that it is discriminatorily applied to marginalised populations.

Overall, by analysing the perceptions of elites about women sentenced to death for drug trafficking, as well as court reports and media articles on their cases, I show that these women are best understood as precarious global workers who are essentially disposable. Many were engaged in precarious work before their arrest – which can be explained with reference to feminised economic and migratory trends in the region – and I conceive of drug couriering as an extension of said precarious labour. Through analysing the elites’ perceptions of these women’s cases, we see that they are viewed as disposable workers in the Southeast Asian drug trade, which explains their heightened vulnerability to arrest and, ultimately, their exposure to capital punishment. Before exploring these empirical findings, we will first turn to a review of the existing criminological literature we will draw upon to make sense of these data.

2. Understanding women's criminality in a globalised world

Introduction

In this chapter, I will develop my theoretical framework. I will evaluate the evolution of feminist theorising in criminology, before moving on to consider the impacts of globalisation on gender and crime, including on women's involvement in international drug trafficking.

To begin with, why do women offend? Are the factors that influence women's involvement in crime unique to their socialised gender roles? Should we develop distinct criminological theories for female offenders? The question of female criminality has intrigued criminologists since the discipline's inception. Indeed, Cesare Lombroso writes in *Criminal Woman, the Prostitute, and the Normal Woman*:

> [W]hile the majority of female criminals are merely led into crime by someone else or by irresistible temptation, there is a small subgroup whose criminal propensities are more intense and perverse than even those of their male counterparts. These are the female born criminals, whose evil is inversely proportionate to their numbers. "Woman is rarely wicked, but when she is, she is worse than a man" (Italian proverb) (Lombroso & Ferrero [1893] 2004:182).

Over the past century, our understanding of gender has progressed, shifting from the notion of biological determinism to an appreciation of 'gender as multi-dimensional, historically changing structure of social relations – relations constructed in active social practices' (Connell, 1987). Sociological theories of female deviance have proliferated since the dawn of feminist criminology in the latter part of the 20th century (Smart, 1977; Heidensohn, 1985; Carlen, 1988).

Concurrently, we have witnessed seismic shifts in the nature of social relations in what has been deemed 'late modernity' (Giddens, 1990). This period has been characterised by 'globalisation' which is understood as follows:

> [A] process (or set of processes) that embodies a transformation in the spatial organization of social relations and transactions, generating transcontinental or interregional flows and networks of activity, interaction, and power (Held, 1999:9).

Criminologists have begun to address the implications of greater global connectivity for crime, with a particular focus on the criminalisation of migration (Franko Aas, 2007). However, our understanding of what this means for women's offending is partial, especially when it comes to women in the global peripheries who tend to experience the 'underside' of globalising processes (Franko Aas, 2007:42). Attempts to globalise feminist criminology have thus far mainly focused on women's victimisation worldwide (for example, examinations of global trends in violence against women) (Barberet & Carrington, 2018). And, consequently, theorising on women's involvement in globalised crime has received short shrift[12].

Evidence suggests that following global neoliberal economic restructuring, an increased number of women are engaging in cross-border drug trafficking worldwide (Fleetwood & Haas, 2011). Thus, the subject matter

[12] With the notable exceptions of Julia Sudbury (2005a) and Maureen Cain & Adrian Howe (2008).

of this thesis provides fertile ground for exploring the relationship between women, crime and globalisation. As such, this theoretical chapter will provide a critical review of the theoretical literature to answer the question: how can we make sense of women's offending in a globalised world?

A critical review of existing theorising on female criminality

Existing theorising on female offending can broadly be separated into three categories: biological, psychological and sociological (Gelsthorpe, 2004). I will deal with each in turn.

To begin with, it should be noted that throughout history and across paradigms, scholars have commented on the so-called 'gender gap' in offending – reporting that from a statistical perspective, women commit fewer crimes than their male counterparts (albeit, evidence suggests that the 'gap is closing' worldwide for certain types of crime, such as violent offences) (Carrington, 2013). Over time, several different explanations for this trend have been offered, as well as a variety of explanations for why women *do* offend. Originally a 'biological' theory of female deviance was proposed by Cesare Lombroso and Guglielmo Ferrero (1893) who posited that women commit fewer crimes than males due to their comparative 'biological inferiority'. They cited particular anatomical features which they believed were shared by female criminals – the majority of whom they thought were 'prostitutes' – including the existence of 'anomalous teeth', a 'prominent (prognathous) jaw' and 'wormian bones' (Lombroso & Ferrero [1893] 2004:115).

Surprisingly, this biological positivist approach was still in existence nearly a century later: for example, Katherina Dalton (1961) conducted research with 386 women prisoners in England and found that nearly half of the women committed their crime whilst menstruating or pre-menstruation, and thus, she deduced, their crimes could be attributed to ‘premenstrual tension’ (1753). That same year, Otto Pollak (1961) also outlined his outlandish theory that, because of women’s physiological ability to conceal their sexual arousal, they are therefore naturally more deceitful – an attribute he believed was criminogenic. Clearly, our understanding of science – and indeed, gender – has progressed markedly, and thus I need not dwell on the shortcomings of these sexist theories which presume ‘natural’ and essentialist feminine traits.

Simultaneously, so-called ‘psychological’ theories of female deviance emerged in the early 20th century. Chief among these theories is Sigmund Freud’s (1933) proposal that women offend as a psychological response to their biological inferiority to men, which causes them to develop a ‘masculine complex’ and enact typically masculine behaviour such as aggressiveness which can lead to violent transgressions. Another example comes from the work of Gisela Konopka (1966) on ‘delinquent’ adolescent girls: she argued that criminality stemmed from feelings of loneliness and alienation, as well as a result of issues with the girls’ sexuality. Likewise, work by John Cowie and colleagues (1998) also examined criminality among young girls and concluded that it is a pathology related to personality, mental health and intelligence. Whilst contemporary research has indeed highlighted the high prevalence of mental health disorders amongst female prisoners (Corston, 2007), this evidence is evaluated in conjunction with other structural factors of disadvantage, and is not regarded as the sole cause of female offending. Furthermore, it is not now thought that a mental health condition is inextricably linked to one's 'biological' gender nor feminine temperament.

Influenced by second-wave feminism, from the 1960s and 1970s onwards a feminist movement was established in criminology in response to the prevalence of androcentric theorising on crime and, as part of this, 'sociological' theories of female deviance were developed (Heidensohn, 1968; Klein, 1973; Smart, 1977). One of the main critiques that was levelled at the discipline was the way in which scholars had demonised, vilified and pathologised female offenders (Allen, 1987). Up until that point, female criminality had been viewed as an individualised problem (whether it be a 'biological' issue or a psychological one), with a lack of appreciation for the social, cultural and structural factors which influence female offending (Smart, 1977; Gelsthorpe, 2004). In light of this, a number of theories have been developed over the years that examine the impact of structural inequalities on women's offending. By way of example, from the 1980s onwards, there was a focus on what was referred to as the 'feminisation of poverty' – a trend whereby in the latter part of the 20th century women were disproportionately affected by poverty as a result of neoliberal reforms and the reduction in the welfare state (Pearce, 1978). In Pat Carlen's (1988) seminal text, *Women, Crime and Poverty*, she argues that women's law-breaking is closely related to their patterns of social control, against the backdrop of Thatcherism and the 'New Right' political economy. She found that poverty was a key feature in the lives of the 39 'criminal' women she interviewed, and that they were exploited by both the 'class deal' and 'gender deal' causing them to commit crime when they were unable to reap the 'imaginary rewards of respectable working-class womanhood' (Carlen, 1988:13).

In addition to the 'feminisation of poverty' thesis, another trend emerged in feminist criminological research: 'pathways to crime' studies. This approach consists of life history interviews with female offenders to discern the factors that caused women to offend, from significant life events, such as childhood abuse and sexual victimisation, to less tangible conditions such as 'socialised gender roles, structural oppression, vulnerability to abuse by males, and female responses to male domination' (Belknap & Holsinger, 2013:103). The majority of feminist pathways studies are based on data from the United States (US) and examine childhood trauma as a precursor to future offending (Chesney-Lind & Rodriguez, 1983; Widom, 1989; Belknap & Holsinger, 2006; DeHart, 2008). It is argued that experiences of victimisation are qualitatively different for females as compared to their male counterparts, as 'abuse and neglect are more common, start earlier, and last longer for girls' (Belknap & Holsinger, 2006:51). These approaches have been critiqued for their over-emphasis upon victimisation which results in a disempowering narrative (Gelsthorpe, 2004).

One oft-cited 'pathways' study is Beth Richie's (1996) *Compelled to Crime*, which details her research with battered African-American women incarcerated at Riker's Island, New York. From her interviews, Richie develops a typology of the six different routes that the women took to offending, which are centred upon the role of an abusive intimate partner, and consist of: an abusive partner who may force a woman into crime through co-offending; fighting back against the abuser; fighting back against men in general; sex work; the effects of poverty; and the effects of addiction (Richie, 1996:105-27). She uses these typologies to inform her theory of 'gender entrapment', explained as follows:

> [H]ow some women are forced or coerced into crime by their culturally expected gender roles, the violence in their intimate relationships, and their social position in broader society (Richie, 1996:133).

Similarly, in the neighbouring jurisdiction of Connecticut, Kathleen Daly (1992) created a typology of women's pathways to felony court that included: the effects of physical, sexual and psychological harm, intimate partner violence, 'street life' and drugs, which she deemed were precursors to women's offending (27-44). However, in studies such as these, it is possible that correlation may be conflated with causation, i.e. how can we prove that there is a direct causal link between, say, physical abuse and later offending behaviour? Moreover, authors may again overemphasise individual life histories without necessarily teasing apart how, for example, childhood deprivation is related to the broader environment of patriarchal society.

More recently, feminist theorising in criminology has been influenced by third-wave feminism and critical race theory and, in particular, intersectionality theory which acknowledges that 'each person has an assortment of coalesced socially constructed identities that are ordered into an inequitable social stratum' (these socially constructed identities include: race, gender, class, sexuality, disability, citizenship, etc.) (Potter, 2015:3). This theory was coined by the legal scholar, Kimberle Crenshaw (1989) who utilises the analogy of a traffic intersection to exemplify how African American women experience multi-dimensional discrimination, as she explains:

> Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination (Crenshaw, 1989:149).

How can intersectionality theory help to illuminate the causes of female criminality? One study that may be helpful for exemplifying this is Nikki Jones' (2009) *Between Good and Ghetto*, which is based on her fieldwork with adolescent Black girls who were enrolled in a hospital-based violence reduction project in Philadelphia in the early 2000s. As part of her research, Jones sought to understand the role of violence in these young girls' lives, and found that, for these 'girl fighters', their violent reputations were a source of identity, respect and control over their lives, as a consequence of:

> [A] shared structural – cultural context that is shaped profoundly by entrenched poverty, the threat of violence in everyday life, and by the code of the street. This shared context leads to a preoccupation with survival, including a conscious and active imagining of what to do next in order to ensure personal safety. The intersecting and overlapping aspects of inner-city girls' identities – poor, young, Black, and female – put them in an especially vulnerable position (Jones, 2009:78).

What remains to be seen is whether intersectionality theory can be used to make sense of women's offending in the global south, where one of the 'intersections' of disadvantage is global structural inequality (Henne & Troshynski, 2013).

When studying female offending, it is necessary to address the question of women's agency. This was a contentious issue during the 1970s when two controversial works were published – Freda Adler's (1975) *Sisters in Crime* and Rita Simon's (1975) *Women and Crime*. These authors argued that there had been an increase in women's offending (particularly violent crime) and this was as a result of the women's liberation movement having 'gone wrong' which has led to the 'masculinisation' of female behaviour (Adler, 1975; Simon, 1975). According to this position, women's emancipation had led to increased opportunities for women to commit crime. However, this was critiqued by feminist criminologists, who retorted that:

> [T]his type of explanation reveals a confused and simplistic understanding of the process of emancipation, its influence upon consciousness and social institutions, and its location within and alongside other social and historical developments (Smart, 1977:76).

More recent works have swung the pendulum in the opposite direction and are quick to emphasise women's victimisation – as opposed to emancipation – as a direct cause of their offending, a position highlighted by the title of Mary Gilfus' (1993) article, 'From Victims to Survivors to Offenders'. A balanced perspective is offered by Lisa Maher (1997) in her study of women involved in the street drug economy in Brooklyn, New York, where she critiques the polarised framing of female offenders:

> The first [interpretation] practically denies women any agency and the second over-endows them with it. In the first, women are portrayed as passive victims of oppressive social structures, relations and substances, or some combination thereof. Women are cast as submissive objects, serving as mere automata for the reproduction of determining structures. Constituted by and through their status as victims, they are devoid of choice, responsibility, or accountability; fragments of social debris floundering in a theoretical tide of victimage. In the second, women are viewed as active subjects – rational volitional agents seeking to maximise 'deviant' or 'criminal' opportunities in a brave new world devoid of structure, power, and domination. […] Both readings are an over-simplification and both ignore the relationships between broader social, economic, and cultural formations and immediate, specific, and local contexts in structuring the conditions by which women's agency is enacted (1).

More recent studies have utilised the ethnographic method in order to provide an in-depth analysis of the social context of women's offending, such as the work of Jennifer Fleetwood (2014) on women involved in the cocaine trade in Ecuador. This example is particularly relevant to the current thesis given that it also focuses on women involved in international cross-border drug trafficking. Fleetwood reflects on whether the women she interviewed and observed had control and agency over the drug couriering process, and she came to the nuanced conclusion that most of the participants were 'willing' drug mules who agreed to the work but, once they had committed, there was almost no opportunity to 'back out' and, at this stage, their agency was more constrained (Fleetwood, 2014:158). These constraints led her to theorise that 'victimisation and agency are not static qualities of a person, but are enacted through social interaction' and thus subject to change over time and depending on the context (Fleetwood, 2014:158).

Fleetwood's (2014) study of drug trafficking in Ecuador provides a useful segue, as it is important to point out that the majority of the studies reviewed so far have focused on the Anglo-American context and, as is the case with criminology in general, there is a dearth of evidence from the global south (Carrington, Hogg & Sozzo, 2016). There are, however, some notable exceptions of studies of women's criminality from the so-called global peripheries. These include Rimple Mehta's (2018) research into the experiences of Bangladeshi women incarcerated in Indian prisons in Kolkata, West Bengal and examines how these women navigated honour and violence in their everyday lives. Another example comes from the work of Bitna Kim and colleagues (2010) on South Korean women incarcerated for homicide of male partners in the cultural context of domestic violence.

It should be noted that the majority of studies of women's criminality in the global south do not depart methodologically nor epistemologically from the Anglo-American 'feminist pathways to crime' model, and cite similar 'drivers' of women's offending, including the effects of economic hardship; histories of abuse and victimisation; and the influence of male intimate partners. Examples of such studies of women incarcerated in different geographic locations include research from: South Africa (Artz, Hoffman-Wanderer & Moult, 2012); Pakistan (Khalid & Khan, 2013); China (Shen, 2015); Israel (Shechory, Perry & Addad, 2014); and Argentina (Salisbury et al., 2018). Furthermore, most of these studies focus on domestic crimes committed within the nation state, when arguably we should adopt a more transnational unit of analysis to account for our globalised realities.

Gender, globalisation and crime

What is globalisation? Whilst the definition is contested and 'elusive' (Hamelink, 1999), it is generally understood to refer to:

> [T]he processes by which more people across large distances become connected in more and different ways […it] involves growing diffusion, expanding interdependence, more transnational institutions, and an emerging world culture and consciousness (Lechner & Boli, 2015:2).

Globalisation is usually associated with the global restructuring that occurred post-World War II and the start of neoliberalism in the latter part of the 20th century. The neoliberal agenda consists of:

> [A] theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade (Harvey, 2015:71).

The implementation of this philosophy – backed by the International Monetary Fund (IMF) and the World Bank – has led to de-regulation, privatization and a reduction in the welfare state. This has had uneven effects, unduly affecting women in the global south who have felt the effects of Structural Adjustment Programmes (SAPs) and cuts in public services most acutely (Efange & Woodroffe, 2020). The global inequality engendered by globalisation has led to the development of a new capitalist 'world system' with a transnational division of labour between what have been deemed 'core', 'semi-peripheral' and 'peripheral' states (Wallerstein, 1974). The first category consists of states in the global north whose highly developed and diversified economies are propped up by cheap labour and raw materials from states in the latter two categories (Wallerstein, 1974).

Globalisation is also closely related to the development of the internet and what Manuel Castells (2004) refers to as 'network society':

> [T]he social structure that results from the interaction between social organization, social change, and a technological paradigm constituted around digital information and communication technologies (xvii).

As a result of these technological developments, as well as advances in transportation infrastructure, we have experienced 'time-space compression' and 'deterritorialisation' whereby 'the constraints of physical space lose their hold on social relations' (Lecher & Boli, 2015:5). Yet, globalisation has a high human cost, as 'an integral part of the globalizing processes is progressive spatial segregation, separation and exclusion' (Bauman, 1998:3).

Critiques of mainstream conceptualisations of globalisation abound. Some have pointed out that globalisation is usually presented as a singular, homogeneous process, when in fact it produces a plurality of experiences, as explained by Boaventura de Sousa Santos (2006):

> As they are sets of social relationships, globalizations involve conflicts and, therefore, winners and losers. The dominant

> discourse on globalization is the history of the winners, told by the winners. At an abstract level, only a process-based definition of globalization is possible. Here is my definition: it is a set of unequal exchanges in which a certain artefact, condition, entity or local identity extends its influence beyond its local or national borders and, in so doing, develops an ability to designate as local another rival artefact, condition, entity or identity (395-396).

In this thesis, we will be focusing on 'non-hegemonic' experiences of globalisation, or as some have called it, 'counter-geographies of globalisation' (Sassen, 2000). As the empirical evidence presented in following chapters will show, many of the women whose cases are explored in this research claimed to be what is referred to in the literature as 'informal cross-border traders', 'suitcase traders' or 'parallel traders', whereby they are paid to courier items such as gifts, cash, medicine and commodities across international borders via their personal baggage allowance (Desai, 2009; Ulysee, 2007; Joe Laidler & Lee, 2014). There are examples of this phenomenon throughout the global south, and crucially this practice appears to be dominated by female traders (Mukhina, 2009; Garni, 2014). Thus, these women are not passive recipients of global economic restructuring but, in fact, are active agents who have found 'alternative routes to economic participation that emerge in the nooks and crannies of globalization' (Gauthier, 2012:138). Accordingly, the definition and iteration of globalisation that we will be focusing on in this thesis is what is referred to as 'globalisation from below':

> [D]efined as the transnational flow of people and goods involving relatively small amounts of capital and informal, often semi-legal or illegal transactions, often associated with "the developing world" but in fact apparent across the globe (Mathews & Alba Vega, 2012:1).

Here, women, especially from the global south, play a significant role in the globalising process. Another critique that has been levelled at mainstream studies of globalisation has come from feminist scholars who argue that gender has been left out of existing analyses, with much of the macro-level analyses of globalisation or neoliberalism being gender-neutral or gender-blind (Chow, 2003). There is an uneasy relationship between gender and globalisation, which is referred to by commentators as an 'unhappy marriage' or a 'messy relationship' (Davids & Van Driel, 2009; Desai, 2007). This is because studies of gender and globalisation have been stymied by the prevailing, dichotomous thinking on the matter, that represents women as either 'local victims of evil global processes' or as 'heroines (supposedly) fighting against or resisting these global processes', and creates false oppositions between the categories of victim/heroine, global/local and traditional/modern (Davids & Van Driel, 2009:905-906; Freeman, 2001). In fact, authors have shown that the participation of women in the globalising process has been 'uneven', and whilst many scholars have focused on highlighting the exploitative, feminised and racialised labour arrangements that serve as the foundation for the globalised economy, there have also been opportunities for women's economic development and innovation, such as through cross-border trading (Desai, 2007:798).

In the realm of cultural globalisation, we see that globalisation has engendered new forms of transnational feminist activism, as evident within entities like the United Nations (UN) and the World Social Forum. However, it should be acknowledged that privilege is required in order to navigate these new spaces (Desai, 2007). On the other side of the coin, we find that globalisation has created a new form of hegemonic masculinity, associated with a 'transnational business' identity (Connell, 1998). Thus, gender and globalisation exist in an 'awkward' relationship with one another (Davids & Van Driel, 2009:905).

In response to the dearth of information on women's participation in – and the effects felt by women of – economic globalisation, a new body of scholarship emerged during the 1980s and 1990s, referred to as 'feminist macroeconomics'. This work highlighted that Structural Adjustment Programs (SAPs) and cuts in public services unduly affect women, and that mainstream economic analyses and policies fail to consider women's unpaid work (Efange & Woodroffe, 2020). Studies have also highlighted that during the economic growth and structural adjustment processes that occurred from the 1960s to the 1980s in parts of the global south – including the Southeast Asian region – there was an unprecedented increase in women's participation in the economy, but disproportionately in low-wage, manufacturing jobs in industrial export zones (in so-called 'global factories'), where, in some places, women made up more than 80% of the work force (Lim, 1993:176). This 'feminisation of labour' was underpinned by sexist and orientalist discourses where:

> Women are considered not only to have naturally nimble fingers, but also to be naturally more docile and willing to accept tough work discipline, and naturally less inclined to join trade unions, than men; and to be naturally more suited to tedious, repetitious, monotonous work (Elson & Pearson, 1981:93).

With the development of a more globalised economy, we have also witnessed what has been deemed the ‘feminisation of migration’, whereby increasing numbers of women from the global south have been migrating since the turn of the 21st century to work abroad in feminised sectors – such as healthcare, domestic work, entertainment, manufacturing and/or textile sectors – and consequently:

> [H]ouseholds and whole communities are increasingly dependent on women for their survival. Governments too are dependent on their earnings as well as enterprises where profit making exists at the margins of the “licit” economy (Sassen, 2000:503).

This is especially the case in Asia, where much has been written of the so-called ‘maid trade’ of women travelling from states such as the Philippines and Indonesia to more affluent nations within the region and in the global north for employment as domestic workers (Constable, 2007).

What is the significance of globalisation for criminology? First, globalisation has changed criminology’s unit of analysis from the nation state to what has been termed the ‘global risk society’ (Beck, 1999). In this new global society, as a consequence of time-space compression, we are confronted by issues where:

> [T]he basic conditions and principles of first, industrial modernity – class antagonism, national statehood, as well as the images of linear, technical-economic rationality and control – are circumvented and annulled (Beck, 1996:1).

Examples of these threats include the global war on terror, the climate crisis, the COVID-19 pandemic, and world economic crises. Concurrently, we have witnessed a rise in transnational crimes (be it, ecological, financial, or transnational). However, one of the central paradoxes of globalisation is that alongside the greater flow of information, money and people, there has also been a move towards '(re)territorialisation' and 'securitisation' of national borders – particularly in the wake of 9/11 – and, in this way, borders have created new 'crimes of mobility' as well as the stratification of citizens and non-citizens, and policies of 'inclusion and exclusion' based on race, socio-economic status and gender (Franko Aas, 2007; Aliverti, 2013; Bosworth, Parmar & Vázques, 2017).

Attempts have been made to 'globalise feminist criminology' (Carrington, 2015). In general, these efforts have done one of two things. Either they have mentioned that globalisation is gendered and has a concomitant effect on crime and justice, but have failed to elaborate on the causal mechanisms (Renzetti, 2013; Silvestri & Crowther-Dowey, 2016). For example, the key author on the topic of globalisation and crime, Katja Franko Aas (2007) writes that there is a 'female underside of globalisation', but does not go much further than to cite 'the increasing employment of Third World women as maids, nannies, sweatshop workers and sex workers in the prosperous countries' (48).

Or, alternatively, they solely focus on the globalisation of women's victimisation, with particular attention paid to human trafficking and violence against women globally (Lee, 2007; Carrington, 2015). The concern with the victimisation approach is that it may unintendedly reinforce orientalist representations of the ‘third world woman victim’ who: ‘has come to represent the more victimized subject; that is, the real or authentic victim subject’ which ‘risks resurrecting the “native subject” and justifies imperialist interventions’ (Kapur, 2002:2).

And indeed, much has been written about anti-human trafficking measures and how they disproportionately affect racialised women from the global south who are over-policed at the border (Pickering & Ham, 2013). Ultimately, this leads to restrictions on women’s mobility and right to livelihood, which are justified using paternalistic discourses of entrapment, sexual slavery and submission (Kempadoo, 1998).

More usefully, some of the work on the globalisation of feminist criminology has highlighted how economic inequality at an international level has contributed towards women’s offending, and such theorising:

> [F]ocuses in particular on single women with dependents and their needs to make ends meet in developing nations, given cutbacks in social services and the removal of local sources of employment. Women are thus pushed or pulled toward crime, often in the migratory process […] The feminization of poverty thus results in different life choices for women that involve illegal migration, succumbing to human trafficking, or participating in the domestic or international drug trade (Barberet, 2014:139).

Mainstream feminist criminological scholars are encouraged to adopt an alternative, international lens, which consists of:

> Seeing increased and forced migration, combined with racism and “othering” of the immigrant, as a cause of criminalization and victimization; drugs on our streets as a transnational pattern of

> supply and demand; and prisons as part of the worldwide prison-military-industrial complex[13] (Barberet, 2014:31).

In this way, we must consider women's offending not in an individualised way, but instead consider how it is part of a larger interlocking system of power and marginalisation which extends beyond national borders. This is illustrated by the work of the transnational feminist criminologist, Julia Sudbury (2005a), who, when considering the rising rates of female imprisonment worldwide, refers to this as a 'global lockdown':

> Both the fabric of the prison and the people and the people caged within it are shaped by global factors, from free trade agreements and neoliberal restructuring to multinational corporate expansion. The prison is thus simultaneously local and global […] a product of local, national, and global political, economic, and cultural phenomena (xii).

Whilst penal practices such as the over-incarceration of female offenders occur at the cross-roads between global and local forces, so too, I would argue, do they sit at the nexus of historical and contemporary forces – the death penalty in particular is a modern manifestation of a 'colonial penality' which is gendered and racialised and disproportionately affects foreign nationals (Cunneen & Baldry, 2013).

One of the most obvious examples of the need to globalise feminist criminology is the involvement of women in transnational criminal activity. One popularised manifestation of this is the involvement of women in international terrorism. Authors who have studied this topic in a variety of international

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[13] Here, referencing the work of Julia Sudbury (2004).

contexts have commented that the media tends to 'fetishize' female terrorists (Bloom, 2011:33), and thus much of the research has focused on the representations of female terrorists in the public imagination. Usually these are binary representations: work on the media depictions of female Chechen terrorists tended to either depict the women as sympathetic 'black widow[s]' – suicide bombers who were 'forced into terrorism as a result of the deaths of the men in [their] life' – or alternatively, as 'zombie[s]' – who have been 'drugged, raped, or tricked into terrorism by Chechen men' (Stack, 2011:83). Neither portrayal imbues the women with agency quite apart from their association with males. Likewise, an examination of the 'neo-orientalist' portrayals of female Al-Qaeda operatives in the media and by their family members also played into gendered tropes to do with motherhood, as they were cast as either 'rebels, infertile outcasts, or submissive wives' (Gentry, 2011:178). Therefore, most of the existing work on females in transnational crime has focused on their representation of gendered tropes rather than an examination of the gendered drivers behind their criminality.

Women and international drug trafficking

The focus of this thesis is women involved in the international drug trade who are intercepted in Malaysia. Here, we find that globalisation has had a 'dual' impact: not only has globalisation and associated neoliberal economic reforms led to the increased number of women in the global south being pushed into illegal activities such as drug couriering for survival, but we have also witnessed the 'globalisation' of the US-led 'war on drugs' resulting in excessively punitive punishments for low-level drug offending. Globally, drug offences are the main cause of the rapid growth in the female prison population, which has increased by 59% from 2000 to 2020 (Heard, 2017).

The majority of existing literature on women's involvement in cross-border drug trafficking focuses on women from Latin America, the Caribbean and West Africa, usually caught smuggling drugs to the United States or the United Kingdom (Bailey, 2013; Del Olmo, 1986; Fleetwood, 2014; Green, 1996; Huling, 1995; Office of the Sentencing Council, 2011; Sudbury, 2005b). There is a dearth of academic research on women involved in the international drugs trade in Southeast Asia, with the exception of studies of Thai women incarcerated for drug trafficking in Cambodia (Jeffries & Chuenurah, 2019; Jeffries et al., 2021).

These studies assess the 'pathways to crime' or motivations behind women's involvement in drug couriering, and report similar findings. These pathways can be grouped as follows: the 'feminisation of poverty' and economic factors often related to women's roles as primary familial caregivers or breadwinners; specific vulnerabilities (including histories of abuse and victimisation); romance often plays a role with many women recruited by their male intimate partners; coercion and deception, usually by a male intimate partner; and, finally, some are drawn to the excitement of travel and potential earnings. It should be noted that these studies are not distinct from more general studies of female offending – mentioned in an earlier section – which find that women and girls become involved in crime as a result of poverty and victimisation (Widom, 1989).

Rather than focusing on the drivers behind women's involvement, some authors have examined the positions and power or lack thereof of women within international drug smuggling operations (Campbell, 2008). Studies of women's involvement in domestic, street-level drug trading have revealed that although women's participation has increased, they still occupy low-level roles in a gender-stratified hierarchy (Maher & Daly, 1996). Some research into women involved in transnational drug trafficking has found examples of women occupying high-level roles. Take, for example, a study of women involved in smuggling drugs from Ciudad Juárez, Mexico across the border to the US, which found evidence of female 'high-level traffickers' who gained money, power and independence as a result of their roles in the syndicate (Campbell, 2008).

Meanwhile, other studies of women involved in international drug trafficking routinely find examples of women who had been forced, coerced or threatened to carry drugs, oftentimes by a male intimate partner (Huling, 1995; Bailey, 2013). Furthermore, many of the women claim to have been duped into smuggling drugs, and indeed, a study conducted with female drug couriers imprisoned in the United Kingdom (UK) found that nine of the twelve women interviewed claimed not to know about the drugs they were carrying (Office of the Sentencing Council, 2011:4). Thus, this evidence seems to contradict claims that women occupy powerful roles within drug syndicates. But, in fixating on this issue, we are still preoccupied with individualised reasons for women's offending rather than examining broader structural issues – something to which we will now turn our attention.

Female drug couriers at the nexus of globalisation-patriarchy-racism-xenophobia

Several transnational feminist criminologists have emphasised the links between globalisation, the global war on drugs and the over-incarceration of women of colour from the global south (Sudbury, 2005a&b; Cain, 2008; Reynolds, 2008). In so doing, they have highlighted that the existing 'pathways' studies over-emphasise the individual histories of women incarcerated for drug couriering and 'mine' their personal histories of trauma, instead of focusing on the wider structural factors that are behind this new penal trend (Sudbury, 2005a:xv). Instead of focusing solely on women's histories, scholars encourage us to question why it is that certain – often racialised – women are deemed 'punishable by the state' (Lawrence & Williams, 2006:327). Julia Sudbury (2005b) attributes this 'global lockdown' of women of colour incarcerated for drug offences to four key factors: the 'racialized feminisation of poverty under neoliberal globalisation'; the racialised 'tough on crime' policies in countries such as the UK and US; the transnational War on Drugs; and the global spread of the 'prison industrial complex' (168).

As has already been discussed, the 'feminisation of poverty' under neoliberal globalisation has a 'criminogenic' effect, and indeed, scholars cite examples of the 'global criminalisation of [women's] responses to structural adjustment' in different locations in the global south, such as Trinidad and Tobago (Cain, 2008:33) and Jamaica (Sudbury, 2005b). Evidence suggests that private businesses and governments may be profiting off this mass incarceration, with the globalisation of the ‘prison industrial complex’. Sudbury (2005b) cites the example of ‘Operation Airbridge’, where the British government was in discussion with the Jamaican government about a GBP2 million policing contract aimed to apprehend female drug couriers travelling from Kingston and Montego Bay to the UK and, as part of this, British companies were to be contracted to build maximum-security private prisons in Jamaica (179). A punitive and profit-oriented approach is favoured over focusing on improving social welfare which would ultimately reduce the need for women to turn to alternative (and criminalised) sources of income. The US has an undue influence on this global situation, and indeed many scholars critique the globalisation of the US’ ‘War on Drugs’ (Reynolds, 2008). For example, in Ecuador the major increase in women’s imprisonment for drug-related offences is considered ‘collateral damage’ from the US War on Drugs, as the US has made foreign aid conditional on a punitive stance on drugs (Norton-Hawk, 2010).

As part of governments’ ‘wars on drugs’ we find that particular gendered and racialised and often foreign nationals’ populations are constructed as the drug couriering ‘other’. Research from the US shows that African-American women are disproportionately stopped and searched for drugs by customs officers at airports (Newsome, 2003). It is argued that this profiling and stereotyping is a continuation of historical racist and sexist representations of African American women – starting with the Slave Codes, the Jim Crow laws and through to the ‘War on Drugs’ – with African American women being type-cast as ‘the mammy or Aunt Jemima, the Jezebel, the tragic mulatto, the matriarch, the Sapphire, and the welfare queen' (Newsome, 2003:34). These representations 'devalue black women and depict them as masculine, crafty, promiscuous, sexually inviolable, pathological, and criminally inclined' (Newsome, 2003:34). The Customs Officers' criterion for 'suspicious traveller' are demonstrably racist and sexist, with the list of 'narcotic source countries' being predominantly 'black' countries such as locations in West Africa and the Caribbean (Newsome, 2003:45). African-American women's hostility to customs officers (due to historical and contemporary mistrust of authorities) is read as evidence of guilt; and African American women's unfamiliar attire is deemed suspicious (Newsome, 2003:46). All in all, this leads to the policing of black women's 'spatial mobility' and seeks to 'enforce the racial, class and gender boundaries that define African American women's "proper" place in social structure' (Newsome, 2003:53). Here, the 'threat' from drug courier is 'internal' (from fellow citizens) but they are considered the 'other' due to their membership of a racialised and minoritised group.

At the southern border of the US, research has shown that female drug couriers from Latin America are represented by border control according to a different gendered, racialised and nationalistic logic, characterised by a 'victim and vamp' binary (Schemenauer, 2012). On the one hand, border agents refer to certain female drug couriers as 'victims' who are thought to be 'uneducated', 'poor', 'vulnerable' and 'not the real culprits' and, as such, this bolsters the US state's position as a 'chivalrous, masculinist, regional protector' (Schemenauer, 2012:83). On the other hand, 'vamps' are 'female drug couriers who are said to knowingly use notions of femininity and womanhood to try to thwart the suspicions of authorities' and are categorised in different ways by border agents – including those who 'fake motherhood' (and hide drugs around their stomach), those who 'accentuate' their feminine features (and hide drugs in their prosthetic breasts), or those who distract or mislead the border agencies by portraying themselves as a 'professional woman' or by being 'sexy' and flirtatious (Schemenauer, 2012:96). Overall, these micro-interactions at the border are a microcosm of wider geopolitical dynamics, whereby:

> Female drug couriers from Latin America and the Caribbean must be victimized or summarily dismissed as sexual objects, improper women/mothers or simply as conniving in order for the gendered, racialized and geographed order that sustains a white supremacist US identity and a militarized, supply side drug policy to survive (Schemenauer, 2012:96).

Research from the UK has shown that a 'moral panic' about Jamaican drug mules in the early 2000s fuelled the over-incarceration of women of colour for minor drug offences (Sudbury, 2005b). Likewise, in Canada, scholars have commented on how Jamaican women are subjected to harsh sentencing for drug trafficking in order that the Canadian state can maintain the myth that the 'drugs issue' originates in 'remote places, beyond Canada's borders' (Lawrence & Williams, 2006:327). Here, their gender, race and citizenship compound their 'otherisation'.

This literature indicates that rather than focusing on women's 'criminality' we should instead direct our attention towards women's '*criminalisation*'. And in so doing, we discover that the global processes that are responsible for women's criminalisation are governed by a patriarchal, racist and xenophobic logic.

Conclusion

This chapter has provided a critical overview of the existing criminological literature on women's offending in a global context. It began with the classical (and androcentric) theorists of the 18th, 19th and mid 20th century who conceived of female criminality as a form of individual pathology stemming from psychological factors (Lombroso & Ferrero, [1893] 2004; Freud, 1933; Pollak, 1961). Following the start of feminist approaches to criminology from the 1960s and 1970s onwards it was argued that instead of looking at women's individual histories it is necessary to examine broader structural inequalities in patriarchal society, and hence we saw the proliferation of studies of women, crime and the 'feminisation of poverty' (Carlen, 1988) as well as a new category of 'feminist pathways to crime' studies which examined the interactions between individual histories of trauma and broader structural inequalities faced by female offenders (Chesney-Lind & Rodriguez, 1983; Widom, 1989; Belknap & Holsinger, 2006; DeHart, 2008).

Third wave feminism prompted the adoption of more intersectional approaches to studies of female offending which do not only examine the effects of gender, but look at gender alongside the effects of other marginalised identity markers such as race and class (Jones, 2009). After reflecting upon the fact that this existing work fails to encompass the global dimensions of structural inequality, and the resultant impacts on female offending, especially in the global south, I turned to another area of criminological theorising: that of globalisation and crime (Franko Aas, 2007). In so doing, I contemplated one of the central paradoxes of globalisation: that alongside the increased mobility of people, money and information, there has also been a move towards '(re)territorialization' and 'securitization' of national borders, creating a new international politics of inclusion and exclusion, and 'crimes of mobility' (Franko Aas, 2007).

After considering the critiques of mainstream conceptualisations of globalisation – including that it is often gender-blind (2003) – I settled on a definition of globalisation that I will use throughout this thesis, that of 'globalisation from below' which focuses on the 'transnational flow of people and goods involving relatively small amounts of capital and informal, often semi-legal or illegal transactions' (Mathews & Alba Vega, 2012:1). And, in later chapters, I will focus on the proliferation of female 'suitcase traders' in the global south (a concept that recurs in the empirical data), an example of 'globalisation from below' (Mathews & Alba Vega, 2012:1).

In order to conceptualise women's criminality in a globalised world, I examined examples of women involved in transnational crime – such as terrorism – but found that the majority of these studies tended to focus on the popular representations of these women (which usually involved gendered tropes) (Bloom, 2011; Gentry, 2011; Stack, 2011). Drug trafficking – the subject of this thesis – is another key example of a transnational crime that involves women. From a review of the literature I found that most of the existing studies adopt a 'pathways' approach, and instead of examining the global-level processes that have fuelled the over-incarceration of women of colour for minor drug offences, they 'mine' women's personal trauma for explanations of their offending (Sudbury, 2005a:xv). It is necessary to adopt the nuanced position of 'transnational feminist criminologists' which:

> [C]onnects the multiple and intersecting identities of individual women – race, class, gender, culture and nation – with the processes of globalization, militarism, patriarchy, and neo-colonialism to understand the resultant criminalisation of racialised, foreign national women from the global south (Reynolds, 2008:73).

In this way, I can see how the incarceration of predominantly racialised and foreign national women from the global south occurs at the nexus of neoliberal globalisation, patriarchy, racism and xenophobia. And thus the most significant reflection from this chapter is that instead of focusing on women's offending, I should instead think about women's criminalisation. The difference is subtle but important: rather than thinking about individual women's personal involvement in drug trafficking, I should instead examine the broader causal processes that lead to the disproportionate number of women incarcerated for drug trafficking, in this case, in Malaysia. With this in mind, I will now turn to a consideration of the concepts I will engage with in order to make sense of these trends.

3. Precarity and disposability: a conceptual framework

Introduction

In the previous chapter, I established that the underlying theme of this thesis is the relationship between gender, globalisation and criminalisation. In this chapter, I will hone in on two distinct yet overlapping concepts that will help to frame the following analysis: *precarity* and *disposability*. Both of these concepts are related to, and exacerbated by, globalisation. Both of these concepts have gendered[14] (as well as racialised, classed and citizenship-related) dimensions. And, both are under-theorised in relation to criminalisation.

Within the context of this thesis, precarity can be understood as:

> [W]ork for remuneration characterized by uncertainty, low income, and limited social benefits and statutory entitlements. Precarious employment is shaped by the relationship between *employment status* (i.e. self- or paid employment), *form of employment* (e.g. temporary or permanent, part-time or full-time), and *dimensions of labour market insecurity*, as well as *social context* (e.g. occupation, industry, and geography) and *social location* (or the interaction between social relations, such as gender, and legal and political categories, such as citizenship) (Vosko, 2009:2).

The most important components of this definition are the references to both 'social context' and 'social location'. With regards to the former, geography is a crucial consideration – as precarity disproportionately affects people in the global south – and with regards to the 'social context' it is necessary to think

[14] My usage of the terms 'gendered' and 'feminised' throughout this thesis are based on an 'understanding of gender as a routine accomplishment embedded in everyday interaction[s]' between individuals and institutions (West & Zimmerman, 1987:125).

about this in an intersectional manner (considering the interactions between different, subordinated identity markers such as race, gender, class, etc.). I see 'precarity' as a condition shaped by *gender*, socioeconomic status and citizenship in a neoliberal, globalised world – as will be fully explained in the following sections. With regards to disposability – which I will show is a gendered concept – this can be understood as follows:

> The discursive production of racialized women's bodies as inherently inferior has become integral to the current operation of intensifying global capitalism. Historical processes of devaluing what is constituted as feminine, along with the colonizing production of the racial *other* as inherently inferior to that of the archetypal White middle-class male body, have manifested themselves within the current global economy. Working class women of colour, specifically from the global South, predominantly fill unskilled labour positions with the global labour market. Understanding the discursive production of racialized and gendered bodies as devalued follows for a complex narrative, which draws on the processes of racialization and feminization within the labour market as sites of violent exploitation (Bachour, 2014:174).

Both of these concepts have two levels to them: first, some scholars focus on precarity and disposability as ontological conditions (Butler, 2009; Bauman, 2004b). Second, others use these concepts to explain the lived experiences of socioeconomic trends (Standing, 2011; Chang, 2016). I am more concerned with the second category. However, there are overlaps between the two.

I see the two concepts as interrelated, and in fact, I view disposability as subsumed under the umbrella of precarity. Precarity is a broader concept – and as such, greater attention will be paid to it in this chapter – and disposability is an especially gendered symptom of precarious economic relations. Fundamentally, I argue throughout this thesis that many of the women facing the death penalty for drug trafficking in Malaysia were engaged in precarious employment prior to their engagement in the drug trade, and drug couriering was another form of precarious (and at times, disposable) labour – thus we will be evaluating both the women's socio-economic lives prior to arrest as well as their experiences of drug couriering. And where disposability is most relevant is in relation to women's treatment as drug couriers, as they become the ultimate disposable worker, their expendability exemplified starkly by their exposure to capital punishment.

Precarity

'Precarious life'[15]: precarity as an ontological condition

The concept of precarity, or precariousness, is most often attributed to the work of queer theorist, Judith Butler (2004), who, writing in the context of a post-9/11 United States (US), argues that we all possess:

> [V]ulnerability to destruction by others that follows from a condition of precarity in all modes of political and social interdependency. We can make this into a broad existential claim, namely, that everyone is precarious, and this follows from our social existence as bodily beings who depend upon one another for shelter and sustenance and who, therefore, are at risk of statelessness, homelessness, and destitution under unjust and unequal political conditions. As much as I am making such a claim, I am also making another, namely, that our precarity is to a large extent dependent upon the organization of economic and social relationships, the presence or absence of sustaining

[15] This heading is a reference to Judith Butler's (2004) book, *Precarious Life: The powers of mourning and violence*.

> infrastructures and social and political institutions (Butler, 2012:148).

By this reading, as a consequence of our human vulnerability to being expunged, our existence is precarious, and reliant upon socio-political structures for sustenance. However, precarity is distributed unequally, as some lives are deemed 'ungrievable' by the political order, and therefore not worth protecting (Butler, 2012:148). In this way, we see that Butler's work is influenced by French philosopher Michel Foucault's (1978) theorising on 'biopolitics' where he argues that, due to the biological advances of the 19th and 20th centuries, we have seen a shift in political power whereby: 'the ancient right to *take* life or *let* live was replaced by the power to *foster* life or *disallow* it to the point of death' through the 'administration of bodies and the calculated management of life' (138). We will return to this work later in relation to ontological theories of disposability.

In a similar vein, the concept of precarity has been adopted by anthropologists (Han, 2018). A clear example of this is a special edition on 'Precarity' in the online journal, *Cultural Anthropology*, where the concept is defined as 'an emerging abandonment that pushes us away from liveable life' (Shaw & Byler, 2016). This special edition includes articles on the topics of family and friends' responses to the kidnapping of a friend, Jabar, in Basra, post-war Iraq (Al-Mohammad, 2012), as well as reflections on an activists' experience of witnessing an animal's suffering (Dave, 2014).

Anne Allison (2013) has written a key ethnography on the subject, entitled, *Precarious Japan*, in which she studies the uncertainty of Japanese society in an era characterised by irregular labour, an economic recession, nuclear disaster, and a decreasing population. She examines the ways in which this precarity manifests, which includes the rise of phenomena such as violent attacks plaguing the streets of major cities; the rise of '*netto kafe namin* (net café refugees)', a new class of homeless people who drift between internet cafés for shelter; as well as news stories of people starving to death within the confines of their own homes (Allison, 2013:3,44,103). Here, Allison coins the term 'social precarity', defined as follows:

> Though it may start in one place, precarity soon slips into other dimensions of life. Insecurity at work, for example, spreads to insecurity when paying bills, trying to keep food on the table, maintaining honor and pride (in one's community or head of household), finding the energy to keep going. It is not just a condition of precarious labor but a more general existential state (Allison, 2013:9).

Others still have argued that precarity inhabits 'the microspaces of everyday life' (Ettlinger, 2020:401-402).

However, for this thesis I am less concerned with the 'ontological' explanations of precarity, and will instead be focusing on precarity as a socio-economic condition. This is because the high-level theorising on precarity and precariousness as a form of existential insecurity is too abstract, and thus not useful for understanding my empirical data. It is hard to operationalise: methodologically, how does one gather data on participants' 'vulnerability to destruction' (Butler, 2012:148)? Furthermore, by creating a grand theory of ontological vulnerability, this white-washes historical and present global structures of racial, colonial, patriarchal and capitalist violence.

From Fordism to flexible work: economic precarity

The term 'precarity', originating from the French term *precarité*, is utilised by economists to refer to transformations that have occurred in the latter part of the 20th century, consisting of:

> [T]he multiple forces that have reorganized labor from that of the Fordist assembly line, privileging the proletariat to the small-scale, networked forms of flexible and intermittent labor, including the globalization of capitalist production, the rise of the information economy, and the assault on welfare state provisions… precarity signals the loss of stable, regular jobs, which had allowed people to project themselves in terms of upward social mobility (Han, 2018:335-336).

This concept has been in existence since the 1980s, however it began to circulate with greater frequency in the early 2000s as a result of a number of protests that occurred across Western Europe, including EuroMayDay 2004 (Milan and Barcelona), Precarity Ping Pong (London, 2004), the International Meeting of the Precariat (Berlin, 2005) and Precair Forum (Amsterdam, 2005) (Neilson & Rossiter, 2005). According to the International Labour Organisation (ILO), over 60% of workers worldwide are in non-permanent work (Connell, 2015). However, it should be noted that this is an incredibly heterogeneous category of worker and, as such, scholars have warned against conflating 'the figure of the creative worker with that of the migrant or female care-worker in the discussions and actions surrounding precarity' (Neilson & Rossiter, 2005: no page number).

The preeminent scholar of precarious work, Guy Standing (2011), argues that the 'precariat' (the 'new dangerous class') consists of people who lack the seven forms of labour security detailed in Table 2 below (10):

Table 2: Seven forms of labour security (Standing, 2011:10).

Labour market security	'Adequate income-earning opportunities; at the macro-level, this is epitomised by a government commitment to "full employment".'
Employment security	'Protection against arbitrary dismissal, regulations on hiring and firing, imposition of costs on employers for failing to adhere to rules and so on.'
Job security	'Ability and opportunity to retain a niche in employment, plus barriers to skill dilution, and opportunities for "upward" mobility in terms of status and income.'
Work security	'Protection against accidents and illness at work, through, for example, safety and health regulations, limits on working time, unsociable hours, night work for women, as well as compensation for mishaps.'
Skill reproduction security	'Opportunity to gain skills, through apprenticeships, employment training and so on, as well as opportunity to make use of competencies.'
Income security	'Assurance of an adequate stable income, protected through, for example, minimum wage machinery, wage indexation, comprehensive social security, progressive taxation to reduce inequality and to supplement low incomes.'
Representation security	'Possessing a collective voice in the labour market, through, for example, independent trade unions, with a right to strike.'

This model of precarious labour is, in fact, gendered (Fudge & Owens, 2006). Women, and especially women from the global south, are over-represented in the precarious labour market (Standing, 1989). Of relevance to the current thesis is that we can observe this trend in the Southeast Asian region, both historically and presently. During the economic growth and structural adjustment process that occurred from the 1960s to the 1980s, there was an unprecedented increase in women's participation in the labour market in Southeast Asia (Lim, 1993). This ‘feminisation of labour’ occurred alongside the ‘flexibilisation’ of labour, which meant that women were moved into peripheral, temporary and part-time positions (Gills, 2001:9). This was prevalent in the export-oriented industrialisation phase of development, with many women working in textile and electronics manufacturing on the ‘global conveyor belt’ (Kaur, 2000). It was seen as economically advantageous to employ women in these roles, as often this was their first entry into the labour market and so they had low ‘aspiration wages’, and the women would be retrenched once they reached the age of marriage or childbirth, to be replaced by a more ‘youthful’ and ‘productive’ workforce (Standing, 1989:1080). This strategy was underpinned by orientalist discourses where:

> Women are considered not only to have naturally nimble fingers, but also to be naturally more docile and willing to accept tough work discipline, and naturally less inclined to join trade unions than men; and to be naturally more suited to tedious, repetitious, monotonous work (Elson & Pearson, 1981:93).

However, it should be noted that there were ways in which this new flexibilisation of labour could be harnessed by women workers, as is demonstrated by Anja Franck’s (2016) study of the labour force participation of working class women in Penang, Malaysia. She finds that across the women’s life courses they moved from formal employment in low-skilled jobs in global factories or in the tourism industry to small-scale informal businesses (such as street hawking), as an agentive response to the constraints of the working conditions in the export industries (such as the long shifts and poor salaries, as well as the geographic distance from their homes to the export processing zones) (Franck, 2016:169-170). For many of the women, the decision to move from the formal economy to the informal economy was not borne out of desperation, but in fact was a 'deliberate choice' driven by a desire for more freedom and flexibility to enable them to balance their domestic roles within the family alongside their economic lives (Franck, 2016:174).

Today, women in Southeast Asia are over-represented in other forms of precarious labour, such as migrant domestic work (Lan, 2006). We will delve into the relationship between precarity, gender and migration in the global south in what follows.

'Precarious women adrift'[16]: the feminisation of precarity

Feminist critiques of mainstream theorising on precarity abound. To begin with, it is argued that the Standard Employment Relationship (SER), against which precarious work is compared, is 'intertwined historically with a particular gender contract – i.e. the sex/gender divisions of paid and unpaid labour' and, namely, 'the male breadwinner/female caregiver contract' (Vosko, 2009:8). Thus, throughout history, unpaid and/or 'precarious' work has been the norm for women, especially in the domestic sphere. And indeed, it has been argued that feminists in the 1970s were struggling against precarious work, but these issues remained unnoticed until recent decades 'when the western, male worker began feeling the negative effects of the new, post-industrial, flexible job market' (Fantone, 2007:7). Indeed, a Spanish feminist collective, *Precarias a la Deriva*, translated as 'Precarious Women Adrift', was established in 2002 in

[16] This heading is a reference to the Spanish feminist collective, *Precarias a la Deriva*.

order to advocate for those working in 'precarious and highly feminized sectors' such as 'language work (translations and teaching), domestic work, call-shops, sex work, food service, social assistance, media production', and in so doing, discovered that gendered precarious work is characterised by a 'Care-Sex-Attention continuum', and the 'externalization of the home' (Precarias a la deriva, 2004:158-159; Precarias a la deriva, 2005:38). The very term *precarias* (a feminine noun in the Spanish language) highlights the way in which gender is inseparable from experiences of precariousness.

Other scholars have shown that the sexual division of labour – which gives rise to a disproportionate number of women in the precarious workforce – is intertwined with historical legacies of patriarchal colonisation (Mies, 2014). Indeed, Maria Mies (2014), when exploring a concept that she dubs 'housewifization', argues that:

> [T]hese two processes of colonization and housewifization are closely and causally interlinked. Without the ongoing exploitation of external colonies – formerly as direct colonies, today within the new international division of labour – the establishment of the "internal colony", that is, a nuclear family and a woman maintained by a male "breadwinner", would not have been possible (110).

This trend has become more pernicious with the establishment of what has been coined 'global care chains', consisting of 'a series of personal links between people across the globe based on the paid or unpaid work of caring', systems which are usually made up of women of colour, from the global south, who migrate to developed countries to work as domestic workers and carers, and whose own children are in turn cared for by family members or other local women who form part of this chain (Hochschild, 2000:131). Internationally, precarious care work is highly gendered and racialised and often involves migrant women.

The sex and entertainment industry is another site of gendered (and racialised) precarious migrant work. A clear example of this can be found in the work of Carolyn Choi (2017) on the shifting work arrangements of hostesses in Los Angeles' (LA) Koreatown. Historically, the LA Koreatown hostess industry was made up of female migrant workers from South Korea who travelled to the US as part of a debt bondage system. During this time, they were indentured labourers, working in 'room salons' under the supervision of 'madams' who controlled their personal lives such as their accommodation and pay (Choi, 2017:453-455). However, the hostess industry changed following the financial recession and changes in the US immigration system which enabled people to travel to the US more freely from South Korea (Choi, 2017:448). This resulted in a shift towards a more precarious model of '*doumi*' companies which act as 'unregistered and unlicensed auxiliary hostess sourcing agencies' who match freelance hostesses with karaoke venues (Choi, 2017:452). Increasingly, hostesses are not South Korean migrants but local women unable to find stable employment or those who are attracted to the flexible work arrangements, such as students (Choi, 2017:452). For those working in the '*doumi*' companies, in order to incentivise clients to regularly hire their services, they increasingly find themselves performing 'sexually explicit acts' (Choi, 2017:458). Whilst at the time there is no workplace security, making them vulnerable to physical and sexual abuse from clients (Choi, 2017:458). Though both business models are inherently exploitative, we see with the latter how the insecurity of precarious work can lead women to turn to criminalised activities to sustain themselves.

Another example of gendered precarious work is garment factory labour, an export-oriented industry disproportionately occupied by female workers (Standing, 1989). Take, for example, the case of female textile workers in Štip, Macedonia, where business was prosperous during socialist times, but has become increasingly precarious following the Yugoslav break-up and competition from the global market (Bonfiglioli, 2014). Research has shown that women dominate this sector (85% of workers) due to sexist stereotypes about women's 'nature' and suitability for 'light' industries such as textiles (Bonfiglioli, 2014:11,14). These women are subjected to insecure and unsafe working conditions due to 'the lack of job security, the inability to claim years of wages and social contributions due to bankruptcy, the closing of factories, and the postponement of retirement age' (Bonfiglioli, 2014:18). There are stark examples of this, including the case of a female worker, Marijana Stojcevska, who died in 2007 at a textiles factory where she had been working for 13 hours consecutively; in another factory, six seamstresses were violently attacked by the factory owner for asking for late salaries (they were being paid four to five euros for over ten hours of work per day); and 30 workers were locked into a factory in order to ensure that a textile order was ready for export (Bonfiglioli, 2014:12-13). This case-study is an extreme example of the unfortunate fact that precarious work – and the accompanying lack of employment protection – is likely to result in worker exploitation.

Not only is precarious work concentrated within feminised industry, but arguably gender is constituted and enacted through precarious work, and precarious labour becomes a 'technology of gender' (Flores Garrido, 2020:584). An example of this is the call centre industry, and specifically, research from Portugal, which has shown that these companies mandated the 'enactment of (less valued) feminized and (more valued) masculinized ways of speaking' for different tiers of employees (Alves de Matos, 2014:14). The predominantly female commercial support workers were given scripts which satisfied the 'client's expectation of feminized sympathy, demeanour and docility' (Alves de Matos, 2014:14-15). However, the mainly male technicians were instructed to 'show security and determination in their voices' and to take an 'active' role in their calls (Alves de Matos, 2014:14-15). The feminisation of precarious work is multi-layered, and includes the commercialisation of 'female' affective labour.

Additionally, when considering the gendered dimensions of precarity, it is important not to consider gender in isolation but, instead, to think about how precariousness is exacerbated by other identity factors and structural forces:

> [D]espite the generalization of this condition, this does not mean it has the same characteristics and that everyone living in a precarious situation experiences it in the same way. Intersectionality is then useful to interrogate these differences, and to conceptually link the process of precaritization of nowadays to historical processes of Othering and unequal distribution of power and resources like racism, imperialism, and Colonialism (Flores Garrido, 2020:587).

In light of this, I will now move onto considering gendered precarity in relation to two key and interrelated variables: citizenship and migration.

'Hyper-precarity'[17]: links to migration status

Scholars of migration have appropriated the concept of 'precarity' to explain the situation of 'hyper-precarity' experienced by migrants, a condition constituted by 'the ongoing interplay of neoliberal labour markets and highly restrictive immigration regimes' (Lewis et al., 2015:582). Migrant workers, who are often concentrated in precarious sectors – referred to as the '3Ds' (dirty, dangerous and demeaning) (Lan, 2006:59) – find themselves in even more insecure situations by virtue of their migration status. Whilst historically this was mainly a concern for male migrant workers, recently we have begun to witness the 'feminisation of migration', especially in Southeast Asia (Piper, 2008). By this, we are referring to the increasing number of Asian women who, since the turn of the 21st century, have been migrating to work in feminised sectors – such as healthcare, domestic work, entertainment, and the manufacturing and/or textiles sector – in more affluent Asian countries such as Hong Kong, Singapore and Malaysia, as well as countries in the global north (Piper, 2008:1292). Others have referred to this as the 'feminisation of survival' (Sassen, 2003). This form of migration can be summarised as follows:

> Aiming to improve their livelihoods and that of their families in the face of rising male un- or under-employment, increasing numbers of women seek work in foreign countries in different types of

[17] This heading is a reference to Hannah Lewis et al.'s (2015) concept 'Hyper-Precarity', as explained within this section.

> occupations. Migration is not necessarily their first choice but at times a reflection of changing labour markets structures "at home" and "abroad" that offer specific job opportunities abroad in highly gendered job categories. Restrictive migration policies and the prevalence of temporary contract schemes, in combination with many migrant women's economic and social contributions being undervalued and their work being often legally unrecognised, pose serious limitations to women migrants' chances for personal socioeconomic empowerment (Piper, 2008:1300).

Previously, the migration within the region was from Asia to the global north, whereas nowadays we are seeing more south-south migration. Indeed, from the 1960s onwards there was a significant migration of skilled workers and students out of the region to North America and Australia (Lan, 2006:30). Then, from the mid-1970s, Asian migrants headed to the Gulf states in response to the oil boom and, finally, from the 1980s and 1990s onwards, following the rapid industrialisation of East and Southeast Asian states such as Taiwan, Singapore, Malaysia, Hong Kong and South Korea, these states became the major recipients of migrant labour from Southeast and South Asia (Lan, 2006:30).

Migratory patterns within Asia have several distinct features which exacerbate the precarious status of migrant workers. First, we have the direct involvement of Asian governments in the facilitation of migration, with, for example, the Philippines and Indonesian governments having departments specifically dedicated to regulating migration, as well as numerous bilateral migration agreements between different states' governments (Lan, 2006:31; Piper, 2008:1296). Consequently, we find that the migration process within Asia has become highly 'commercialised' through the involvement of governments, but also of private recruitment agencies – many of which are poorly regulated and thus exploitative – not to mention that they can cause migrant workers to accrue significant debt for their facilitation of the migration process, thus exacerbating the migrant workers' situation of economic precarity (Lan, 2006:32; Platt et al., 2017). And finally, it is notable that the migration process in Asia is characterised by temporary migration on a 'guest worker' visa, which means that the migrant worker is unable to 'naturalise', and is subject to employment and immigration insecurity, as they may be retrenched, and forced to return to their home countries, in response to global market fluctuations (Lan, 2006:31; Piper, 2008:1295).

Migrant domestic workers are an extremely precarious category of labourer in large part due to the fact that their work occurs within the private domestic sphere, with limited employment protections, and consequently they are subject to the 'whim and prejudices of the householder' leaving them vulnerable to exploitation and psychological, physical and sexual abuse (Rosewarne, 2014:136). Indeed, a Human Rights Watch (2006) report, *Swept Under the Rug: Abuses Against Domestic Workers Around the World*, highlighted the deplorable conditions and systematic abuses faced by migrant domestic workers worldwide, enabled by their informal and insecure employment statuses.

Migrant domestic work is not the only form of precarious migration affecting women within the region. Another example is marriage migration (Piper & Lee, 2016). This is a form of economic migration, as receiving states attempt to address their reproductive crises by 'importing' foreign brides to conduct unpaid and paid reproductive labour (Piper & Lee, 2016:474). These women face a situation of 'legal precarity' and uncertainty over their immigration statuses, as they are subject to destination countries' regulations such as laws and policies aimed at proving the 'authenticity' of the marriage, which means they must remain married for a certain period of time (ranging from two to ten years) before they are entitled to a residents' permit in their own right (Piper & Lee, 2016:485). Further, to secure a residency permit there may be additional requirements related to their levels of income and education, as well as career requirements (Piper & Lee, 2016:485, 486). This is further complicated in the event of divorce, not to mention that the related legal procedures are complicated and bureaucratic (Piper & Lee, 2016:485,486). Consequently, female marriage migrants are extremely dependent upon their spouses for legal and migration status security.

However, it is important to note that 'migration cannot be seen as a linear path into precarity' and female migrants are not necessarily travelling from a situation of stability in the first place (Piper & Lee, 2016:48). Indonesian anthropologists have critiqued mainstream studies of precarity and migration for being Western-centric:

> From the perspective of the sending country, assertions such as "migrating into precarity" are rather odd since it connotes movement from an un-precarious situation prior to migration… this elides the predicament of the South as the main global site of precarity, where it is especially widespread today and historically (Azis, Ariefiansyah & Setia Utami, 2020:13).

This critique is useful, as it highlights that experiences of precarity are not linear, and indeed in chapter 5 we will explore the ‘continuum of precarity’ experienced by female drug couriers in Southeast Asia.

Elsewhere, studies have shown that precarity is caused by the migration process itself, leaving female migrants vulnerable to gender-based violence (Tastsoglou, Petrinioti & Karagiannopoulou, 2021). A study of female asylum seekers travelling across the Eastern Mediterranean towards Greece found that women were at increased risk of gender-based violence (GBV) as a consequence of their precarious status as asylum seekers, with women being at risk of GBV perpetrated by smugglers, fellow migrants, and border officials (Tastsoglou, Petrinioti & Karagiannopoulou, 2021:4). As a consequence of their precarious status they may engage in ‘transactional sex’ as a survival mechanism, and upon arrival at the ‘safe’ country they are also at risk due to overcrowded temporary accommodation, and pending a decision on their refugee status they may be unable to access services for GBV victims (Tastsoglou, Petrinioti & Karagiannopoulou, 2021:4). Overall, there is a nexus between gendered experiences of precarity and migration: precarity permeates all stages and aspects of migration, and experiences of migration are shaped by gender.

A view from the global periphery: precarity as a westernised concept

‘Southern’ scholars have levelled critiques at the universalising concept of precarity (Scully, 2016; Barchiesi, 2017). In particular, these scholars highlight that the historical context of precarity is different in the global south:

> The precariat discourse exudes a nostalgia for something which has passed (the Keynesian/Fordist/welfare state), it does not speak to a South which never experienced welfare state capitalism. The Southern experience of precarity is marked by the nature of the postcolonial state and, later, by the developmental state where this has emerged (Munck, 2013:752).

This critique echoes the concerns raised by feminists, mentioned above, as the standard precarious subject appears to be a white male from the global north (despite my selection of literature that focuses on women, predominantly in the global south). Others argue that Guy Standing's (2011) work is a 'liberal analytic' and presupposes 'regulative ideals of self-reliance, autonomy, and work-centred subjectivity' which are not applicable to the majority of the world (Vij, 2019:511). Others still have critiqued the use of 'precarity' to conceptualise ontological vulnerability and a 'shared horizon of suffering' as this ignores the 'entangled histories of imperial violence, slavery, and colonial conquest' (Vij, 2019:506, 509).

Despite these critiques, I still think the concept of 'precarity' is productive, as it characterises most accurately the insecure labour arrangements faced by these workers (see Table 2 above). But, as these critiques make clear, the concept of precarity must be historically and geographically contextualised, as I have sought to do in the earlier discussion of feminised export-based industrialisation in Southeast Asia, and as I will show below in my review of literature on female informal cross-border traders in the global south.

‘Suitcase traders’: Female informal cross-border traders

I have established that an understanding of precarity must encompass gender, migration status and a focus upon the specific ways in which it manifests in the global south both historically and presently. To establish such a focus, I will turn to an example of this of relevance to this thesis: the case of female informal cross-border traders in the global south. I am focusing on this example, because we will see in chapter 5 that many of the women in my sample were engaged in this economic practice. This is a clear example of ‘globalisation from below’ (outlined in the previous chapter) characterised by:

> [T]he transnational flow of people and goods involving relatively small amounts of capital and informal, often semi-legal or illegal transactions, often associated with “the developing world” but in fact apparent across the globe (Mathews & Alba Vega, 2012:1).

There is an emerging body of international literature on women engaged as ‘suitcase traders’, ‘shuttler traders’ or ‘*fayuqueros*’ (‘ant traders’), who, in the face of exclusion from the global economy, have found ‘alternative routes to economic participation that emerge in the nooks and crannies of globalization’ (Gauthier, 2012:138). In this way, women from the global south are not passive recipients of global economic restructuring, but in fact have ‘expanded the realm of their activities to help shape variable forms of global capitalism’ in an era of mass migration (Garni, 2014:170). The existing studies highlight several important insights about the relationship between gender, precarity and migration in the global south.

First, this phenomenon is a clear example of *precarious* transnational labour. It is small-scale, informal, and often operates outside the purview of the law. It is an unstable source of income, and a trader must make multiple trips with small shipments to avoid customs detection. A study from the El Paso/Ciudad Juárez border area found that this practice was referred to as '*fayuca hormiga*' ('ant trade') due to the 'high frequency of cross-border movement and low volume of product carried per trip' (Gauthier, 2012:141). Consequently, some female transnational traders supplement this economic activity with other precarious work: for example, there is evidence from Barbados of a new form of female global worker, known colloquially as a 'pink collar worker', who works in the offshore offices of international Information Technology (IT) companies, and who utilises the flights paid for by her employers to engage in some international informal trading as an additional source of income on the side (Freeman, 1997).

The flexible and informal nature of this trading is not always advantageous: a study of women traders travelling to Cape Town, South Africa, found that the women's economic precarity was compounded by other forms of vulnerability:

> Migrants engaged in informal-sector trade face the economic precariousness inherent to such livelihoods, along with additional, gendered forms of vulnerability. Female cross-border traders report various forms of exploitation and abuse, including from officials and police, as well as local citizens in the countries in which they conduct their business… Among the reported abuses by border officials were harassment, soliciting of bribes and sexual exploitation. Cross-border traders and other migrant women encounter various forms of hostility and disapproval (Dodson, 2018:103).

Furthermore, the policing of cross-border trading exacerbates the precarious situation. In many places cross-border informal trading occurs within a legal 'grey zone'. So, for example, studies of what is known as 'parallel trading' at the Hong Kong – China border have reported that although parallel trading is a criminal offence in Mainland China (due to the evasion of Import Tax), in Hong Kong traders who walk and carry goods across the border are exempt from the Import and Export Ordinance, albeit that parallel traders can be charged for 'Breach of Conditions of Stay' (by engaging in income generating activities) according to the Immigration Ordinance (Wan et al., 2016:79). Further, in recent years, a number of enforcement authorities have been deployed to police parallel traders (including the police, Customs Officials and the Transport Bureau), and the most effective way to criminalise these activities is through recourse to immigration laws, which has had a disproportionate impact upon women, with Hong Kong detaining one of the highest proportions of female prisoners in the world (Joe Laidler & Lee, 2014:325). Precarity intersects with criminalisation in this example, as is also the case for drug couriering.

Second, this form of precarious transnational labour is gendered. For example, in El Salvador we find a particular category of '*viajeras*' ('women traders') who transport items such as gifts, cash, medicine and commodities across international borders – via their personal baggage allowance on aircraft – towards the US (Garni, 2014). This trend towards transnational couriering as a means of subsistence has arisen as a consequence of the lack of wage labour following the collapse of agriculture and the failure of assembly manufacturing since the 1990s, and this itself was as a consequence the dollarisation of the El Salvadorian economy and implementation of the Central American Free Trade Agreement (CAFTA) (Garni, 2014:167,173). Women were especially affected due to their lack of land rights, which affected their ability to generate an income (Garni, 2014:167,173). There are similar trends in nearby Mexico, where women work as '*paseras*' ('ferrywomen') and smuggle used clothing across the border with the US (Gauthier, 2012). The strategies that women use to carry the products across the border conform to gender stereotypes, so, for example, they pretend that they are carrying the smuggled clothing across the border to a laundromat (and thus travel with soap, bleach and fabric softener sheets) (Gauthier, 2012:144).

Third, there is evidence to suggest – as 'southern' critiques of precarity have explained – that this form of precarious labour has historical roots prior to globalisation, albeit it has proliferated and adapted in modern times. This is evident in the Caribbean, where the phenomenon is referred to as 'suitcase trading' or 'informal commercial importing' (Ulysee, 2007). Recent manifestations of cross-border trading occurred as a result of the IMF economic restructuring and resulting crisis in the Caribbean in the late 1980s and 1990s (Freeman, 1997:71). However, authors have shown that this transnational trade is in fact a continuation of historical processes that started in colonial times (Ulysee, 2007). For example, in Jamaica, where the British took over Zaymaca from Spain in 1655 – a process that involved the genocide of the local Arawak population and the forced migration of Africans for slavery and Europeans for indentured servitude – the first ever trading market was formed in 1662, and from then onwards slaves, and particularly female slaves, dominated this new market system (Ulysee, 2007:60-62). And following emancipation, and later, independence, the category of 'higgler' emerged: a 'market trader or a middleperson who primarily distributes his or her own agricultural goods' (Ulysee, 2007:58). From the late twentieth century, this morphed into the category of 'foreign higgler' or 'suitcase trader' who would fly to nearby destinations, such as the Caymans, Panama and Haiti, to sell Jamaican goods and export cheap items to sell back home, as in response to the neoliberal economic crisis in the region, suitcase trading 'replaced the government's social welfare system' (Ulysee, 2007:80). Therefore, it is clear that informal trading has a longer history than globalisation, albeit, in this new era of migration, it has adapted and expanded its reach accordingly.

Fourth, this form of precarious labour has several benefits for the women involved, including increasing their autonomy and entrepreneurial abilities. Research from Cape Verde revealed that there has been the feminisation of 'transnational petty trade', and these female traders are referred to as '*rebidantes*' who travel by aircraft to buy consumer goods from locations in West Africa, Portugal and other European countries, Brazil and the US, which they then transport back to Cape Verde to sell (Marques, Santos & Araújo, 2001:283). Crucially, from interviews with the women traders, it was found that many engaged in this income-generating activity in order to escape 'the Cape Verdean fate' of migrating abroad for work, and many of the women perceived of themselves as 'autonomous, independent entrepreneurs' (Marques, Santos

& Araújo, 2001: 285,293). Furthermore, a study of Zimbabwe's cross-border women traders found that this work enabled the women to develop cosmopolitan identities (Muzvidziwa, 2001:73). Likewise, interviews with female informal cross-border traders in Cape Town, South Africa, found that they:

> [E]xpressed initiative and independence in describing their decision to migrate… several expressed a sense of pride and accomplishment at being able to provide for their families "back home" …[they] enjoyed both the adventure and the economic gains of their trading activity (Dodson, 2018:105).

Thus, it is important to emphasise the agency of women engaging in transnational precarious labour in the global south, particularly when we think about it from the perspective of 'globalisation from below' – these women are capitalising on the new opportunities opened up by globalisation, namely the freedom of movement.

Fifth, of direct relevance to this thesis, there are several studies of female cross-border trading occurring within the Asian region. In particular, criminologists have focused on the policing of 'parallel trading' between Hong Kong and Mainland China (Joe Laidler & Lee, 2014). These operations rely upon the '*maangai bungaa*' ('ant moving home') approach, where commodities are carried in small quantities by individual couriers who claim they are their 'personal effects' (Wan et al., 2016:79). Many of the women who engage are either retired or housewives, and engage in couriering goods in order to make 'quick' and 'easy' money (Wan et al., 2016:86; Hung & Ngo, 2019:242). Additionally, there is a well-established '*ukay-ukay*' ('second-hand clothing') trade between Hong Kong and the Philippines, which is dominated by Filipina women, who, in response to Structural Adjustment Programmes (SAPs) and chronic unemployment, 'forge innovative avenues for transnational work' (Milgram, 2012:120). These entrepreneurs make frequent trips to Hong Kong on tourist visas (which enable them to stay for two months) and during this time they purchase second-hand clothing and hire warehouse space in order to sort and pack it, before transporting it in quantities within the allowable customs exemption in order to avoid paying import duties (Milgram, 2012:125). Filipina migrant domestic workers are often involved in these operations, as they are able to bring what are known as '*balikbayan*' boxes with gifts for friends and family back in the Philippines, which are not usually subject to custom duties, and thus this is a loophole that can be utilised by second-hand clothing traders (Milgram, 2012:125,132).

It is important to note that studies have shown that informal cross-border trading in China (in particular, studies of Guangzhou) involves West African men, usually from Nigeria, who use 'the tools of globalization – fast transnational transportation and extremely convenient communication via mobile phones' to 'become middlemen in this lucrative global business' (Yang, 2012: 154,158). Studies of 'parallel trading' networks find that they have a hierarchical structure, with a few bosses at the top, then good deliverers, distributors, coordinators, and finally, couriers at the bottom (Wan et al., 2016:82). The description of the 'courier' at the bottom resonates strongly with the role of couriers in drug trafficking operations:

> [I]t resembles an informal courier service engaging in logistics delivery. While the goods being transported are often commonly found parallel goods, and the goal of the operation is the same – that is, to dispatch the goods in small quantities across the border without being taxed – the person carrying out the service does not pay to buy the goods. Instead, they are hired as couriers to ferry the goods across the border (Hung & Ngo, 2019:246).

This information will be helpful for understanding the testimonies of the women in my sample, which highlight the relationship between drug trafficking, gendered precarity and transnational cross-border trading in Southeast Asia. With that in mind, I will now turn to consideration of the second concept, disposability.

Disposability

The concept of human 'disposability' is intimately connected to global capitalism. In general, it refers to a tension between:

> On the one hand, the body of the labourer is used up or wasted at accelerated rates so as to secure the most profit. On the other hand, the exigencies of capitalist profit-making may lead to this factor of production being excreted (as a form of waste) into unemployment or underemployment, creating surplus populations that are separated partially or fully from domains of capitalist exchange and social life (Yates, 2011:1679).

Disposability is a symptom of precarious labour. Indeed, Standing (2011) refers to 'seven forms of labour security' which precarious work lacks (Table 2), and one of them, 'employment security' ('protection against arbitrary dismissal, regulations on hiring and firing, imposition of costs on employers for failing to adhere to rules and so on'), speaks directly to this issue of disposability (10).

This is because disposability is brought about in large part by retrenchment practices, in response to fluctuations in the global market, or once a worker is deemed unproductive. It is important to note that these retrenchment practices are often gendered so, for example, a female factory worker may be dismissed once she reaches 'child-bearing' age (Standing, 1989). Moreover, while the above definition of disposability is neutral, I argue that disposability (like precarity) is inherently gendered, as it is intertwined with the feminisation and racialisation of the global labour market (Bachour, 2014).

Disposable life: an ontological explanation

For some theorists, disposability is best explained as an ontological condition. This relates to the work of Michel Foucault (1978) on 'biopolitics' (mentioned above), and modern political leaders' ability to control particular *disposable* populations and '*disallow* life to the point of death' (138). Other philosophers develop similar ideas such as Giorgio Agamben's (1998) work on *Homo Sacer* and 'life that does not deserve to live' (136). And more recently, Achille Mbembe (2019) has developed the concept of 'necropolitics', and writes that 'sovereignty means the capacity to define who matters and who does not, who is *disposable* and who is not', and crucially he brings race into the forefront of this analysis (80). Of greater relevance to the thesis at hand, others have thought about this in relation to globalisation, by way of example, Zygmunt Bauman (2004b) writes:

> The production of "human waste", or more correctly wasted humans (the "excessive" and "redundant", that is the population

> of those who either could not or were not wished to be recognized or allowed to stay), is an inevitable outcome of modernization, and an inseparable accompaniment of modernity. It is an inescapable side-effect of *order-building* (each order casts some parts of the extant population as "out of place", "unfit", or "undesirable") and of *economic progress* (that cannot proceed without degrading and devaluing the previously effective modes of "making a living" and therefore cannot but deprive their practitioners of their livelihood) (5).

Likewise, Saskia Sassen (2014) replaces 'dispose' with a synonym – 'expulse' – to describe the 'sharp growth in the number of people, enterprises, and places expelled from the core social and economic orders of our time' (1). To think about this concept of disposability (or expulsion) and the devaluation of – often, female – life in the face of globalisation, I will now turn to more concrete examples of this playing out in different geographical locales in the global south.

Expendable factory workers: disposable female labour

Disposability – like precarity – is a gendered concept. This is because in the global economy 'working class racialized women are utilized for capitalist profit under the guise of globalization', which is enabled by the following patriarchal[18] and racist logic:

> [W]omen have historically been deemed the natural performers of low-status and low-paid work, femininity itself *and* women's labour are devalued, resulting in the production of cheap labour

[18] By 'patriarchal' I am referring to 'a hierarchical gendered social order which systematically places interests of men over women' (Myrttinen, 2012:108). In postcolonial settings, it is generally accepted that this is compounded by colonisation which is an 'economic and political manifestation of patriarchy' (Baldry & Cunneen, 2011:7; Bannerji, 2001; Jaimes Guerrero, 2003).

> that can be disposed of and replaced at any time (Bachour, 2014:177 &179).

Central to the concept of 'disposability' is the 'myth of the disposable third world woman', which:

> [R]evolves around the trials and tribulations of its central protagonist – a young woman from a third world locale – who, through the passage of time, comes to personify the meaning of human disposability: someone who eventually evolves into a living state of worthlessness. The myth explains that this wasting process occurs within the factories that employ her, as she, within a relatively short period of time and at a young age, loses the physical and mental faculties for which she was initially employed, until she is worth no more than the cost of her dismissal and substitute (Wright, 2006:2).

What is particularly insidious about this myth is the way in which it 'naturalises' this process of devaluation, to make it seem like an inevitability, whilst concealing its racist and sexist internal dynamics (Wright, 2006:2). The principal author on this topic, Melissa Wright, conducted in-depth ethnographic work in global factories in both China and Mexico to inform her analysis. Focusing on her work in China, she conducted fieldwork in electronics factories in Hong Kong and Dongguan, where she found that the managers proved their aptitude to their superiors through displaying their 'ability to control the disposable cycling of their female labour force', with female workers having the shelf-life of approximately two years (Wright, 2006:24,41). In order to monitor and preserve the productivity of female workers, they were subject to strict surveillance, including regular pregnancy tests, physical examinations, and restrictions on their mobility (Wright, 2006:34,40). For example, they were not permitted to leave the facility after work hours (Wright, 2006:34,40). Furthermore, reasons for their dismissal included ‘injury, laziness, pregnancy or sexual immorality’ (Wright, 2006:36).

These oppressive measures were justified by the managers through the ‘discourse of Chinese daughters and factory fathers’, who claimed that these restrictions on the women’s sexuality and mobility were part of their paternalistic ‘parental duties’ towards these young women, who were in need of supervision in order to avoid sexual impropriety and other temptations (Wright, 2006:26). When, in fact, this conceals a purely economic motive: to ‘maximise the value of their dexterity, patience, and docility before the wear and tear of production tipped the balance towards diminishing returns’ (Wright, 2006:32).

As one critical scholar has pointed out, in relation to her work in Mexico’s maquiladora industry, women workers are shaped by the ‘productive femininity trope’ that is invoked by factory managers, rather than the business model being shaped by the innate character of women’s work:

> Docile and dexterous women are produced in production relations, they do not autonomously enable them. On maquila shop floors, it is the insistent invocation of femininity, rather than its consistent enactment, which is most striking (Salzinger, 2003:15).

This process is similar to the earlier argument that ‘precarity’ is a ‘technology of gender’ (Flores Garrido, 2020:584). And so, in these ways, gender is constituted and performed through these forms of precarious and disposable labour.

Despite Salzinger's (2004) reference to 'docility' above, it is important to note that women engaged in disposable labour are not devoid of agency. One such example of this is Aihwa Ong's (1987) *Spirits of Resistance and Capitalist Discipline*, an ethnography of factory women in Malaysia, which highlights the everyday acts of subversion and resistance to the capitalist and patriarchal modes of control.

Femicide in Ciudad Juárez: links between GBV and disposability

Research has shown that society's devaluation of women's labour can cause the devaluation of women's lives too (Wright, 2006). A tragic example of this comes from Bangladesh, where on 24 April 2013, the Rana Plaza, an eight-storey building which housed multiple garment factories (with predominantly female workers) collapsed, resulting in the death of over 1,100 workers and injuring over 2,500 – one incident in a series of lethal events – leading feminist commentators to remark that:

> Spectacular industrial catastrophes are seen as the price of development, and the poor are regarded as disposable bodies that will bear the cost of modernizing the country (Karim, 2014:57).

The starkest and most commonly invoked example of women's disposability is the femicide in Ciudad Juárez, Mexico, where, since the early 1990s, over 500 women have been brutally murdered (often following sexual assault) - with their bodies being left to decompose in the desert or in abandoned parts of the city - and many of whom were employed in the local maquiladora factory industry (Staudt, 2010). Several scholars have attempted to link the gender-based violence to the devaluation of women's labour as:

> At the heart of these seemingly disparate story lines is the crafting of the Mexican woman as a figure whose value can be extracted from her, whether it be in the form of her virtue, her organs, or her efficiency on the production floor (Wright, 2006:87; Livingston, 2004).

Others have attributed the femicide to the disruption of gender norms brought about by globalisation and, by this reading, the violence is a 'backlash' against perceived threats to masculinity as a consequence of the feminisation of the maquiladora industry, and rise in male unemployment (Staudt, 2010:188; Livingston, 2004).

The situation in Ciudad Juárez is unfortunately not unique. In nearby Guatemala, over the past 20 years since the country's genocidal war, several thousands of women have been murdered, and this has been termed a 'femicide' (Fuentes, 2020). An analysis of newspaper reporting found that society's response to these deaths was dependent upon how they were 'socio-spatially' positioned so:

> Discursive references to *where* a victim's body was found and to *who* was alleged to have murdered her seemed to be communicating something more broadly about her social status – and value (Fuentes, 2020:1669).

The author made a distinction between what she termed 'public' and 'private' femicides: the former consisted of cases of women who were found in places like a 'ravine, a motel, a ditch next to a high-way' and so reporting on these cases made:

> References to a public spatiality (e.g. a motel) – and more specifically, a non-domestic, public activity (prostitution) – [which] undercut the extent to which the reference to motherhood or heterosexual reproduction might qualify these femicide victims as *victims* (Fuentes, 2020:1677).

By contrast, 'private' femicide victims were considered *proper* victims, as they were viewed as respectable members of society who conformed to respectable feminine norms, and who were, tragically, murdered by their husbands within the context of the marital home (Fuentes, 2020:1676). Thus, according to this hierarchy of victimhood, 'public' femicide victims were seen as the disposable 'garbage of society' (Fuentes, 2020).

'Disposable domestics'[19]: the plight of female migrant workers

Migrant domestic workers are a clear example of feminised disposable labour. Migrant workers are a crucial component of 'global care chains', whereby women from the global south migrate to either more affluent countries within the region, or to countries in the global north, to fill gaps in the caring economy (such as care workers, healthcare workers, and domestic workers) (Hochschild, 2000).

Disposability is built into the regulations around migrant work in many jurisdictions. Singapore is a prime example of this: the 'unskilled' migrant

[19] This heading is a reference to Grace Chang's (2016) book, *Disposable Domestics: Immigrant Women Workers in the Global Economy*.

worker population (including approximately 150,000 domestic maids from less affluent nations throughout Asia) are an extremely 'transient' workforce who may be retrenched according to international market fluctuations (Yeoh, 2006:29). Disposability is built into the worker permits, with these migrants being ineligible to bring their spouses or children with them to Singapore; they are only permitted to work for the specific employer, performing the specific role which they were recruited for, and thus are unable to enter the wider Singaporean labour market; they are not permitted to marry Singaporeans; and must agree to regular medical checks which include a general physical examination, screenings for tuberculosis and HIV, and female migrant workers are required to take a pregnancy test, and, if found to be pregnant, they are repatriated (Yeoh, 2006:29-30). Overall, the government's policy towards these migrants is one of 'use and discard' (Yeoh, Huang & Gonzales, 1999).

There are systematic barriers preventing the 'naturalisation' of migrant workers in other contexts too. By way of example, to address Japan's ageing population and care crisis, the government signed an Economic Partnership Agreement (EPA) with Indonesia in 2008, which enabled the hiring of Indonesian healthcare workers to address the deficit (Saraswati, 2017). However, tough regulations are in place to ensure the impermanence of this migrant population, namely, the mandate that Indonesian nurses must pass an exam (in kanji characters) within three or four years of working in Japan – this exam is notoriously difficult and in the first year of the EPA only 15 out of the total of 104 Indonesian nurses passed the exam (Saraswati, 2017:594).

Outside of the Asian region we find other examples of policies in place to ensure the disposability of the migrant worker population: for example in the US, policies exist to limit female migrant workers' reproductive capability, by limiting their access to welfare aid, in order to:

> [C]apture the labor of immigrant men and women separate from their human needs or those of their dependents… to extract the benefits of immigrants' labor while minimizing or eliminating any obligations or costs, whether social or fiscal, to the "host" US society and state (Chang, 2016:10).

In order to ensure their disposability, migrant workers are subject to undue levels of control and surveillance (Lee, Johnson & McCahill, 2018). In relation to Nepalese women migrant workers who work as domestic helpers in Gulf Nations, Barbara Grossman-Thompson (2019) writes that the women are constrained by two – seemingly opposing – frameworks:

> The "disposability" framework argues that the momentum of global capitalist accumulation works on and with local systems of gender stratification to mark poor, proletariat women's bodies as disposable components of capitalist production. In this framework, women's embodied labor, and women's bodies, are disposable inputs with planned obsolescence in various stages of use – both economic productivity and biological (re)productivity. The "control" framework argues that states, international capitalist enterprises, and individual capitalists work to maximally control the embodied labor of women workers in order to efficiently extract value and accumulate capital. In this framework, particularly gendered forms of control are used as various stakeholders are used as various stakeholders attempt to manage, discipline, and constrain women workers (338).

As for the types of gendered forms of control to which they are subjected, a study of Filipina and Indonesian female migrant labourers working in Hong Kong revealed that pre-departure they had to undergo multiple medical checks (as mentioned above in the case of Singapore) including tests for hepatitis, syphilis, herpes and HIV, a mandatory pregnancy test, and an X-ray, and to provide information on their height and weight (alongside an assessment of their 'ideal weight') (Constable, 2007:76). Even their appearance is controlled by agency staff, who:

> [A]dvise women to come back after they have lost twenty pounds, trimmed their fingernails, cut their hair, removed makeup and jewelry, and changed their shoes… prospective worker must look neat and tidy but not so attractive as to put off women employers (Constable, 2007:74).

This 'sorting' of potential migrant workers occurs along racialised and national lines, with agencies and employers constructing a hierarchy between 'smart Filipinas' in contrast with the 'docile Indonesian', and '[l]abor brokers promote Indonesian women as better model of "ideal servants" in opposition to Westernized Filipinas' (Lan, 2006:80,93). Furthermore, upon arrival in the host country they continue to be monitored both at the border and at their places of work, through technologies such as 'nanny cams' and, in Hong Kong, employers are entrusted with monitoring their employee's visa and 'conditions of stay' on behalf of the state (Johnson et al., 2020; Lee, Johnson & McCahill, 2018:21). Overall, I find that gendered disposability comes hand in hand with attempts to control and discipline women's sexuality and mobility, and ultimately creates an expendable female worker.

Conclusion

This chapter has built upon the previous theoretical chapter on gender, globalisation and criminalisation to elaborate on the two central concepts that will recur throughout this thesis: *precarity* and *disposability*. Both of these concepts are related to globalisation, gender, socioeconomic status, labour and migration. Disposability is a symptom of precarity, as disposable labour is a form of precarious work. What disposability adds to my overarching understanding of precarious work is a deeper analysis of how expendable labour and retrenchment policies are gendered, and how there is a link between the devaluation of disposable work and the lives of those workers, which is of especial interest considering this thesis focuses on capital punishment.

For both concepts, there are ontological explanations. However, I am more concerned with how these concepts relate to lived experiences, and hence the more in-depth focus on the two case studies of women cross-border informal traders and migrant domestic workers in this chapter. Both concepts are under-theorised in relation to the criminal justice system, aside from analysis of how young people are regarded as disposable by the US criminal justice system, and a theoretical analysis of how penality itself can be considered precarious (Giroux, 2009; Super, 2019).

The definition of precarity that I will rely upon in this thesis will be drawn from Guy Standing's (2011) typology of the different forms of economic insecurity that characterise precarious work (Table 2). Whilst at the same time I take heed of both feminists' and 'southern' scholars' critiques of mainstream theorising on 'precarity', and recognise that historically and presently women and people in the global south are over-presented in this sector (Fudge & Owens, 2006; Vosko, 2009; Fantone, 2007; Precarias de la deriva, 2004; Munck, 2013:752; Scully, 2016; Barchiesi, 2017). Moreover, I will consider how precarity intersects with migration status to create a situation of 'hyper-precarity' whereby a person's insecure economic position intersects with their insecure migration status (Lewis et al., 2015).

When it comes to disposability, my understanding is shaped by the acknowledgment that it predominantly revolves around a devaluation of the labour and bodies of women from the global south, who are sacrificed in the pursuit of global development (Bachour, 2014). Disposability is also linked to sexualised violence, femicide and the control of women's sexuality, reproduction and mobility (Wright, 2006; Lan, 2006; Razack, 2016). Overall, these concepts are useful for thinking about how drug couriering can be considered a form of gendered precarious work, and how female drug couriers are ultimately disposable.

4. Conducting international research on vulnerable women

Introduction

Having established the theories and concepts I draw on in this thesis, in this chapter I discuss the qualitative methods I used to conduct case-study research on women, drug trafficking and the mandatory death penalty in Malaysia. I discuss the analytical implications of conducting research on women, without the women themselves as participants. I describe the methods I used to overcome the dearth of available data (as is often the case when conducting research on the death penalty) and explain the processes of conducting database searches of both legal files and media articles, which resulted in a database on 146 women's cases between the years 1983 and 2019. Additionally, I reflect on the complexities of conducting international research, especially with regards to my position as a researcher from the global north, conducting research in a global south country. From the outset, it is worth clarifying that the reference to 'vulnerable' in the title of the chapter is not because I believe that women are inherently vulnerable nor, from my understanding, would I say that the women sentenced to death for drug trafficking in Malaysia were 'vulnerable' per se prior to arrest; it is instead a reflection of the vulnerable situation of women awaiting execution in prison in Southeast Asia.

The case-study: gender, drug trafficking and the mandatory death penalty

I adopt a qualitative approach in order to understand how and why women become exposed to the death penalty (and in particular the *mandatory* death penalty) for drug trafficking in Southeast Asia. In asking and answering my research questions, I am not just trying to uncover trends specific to Malaysia, but also to use this as a microcosm to explore the broader trend of women's involvement in the drug trade in the Southeast Asian region, as has been documented elsewhere (Martel, 2013).

Malaysia provides a useful example for exploring this issue, due to its proximity to the Golden Triangle drug producing region (encompassing the borders between Myanmar, Thailand and Laos) which originally gained notoriety during the mid-20th century for being a world-leader in the production of opium and heroin, but more recently has become the epicentre of the mass production of synthetic drugs such as methamphetamine (R.AGE, 2019). Malaysia is known, not for drug production, but for being a key transit hub for drug trafficking. Due to its central location in Southeast Asia, and its low-cost airline hub, it is an appealing stop-off point for drug syndicates who are smuggling drugs via aircraft to markets in East Asia or in Australia and New Zealand where the street price of methamphetamine is higher than in Southeast Asia (R.AGE, 2019). In this regard, the fact that the female drug couriers in my study were intercepted in Malaysia is immaterial, not in terms of the severity of the punishment they receive, but often their flight routes show they had transited in other countries in the region, or further afield, and Malaysia may not have been their planned final destination.

Therefore, a comparative study of different jurisdictions is not necessarily warranted, as it is reasonable to assume that female drug couriers arrested in Malaysia are unlikely to be distinct from female drug couriers arrested in say, Indonesia, and are likely to have become involved for similar reasons, and to have been recruited using similar means, possibly by the same drug syndicates. So, I am focusing on Malaysia as a 'node' in the regional flow of women embroiled in the drug trade.

Following other case-study based research on the death penalty (Johnson & Zimring, 2009; Pascoe, 2019), I adopt a case-study approach, which is characterised as follows:

> [A] qualitative approach in which the investigator explores a bounded system (a *case*) or multiple bounded systems (cases) over time, through detailed, in-depth data collection involving *multiple sources of information* (e.g., observations, interviews, audiovisual material, and documents and reports), and reports a case *description* and case-based themes (Creswell, 2007:73).

Malaysia is also the most suitable jurisdiction to focus on due to the fact that it has the largest recorded female death row population – and the highest number of women sentenced to death for drug trafficking – in the region (Amnesty International, 2019). While the latest disaggregated statistics from Malaysia suggest there are currently 134 women under sentence of death for drug trafficking, Indonesia by comparison has five women under sentence of death for drug trafficking (Institute for Criminal Justice Reform (ICJR), 2020). Latest figures from Thailand suggest there are 31 women under sentence of death for drug trafficking, and additionally, government statements indicate that women are not at risk of execution in this state (Cornell Center on the Death Penalty Worldwide, 2021; Girelli, 2019:32)[20]. It is challenging to ascertain statistics from Vietnam and Singapore, owing to both states' secrecy when it comes to capital punishment (Pascoe, 2016).

Relatedly, it is likely that there are higher numbers of women on death row in Malaysia owing to the mandatory nature of the death penalty (while a narrow reform was made to the legislation in 2017, it still operates largely mandatorily in practice), whereas in Indonesia the death penalty is discretionary and in theory this is also the case in Thailand too, suggesting that women may be benefitting from paternalistic mercy in these discretionary regimes. Therefore, in addition to Malaysia providing a case-study of the relationship between women and drug trafficking in Southeast Asia, it also provides a case-study of the gendered impacts of the mandatory death penalty, which is useful for other mandatory regimes such as neighbouring Singapore.

In addition to the larger population of women on death row, Malaysia is also an easier jurisdiction than others in the region within which to conduct research in terms of practical and safety considerations. In the Socialist Republic of Vietnam, the death penalty is a state secret and thus it would be both illegal and dangerous for me, and my research participants, to conduct research on the topic (Pascoe, 2016). Likewise, the death penalty is shrouded in secrecy in Singapore, and I was advised by academics on the ground that it

[20] As previously noted, at a 2005 UN Congress on Crime Prevention, a member of the Thai Ministry for Justice announced that 'Thailand does not execute women', and on 5 December 2011, in honour of the King's birthday, all women under sentence of death at that time had their sentences commuted (Sarret, 2015).

would be unwise to conduct fieldwork there. Moreover, there is a law in Singapore which prosecutes those who 'scandalise the judiciary', and indeed, following the publication of the British journalist, Alan Shadrake's book, *Once a Jolly Hangman*, an exposé of the Singaporean death penalty, he was prosecuted under this law and imprisoned for five and a half weeks (Shadrake, 2010). In Thailand, concerns about researching and (potentially criticising) the death penalty stem from the strict lèse-majesté laws, which criminalise any criticism of the monarchy, which is an issue if discussing the death penalty, and clemency in particular as this falls under the purview of the monarch (Pascoe, 2019).

In Malaysia, while the death penalty is still a relatively sensitive topic, there are vocal human rights and anti-death penalty activists in the country, and indeed, at the time of my fieldwork the government was considering abolition. What is more, due to the troubling history of British colonisation of Malaysia, I had some familiarity with the common-law legal system, and English is widely spoken, with many court judgments reported in English.

Not mining trauma: researching vulnerable women awaiting execution

Those awaiting execution are in a very vulnerable situation. Much research has been conducted on the so-called 'death row syndrome' whereby it has been acknowledged by international courts that the psychological impacts of a prolonged wait on death row are tantamount to inhuman and degrading punishment (Hood & Hoyle, 2008:182)[21]. In Malaysia, it can take up to 27 years for the full capital criminal proceedings to conclude and research has shown that 63 people have been imprisoned on death row in this jurisdiction for over 10 years (Berrih & Ngeow, 2020:63). The conditions on death row are deplorable, and inmates are held in solitary confinement for 23 hours per day with limited human contact, no access to training nor rehabilitation programmes, and with no psychological or psychiatric support (Berrih & Ngeow, 2020).

I had initially planned to interview women on death row. However, this changed after some careful consideration of the practical, ethical and analytical issues this might create. From discussions with other researchers (both in the UK and Southeast Asia) who have conducted interviews in prisons or with vulnerable women, I was advised against speaking to the women themselves. This is because the data that I required on the broad trends in women's cases could be gained through interviews with their lawyers and others proximate to them, as well as through my analysis of legal and media articles, rather than exposing a very vulnerable death row population to potentially distressing interviews. Additionally, the women's voices are at times conveyed through their court testimonies.

I am an unfamiliar foreigner, and I would not have the access nor resources to spend enough time conducting prison visits to gain the trust of

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[21] The length of time varies; for example, the Privy Council found in 1993 in the case of *Pratt and Morgan v Attorney General for Jamaica* [1994] 2 AC 1 that a wait of five years on death row would amount to inhuman and degrading punishment, and even indicated that a wait of over two years might also be considered inhumane treatment too (Hood & Hoyle, 2008:180).

participants prior to the interview, not to mention that I may have required a translator for some of the interviews. All in all, this would have been very disorientating for my participants. I would also not have wanted to inadvertently suggest to them that I was working directly on their cases or that my research might have an impact on their particular situation (Bosworth & Kellezi, 2017). Indeed, in reading Alice Gerlach's (2018) reflections on her research interviews with vulnerable women who had been deported or were awaiting deportation from the UK to Jamaica, and her resultant experiences of secondary and vicarious trauma, I found her discussion of slow academic 'returns' particularly resonant:

> One pertinent difference between academics and care professionals is that the role of the care professional is to help the individual work through their trauma and recover from related symptoms, whereas academics tend to collect the stories of participants for research aims… Academics do not have the emotional return…[while] the potential for policy or other impact is high, the real-time outcomes can be frustratingly slow (153-154).

Moreover, there were not just ethical or emotional barriers to me conducting interviews with women in prison, there were also practical ones. I discussed with partners on the ground whether it would be possible for me to conduct interviews with women on death row, and they were unanimously unoptimistic about it. I was told that unless one is a prisoner's lawyer, it is almost impossible to obtain a visit. Not to mention that the process of applying to the Malaysia Prisons Department for visitation access would be a lengthy one (and I would have been unlikely to complete it within my proposed time frame).

Furthermore, local researchers who had conducted research on the general female prison population in Malaysia have reported that they were unable to interview women under sentence of death because the prison's policy precluded this, citing security concerns (Teh, 2006).

Analytically, it also made sense not to interview the women themselves. As mentioned in the theories chapter, this thesis takes a global structural approach to the issue of women's criminalisation, and does not seek to view women's criminality as an individual 'pathology'. Therefore, unlike the 'feminist pathways to crime' approach, here I am not interested in looking at individual 'risk factors' for offending (Belknap & Holsinger, 2013). Instead I am interested in the broader systematic factors that criminalise women in a globalised world. Julia Sudbury (2005b), when writing about the over-incarceration of Jamaican women for drug couriering in Britain, critiques feminist criminological approaches that focus on life-histories as a way to understand women's criminalisation:

> Even where these survival strategies – whether sex work, drug couriering, or welfare fraud – are recognized, they are stigmatized and homogenized by the label "offending behavior". Women's personal histories are then *mined* as rich sources for understanding this aberrant behavior, and childhood abuse, domestic violence, or familial dysfunction presented as the root cause. Presenting women's experiences of abuse as the cause of incarceration individualizes and personalizes their treatment at the hands of the criminal justice system. It obscures the broader social disorder signified by mass incarceration, and it sidesteps the question of why the state responds to abuse women with punishment (xv; my emphasis).

And indeed, as I will show in chapter 6, the women involved in the drug trade were in many ways ‘disposable’ and interchangeable, and thus their specific personal history and childhood experiences do not have a major role to play. Other legal scholars have highlighted the issues with conducting a ‘social context analysis’ of women’s criminality, here focusing on the specific example of the over-incarceration of First Nations women in Canada:

> [T]here is a danger of social context analysis portraying lawbreaking by Aboriginal women as over-determined by ancestry, identity and circumstances, thereby feeding stereotypes about criminality that render the stereotyped group more vulnerable to criminalization. This focus on the Aboriginal woman’s personal history, family, and community shifts attention away from questions about societal discrimination and exclusion and about the role of criminalization and penal practice in exacerbating the problems of Aboriginal societies and individuals. The social and economic relations and the legal regimes that maintain the subordination of Aboriginal peoples in Canada are no more than the faintest of backdrops to the decisions (Williams, 2007:286).

Instead, Sudbury (2005b) offers an alternative path forward:

> [A]ctivists and scholars need to look at the socioeconomic conditions that present women like Beverley[22] with “no choice” between poverty, violence, and sexual assault or work in the criminalized drug industry. We need to examine the root causes of these socioeconomic conditions, in particular the push for neoliberal social policies and free trade aggressively promoted by the United States and international financial institutions, at the expense of poor women who bear the brunt when social welfare programs are decimated and the cost of basic necessities spirals upward. And we need to expose state spending priorities that privilege the U.S.-led war on drugs and punitive law-and-order

[22] Here the author is referring to Beverley Fowler, a 32-year-old Jamaican woman who hanged herself whilst imprisoned for drug trafficking in HMP Durham in 2002 (Sudbury, 2005b).

> buildup over the provision of infrastructure that would provide economic security and physical safety for poor women in Jamaica and elsewhere. As more and more women, especially women of color and third-world women, are "compelled to crime" by a combination of gender violence, global inequities, and a paucity of alternatives, it is imperative that we identify and address the structural roots of women's criminalized survival strategies (180).

This is the analytical approach this thesis adopts. In the following empirical chapters, I will examine the broader structural impacts of globalisation on the criminalisation of women for drug couriering, in particular the effects of the feminisation of precarity and the feminisation of migration as a result of the neoliberal world order. Additionally, I will examine the historical roots of the mandatory death penalty for drug trafficking, and assess how a colonial era punishment has taken on a new logic in the post-colonial era, and how, as a result, economically precarious foreign national women have become the penalised 'Other'.

<u>Triangulation of evidence</u>

One of the greatest challenges of conducting research on capital punishment is the unavailability of official data in many jurisdictions (Pascoe, 2016). Malaysia is no exception. The most up to date statistics on the death row population come from a parliamentary meeting in November 2020 when it was announced that as of October that year, there were 1,324 people on death row: 536 of whom are foreign nationals (40.5%); 129 of whom are women (10%); and 912 of whom were sentenced to death for drug trafficking (69%) (Larasati & Girelli, 2021:42). However, the data are not disaggregated by gender, offence type or nationality (i.e. they do not say what percentage of women were sentenced to death for drugs, nor what percentage of women sentenced to death are foreign nationals, nor what percentage fit in all three categories). Therefore, for the most up to date information in this regard, I rely upon statistics from the previous year, published by Amnesty International (2019), which, by way of reminder, found that: there are 1,140 men on death row (89%) and 141 women (11%). Of the 141 women on death row, 86% are foreign nationals and 95% have been sentenced to death for drug offences (and of those women sentenced to death for drug offences, 90% are foreign nationals) (Amnesty International, 2019:19-20).

Additionally, due to lack of systematic governmental reporting, it is up to human rights groups to monitor the latest death sentences or executions (albeit, there is currently a moratorium on executions in Malaysia). So, to account for this dearth of information, I took heed of advice from other scholars on triangulating my data:

> Death penalty researchers can rely upon available official sources (such as government archives, press releases and reports, speeches and autobiographies), non-official sources (such as independent media reports and foreign and local NGO publications), together with “elite” interviews (Pascoe, 2016:204).

Consequently, I rely upon a number of sources, including: local and international NGO reports; relevant grey literature; and academic publications. The core of my research data come from primary interviews with ‘elite’ participants; as well as secondary data gathered from media articles (both local and international), as well as recorded judgments from the Malaysian High Court, Court of Appeal and Federal Court. I will address my primary data in the section below, but here I will outline the justifications and methods used to gather my secondary data.

In terms of the analytical justifications for using court documents, not only did this allow me to gather data on women's cases in a more systematic and quantitative way, but it also served as a rich resource for ascertaining judicial perspectives on this issue, as often judges' commentaries were included in the reporting. By way of example, a judge stated the following when dismissing an accused's defence:

> Her handbag contained make-up, ladies' accessories, a Gucci watch, sunglasses and a wallet containing American Dollars… These items are not a poor lady's possessions, but the items indicate she is a socialiser – a lady of the "world" (Court report; Judge; Case 72).

This is consistent with other research on women and the death penalty worldwide, which found from a review of evidence in retentionist jurisdictions that:

> [C]ourts judge women not just for their alleged offenses, but also for what are perceived to be their moral failings as women: as "disloyal" wives, "uncaring" mother, "ungrateful" daughters (Cornell Center on the Death Penalty Worldwide, 2018:3).

With regards to the analysis of media articles, other research on women, drug trafficking and the death penalty has shown that the media framing of a case is key to public sympathy (or lack thereof) and women are judged based on their adherence to, or deviance from, 'the familiar narrative of the naïve girl led astray by the "real" traffickers' (Fleetwood & Seal, 2017:374).

In terms of how I went about my legal file search, the legal databases I searched were: *Lexis Nexis*, *WorldLii*, *SSC Online* and *LawCite* (I triangulated my findings across multiple databases to ensure that they were as comprehensive as possible). Details of the search terms I deployed (where a search term function was provided) are listed in Table 3 below:

Table 3: Search terms used for legal databases

Search terms
"Death penalty"
"Capital punishment"
"Death sentence"
"Dangerous Drugs Act"
"Drug trafficking"

These search terms are broad as I found more specific searches did not yield any results, so I cast a wide net and manually reviewed and included or excluded files where appropriate. After reviewing my research results and deleting duplicates, I had files on a total of 127 women's cases. In terms of the inclusion/exclusion criterion, I only included cases where the accused person had been charged after the year 1983 (when the death penalty became mandatory in Malaysia) up until the present day. The first case I could find lists a death sentence passed in 1985 and the most recent cases available list death sentences passed in 2019. I also only included cases where the individual had received a death sentence (there were additional cases where a female suspect was charged under Section 39B of the Dangerous Drugs Act 1952, but the charges were dropped prior to trial; or they were acquitted and discharged at trial; or their charge was reduced to one of 'possession' and thus they did not receive a death sentence). I included cases where the death sentence was later overturned on appeal, provided that the individual had received a death sentence at some stage in the legal process.

Because it is not mandatory to record court judgments in Malaysia, nor to make them publicly accessible, I am limited to the cases that judges have – for some reason or another - decided to document. In order to pick up on the cases that may have eluded the court record, I conducted a systematic research of the media databases, *Factiva* and *Nexis UK*. Table 4 and Table 5 provide an overview of the search terms I utilised for each of these resources, which are tailored to the individual functionalities of the two databases.

Table 4: Search terms used for Factiva

Search terms
“wom?n AND drug* AND Malaysia AND death”
“wom?n AND drug* AND Malaysia AND gallows”
“wom?n AND drug* AND Malaysia AND hang*”
“wom?n AND Malaysia AND drug* AND arrest*”
“wom?n AND Malaysia AND drug* AND charge*”

Table 5: Search terms used for Nexis UK

Search terms
“HLEAD (wom*n AND drug! AND Malaysia AND arrest! OR charg!)”
“HLEAD (wom*n AND drug! AND Malaysia AND death OR gallows OR hang!)”

I then conducted a manual online search of popular English language news journals in Malaysia - *New Straits Times*, *Malay Mail* and *The Star* - as well as a more generic search of *Google News*. For these, I used a combination of the search terms detailed in Table 6, as these online sources do not have more complex search functions.

Table 6: Combinations of these terms were used to search the remaining media sources

Search terms
“Women”
“Woman”
“Drug trafficking”
“Death penalty”
“Gallows”
“Drugs”
“Malaysia”
“Arrested”
“Charged”

Utilising the same exclusion/inclusion criterion as I used for the legal database search, I was able to narrow down my findings to a total of 248 articles pertaining to 43 women’s cases. Of these women’s cases, I identified 24 that overlapped with the cases I found through my legal database search, and thus through the media search I identified 19 new cases that were not picked up in the legal databases. This brings my total number of women’s cases identified between both the legal and media databases search to 146 women’s cases. In order to protect the women’s anonymity, and not risk re-identification, I do not directly cite the legal files nor media articles from which I gathered data on their cases in my empirical chapters, I have also changed their names and identifying features in quotations from interview data, legal and media files. Throughout this thesis, I only cite directly media articles when there is no link to women’s cases in my sample.

The court reports were from the High Court, Court of Appeal or Federal Court of Malaysia. They tend to include the following sections: ‘Judgment of the Court’; ‘The prosecution case’; ‘Findings at the end of the prosecution case’; ‘The Defence’; ‘Findings at the end of the defence case’; ‘The Appeal’ (in appeal cases); ‘Our Findings’; ‘Conclusion’. Under each sub-heading there is usually a descriptive summary of the court proceedings, but at times there are first-hand quotations or paraphrasing, for example from the women's testimonies or from the testimonies of the investigating officers. The judge writes the 'Judgment of the Court', 'Our Findings' and 'the Conclusion' sections. Therefore, these court reports are a useful source of data for extracting some 'factual' information about the circumstances surrounding the women's arrests (I detail the extraction of this data in the next paragraph), and they also offer an insight into the perceptions of judges and other 'elite' actors quoted or paraphrased such as investigating officers, as well as brief glimpses into the women's testimonies.

Using *Excel* to document, I extracted the following information – where available - from the legal and media files:

- Nationality;
- Year of arrest;
- Year of death sentence;
- Current status/latest information on case;
- Drug type;
- Drug quantity;
- Location of arrest;
- Occupation;
- Reason for travel (where applicable).

Key findings

The review of 146 cases (see Appendix 2 for further details of the dates and statuses of cases) provided the following information:

Table 7: Nationalities of women sentenced to death for drug trafficking in Malaysia 1983-2019

Nationality	Frequency
Australia	1
Cambodia	3
China	15
Hong Kong	1
India	5

Indonesia	14
Iran	14
Japan	1
Kenya	2
Malaysia	12
Mongolia	2
New Zealand	1
Nigeria	6
Philippines	12
Republic of Guinea	4
Singapore	1
South Africa	1
Thailand	24
Togo	1
Uganda	1
Uzbekistan	2
Vietnam	6
Zambia	2
Not clear	15
TOTAL	**146**

Table 8: Occupations of women sentenced to death for drug trafficking in Malaysia 1983-2019

Frequency of occupations	
Retail, beauty & hospitality industries (*n*=25)	
Hotel staff	1
Waitress	5
Bartender	3
Shop assistant	2
Cashier	2
Cleaner	2
Chef	1
Events planner	1
Beautician	3
Hairdresser	4
Golf caddy	1
Entertainment & sex industry (*n*=7)	
Masseuse	5
Sex worker	1
Entertainment	1
Healthcare & domestic work (*n*=8)	
Nurse	1
Domestic worker	7
Courier & small business owner (*n*=23)	
Courier	11
Small business owner	12
Other (*n*=9)	

Photographer	1
Accountant	1
Rubber tapper	1
Water metre reader	1
Teacher	2
Student	3
No official employment (*n*=15)	
Not clear (*n*=59)	

Table 9: Location of arrest leading to women's death sentences

Location of arrest	Frequency
Airport	91
Bus terminal	13
Private residency	10
Hotel	10
Border checkpoint	8
Roadside	6
Car	5
Carpark	1
Motorbike	1
Not clear	1
TOTAL	**146**

Table 10: Stated reasons for travel where women's cases involved international travel (n=91)

Reason for travel	Frequency
Paid to courier items (*n*=51)	
Clothing	*20*
Medicine	*8*
Electronics	*5*
Children's clothing	*4*
Confidential documents	*2*
Diamonds	*2*
Bag	*1*
Cosmetics	*1*
Fitness equipment	*1*
Metal	*1*
Perfume, cigarettes & soap	*1*
Not clear	*5*
Asked to courier a bag for a friend/boyfriend (*n*=11)	
Travelled to purchase goods for small business (*n*=11)	
Clothing	*3*
Hair salon equipment	*2*
Accessories	*1*
Camera	*1*

Gold	*1*
Jewelry	*1*
Not clear	*2*
Travelled to meet boyfriend (*n*=8)	
Recruited for a job (*n*=8)	
Domestic worker	*4*
Masseur	*2*
Rubber tapper	*1*
Not clear	*1*
Offered a free holiday (*n*=7)	
Travelled to seek employment (*n*=6)	
Travelled for holiday (*n*=4)	
Travelled to visit relatives/friends/boyfriend (*n*=2)	
Travelled to escape an abusive partner (*n*=1)	
***Not clear* (*n*=10)**	

Table 11: Drug types that women were sentenced to death for trafficking

Drug type	**Frequency**
Methamphetamine	82
Heroin & monoacetylmorphine	21
Cannabis	14
Cocaine	11
Heroin	8
Ketamine	3
Heroin, monoacetylmorphine, methamphetamine & nimetazepam	2
Heroin, monoacetylmorphine & methamphetamine	1
Heroin, monoacetylmorphine & opium	1
Nimetazepam, ketamine & methylenedioxymethamphethamine	1
Morphine	1
Not clear	1
TOTAL	**146**

It is important to note that for both the legal and media database searches, I was limited to English language sources. Thus, I supplemented my findings with data gathered from my 'elite' interviews, to which we shall now turn.

Interviewing up

Some of the practical and ethical issues posed by attempting to interview women on death row were mitigated by 'interviewing up', and conducting interviews with 'elites' rather than potentially vulnerable participants (Neal & McLaughlin, 2009). In qualitative research, 'elites' are classified as 'those at the "top" of any stratification system' (Jupp, 2006:85). The range of categories of 'elite' participants are listed in Table 12 below. I focused on interviewing those with jurisdiction over part of the criminal process, as well as those whose work is influential within the Malaysian human rights and death penalty abolition movements, and who were involved in the women's cases in some capacity. There is an established precedent of elite interviewing in studies of capital punishment (Miao, 2019; Hoyle, 2020 & 2021; Pascoe, 2019).

Table 12: Details of elite interviews

Type of elite participant	**Number interviewed**
Academic researcher	5
Consular official	2
Journalist	3
Judge	1
NGO worker (international)	9
NGO worker (local)	5
Prosecutor	1
Lawyer	17
Police inspector	1
Religious counsellor	3

In terms of recruitment for my interviews, I am greatly indebted to my 'gatekeeper', Rashid Ismail, a fellow DPhil student at the Centre for Criminology and human rights lawyer in Malaysia. He kindly introduced me to many lawyers working on abolition of the death penalty in Malaysia. I was also able to network with academics, NGO activists, and lawyers at conferences, such as the 7th

World Congress Against the Death Penalty in Brussels in February 2019, and events at the United Nations Office on Drugs and Crime (UNODC) 62nd Session of the Commission on Narcotics Drugs in Vienna in 2019. I deployed 'snowball sampling' whereby with each participant I asked if they had any suggestions of others I could speak with within their network, and so I ended up with an 'expanding web of contact and inquiry' (Lewis-Beck, Bryman & Furing Liao, 2004:1044). I contacted my participants via email or WhatsApp – the preferred mode of communication in Southeast Asia – and indeed others have discussed the use of WhatsApp in qualitative research (Ullrich, 2018).

With regard to the interviews themselves, they took the format of a 'semi-structured' interview whereby I asked a series of open-ended questions, based upon my research questions (Given, 2012). By way of reminder, my research questions are as follows – I have one overarching question, followed by four sub-questions:

1. What is the relationship between gender, globalisation and criminalisation in this context?
    a. How many women have been sentenced to death for drug trafficking in Malaysia between 1983 and the present?
        i. What are the characteristics of these cases? What are the nationalities and socio-economic profiles of the women?
    b. Why do women become involved in drug trafficking that leads to the death penalty in Malaysia?
        i. What is the relationship between women, crime and economic factors in this context?
    c. How do women become involved in drug trafficking that leads to the death penalty in Malaysia?
        i. What is the relationship between drug trafficking and human trafficking in this context?
    d. How does the mandatory death penalty for drug trafficking impact on women, and especially foreign national women?

The majority of my 'elite' interviews were conducted on the ground in Kuala Lumpur, Malaysia in February and March 2020, although a few took place in London, UK and online from Oxford, UK. In order to facilitate my research in Malaysia, I was generously hosted as a Visiting Scholar at Monash University, Malaysia where I was supported by Dr Thaatchaayini Kananatu, as well as Datuk Professor Adeeba Kamarulzaman of the University of Malaya.

For in-person interviews, I would travel to a place most convenient for my participant, which was usually their office or a nearby coffee shop. During my fieldwork in Kuala Lumpur, I tended to conduct at least two interviews per day at different locations. On some days, I had up to three interviews. At the start of the conversation there would usually be some polite conversation to help ease the participant into the process and establish some rapport, and then I would begin by asking the participant to discuss broadly their professional experiences of working on cases of women sentenced to death for drug trafficking in Malaysia. It is again important to note that we spoke about cases in general terms. Depending on the relevant professional experiences which they described, I would then ask a series of follow-up questions based on my research questions. The participants were given a Participant Information Sheet beforehand and I obtained informed consent before commencing the interviews. The majority of my interviews lasted about an hour, and were recorded using a Dictaphone, and I additionally took hand-written notes. In a few cases, participants did not feel comfortable being recorded.

My choice of interview participants enabled me to analyse how the criminal justice system, and those intimately involved in the cases of women facing the death penalty for drug trafficking in Malaysia, frame and deal with this issue. I was able to explore how the elites' perception of these women's cases compound the global structural factors that led to their involvement in drug trafficking: this was particularly the case when it came to judges' and law enforcement officers' framing of these women as 'suitable penal subjects' (Cunneen et al., 2013:91).

It is important to note that when conducting 'elite' interviews, it is not the task of the researcher to establish an objective account:

> By their very nature, elite interviewees provide a subjective account of an event or issue. Thus, elite interviewing should not be conducted with a view to establishing "the truth", in a crude, positivist manner. Its function is to provide the [researcher] with an insight into the mind-set of the actor/s who have played a role in shaping the society in which we live and an interviewee's subjective analysis of a particular episode or situation (Richards, 1996:200).

And indeed, there were times when my elite participants' accounts diverged. By way of example, when asked about the relationship between drug trafficking and human trafficking in this context (research question 1(c)(i)), while civil society groups in the region have been vocal advocates for women on death row for drug trafficking to be considered victims of human trafficking, lawyers representing these women felt that 'drugs are different' and these cases are not human trafficking matters, and indeed judges, far from viewing these women as hapless victims, saw them as agentive traffickers. These diverging perceptions have consequences for the women's cases, as crucially under

Malaysian and international law, victims of human trafficking are immune from criminal prosecution.

<u>*COVID-19 and data collection*</u>

I was in the midst of conducting my fieldwork when international lockdowns and border closures came into place as a result of the COVID-19 pandemic. I travelled to Kuala Lumpur in February 2020, when globally we were aware of the virus' existence, but not yet aware of its severity nor prevalence. At this stage, it was thought that cases were largely confined to China. Therefore, aside from some travel restrictions put in place on people travelling to, from and within China, elsewhere there were no lockdowns nor travel bans. A few people expressed their concerns about me travelling to Asia during this time. I remember being alarmed by the thermometer check at the airport, and constant public health announcements on the radio and signs in malls, accompanied by public hand sanitiser dispensers, as well as the use of face masks by some members of the public.

It was only whilst working on Monash Malaysia's campus that the gravity of the COVID-19 situation became apparent. Monash Melbourne had decided to move all of its classes online – at the time a novel undertaking – due to the high number of Chinese students who were unable to return to Australia following the Christmas break. Therefore, in accordance with Monash's policy, the Malaysian campus had to do the same. It was rather eerie visiting a largely empty campus. I was also unable to meet with my other research partner, Datuk

Professor Adeeba Kamarulzaman, as she was very busy in consultations with the government as the chair of the nation's COVID-19 taskforce.

On the whole, I was very lucky to be able to have three to four weeks of largely uninterrupted interviews. So, generally speaking, at this time I was able to conduct my empirical fieldwork as planned. However, there were a few interruptions or oddities as a result of the pandemic. It was bizarre being temperature checked before entering embassies for interviews. I also had to conduct my own 'contact tracing' (a term I was unfamiliar with prior to the pandemic) as there were two outbreaks of COVID-19 amongst my research participant community. The first created considerable commotion when it was revealed that a 'super-spreader' had attended the Annual General Meeting of the Kuala Lumpur Bar Council on 27 February 2020 (The Kuala Lumpur Bar, 2020). And second, on 12 March 2020 it was announced that there had been an outbreak at SUHAKAM, the Malaysian Human Rights Commission, which exposed other members of the legal community to the virus and led to its temporary closure (Karim, 2020). I anxiously went back through my records of who I had met with, and when, and rescheduled interviews where appropriate.

The situation progressed rapidly, and I woke up on the morning of Monday 16 March 2020 to news reports that the Malaysian Prime Minister, Muhyiddin Yassin, would be addressing the nation that evening regarding a possible Movement Control Order (MCO) and border closures (The Star, 2020). I was immediately in touch with my supervisor and others at the Law Faculty and it was decided that I needed to return to the UK as soon as possible, particularly as borders were starting to close around Europe. I found a flight back to the UK via Turkey, and within 12 hours I had left the country. I was waiting to board my flight to Istanbul when the 8pm announcement came from the Prime Minister's office that the country would be entering a nation-wide – and military-backed – lockdown commencing in 48 hours. It was a memorable time to travel, with boards full of flight cancellations and general chaos amongst passengers who were attempting to get home in the midst of this rapidly escalating global crisis.

Upon my return to the UK, I finished up my interviews virtually, via *Zoom* and *WhatsApp*. I left about a month or so before I arranged the bulk of my remaining online interviews, as at the start of the Malaysian MCO many of the lawyers and other stakeholders whom I was hoping to interview were dealing with pressing concerns regarding the temporary closure of their businesses, and thus they either did not have availability nor the inclination to be interviewed by me, and I felt it was inappropriate to ask people for their time during an extremely stressful period. However, after a few months, people had adapted to working from home, and in fact, in some ways, it appeared to be easier for participants to schedule time for an interview as these could be done outside of usual office hours.

Online interviews may be the future of sensitive death penalty research, particularly in international locations. Others within the social sciences and indeed criminology have written about how online interviews have enabled them to access harder-to-reach populations and created a more comfortable space within which to share information on sensitive topics (McAulay, 2021). This would mitigate some of the practical barriers of researching global human rights issues, as I will discuss in the sub-section on ‘Disrupting the Global North/Global South divide’ below.

Thematic analysis: precarity, disposability and exploitation

Once I had gathered all of my data, I embarked upon a ‘Thematic Analysis’ defined as follows:

> [A] systematic approach to the analysis of qualitative data that involves identifying themes or patterns of cultural meaning; coding and classifying data, usually textual, according to themes; and interpreting the resulting thematic structures by seeking commonalities, relationships, overarching patterns, theoretical constructs, or explanatory principles (Ladapat, 2012:926).

Thematic Analysis is used in qualitative research in multiple fields, and can be conducted on a number of different textual data sources. It is described as an ‘analytical approach’, a ‘synthesizing strategy’, a ‘sensemaking approach’, and even a ‘way of seeing’ (Lapadat, 2012:926-927; Boyatzis, 1998:1). I used this method alongside the software, *NVivo*, in order to identify codes and overarching themes from my ‘elite’ interviews as well as the legal and media documents. I found the following metaphor useful for conceptualising the role of codes and themes:

> Codes are the building blocks of analysis: If your analysis is a brick-built house with a tile roof, your themes are the walls and roof and your codes are the individual bricks and tiles (Braun & Clarke, 2012:61).

I arrived at my codes and themes through a ‘hybrid’ process of inductive and deductive reasoning (Fereday & Muir-Cochrane, 2006). In essence, my codes and themes were derived in part from my review of existing literature and theories, and in part ‘grounded’ in the emerging findings from my data (Glaser & Strauss, 1967).

Codes and themes

1) Precarity: this code was not explicitly mentioned in research interviews. However, this concept provides a framework for understanding a pattern that participants were articulating. So, for example, participants would talk about how the women ‘had no specific work’, ‘their economic lives are characterised by fragility’, and that they were drug couriering in order to make a ‘quick buck’, ‘fast money’, ‘extra money’, ‘extra income’. Other relevant quotations include: ‘[drug couriering] is not a career as such; it’s just to fill a present need’ or to ‘get you on your feet again’. Some participants more directly likened drug couriers to ‘everyday people in the gig economy’. And from the review of legal files and media documents as well as details gleaned from interviews, it appears that many of the women’s socio-economic profiles were characterised by precarity. Additionally, from asking interview participants about *how* women became involved in drug couriering, it became clear that the methods of recruitment and the way drug couriering is framed by recruiters mirrors other dispatch or courier work in the legal or semi-legal precarious industries.

2) Disposability: occasionally this concept was mentioned explicitly in interviews, for example: ‘[as a drug courier] you are disposable and

dispensable; where you come from there are thousands more just waiting for a quick buck', '[drug couriers] end up being viewed as very disposable'. Another participant, when talking about female migrant domestic workers being recruited as drug couriers, stated the following: 'the fact that they are domestic workers in a foreign country means that they are desperate for money. And there's lots of them; they're just disposable'. Other data were coded under this framework, and in particular judicial attitudes and the attitudes of law enforcement as mediated through interviews and legal documents with details of the arrests which were viewed as 'just a matter of KPI really'. 'KPI' refers to 'Key Performance Indicators' and so for law enforcement these women were treated as disposable and just a way of fulfilling their arrest 'quota'.

3) Exploitation: this code relates to the research question 'what is the relationship between drug trafficking and human trafficking in this context?'. This research question was formulated in response to activism that was occurring in the region at the time of my research: it was argued that many of the women on death row for drug trafficking in Southeast Asia are in fact victims of human trafficking, galvanised by the case of a Filipina former migrant worker, Mary Jane Veloso, who is currently on death row in Indonesia (Gerry et al., 2018). Thus, as part of my research I wished to test this hypothesis in the Malaysian context. So, the theme of 'exploitation' came explicitly from participants' answers to this interview question, by way of example:

> Human trafficking involves an element of deception, an element of exploitation, and an element of unfreedom. When we look at drug trafficking it is slightly different, but it does have the element of exploitation: you exploit a human being to do this illicit

> business, and they deceive the [courier] without telling them the risk (Malaysian NGO worker 2).

But this code also permeated other aspects of the data, with participants alluding to coercion, duress and deception of female drug couriers, and indeed with court testimonies describing situations characterised by exploitation:

> The man showed his handphone to her… She saw that it had a picture of her son on the screen… The unknown man told her he had her son… He threatened to harm her son if she did not do what he wanted her to do… Being fearful for her son's safety she followed the unknown man to her room… In the room he gave her a plastic package and asked her to swallow the contents (Court report; Defence testimony; Case 33).

Overall, these codes fit within the following overarching themes, outlined in the Theories chapter:

- Gender, globalisation and crime;
- Criminalisation of foreign national women at the border;
- Gender, global labour markets and drug couriering.

<u>Disrupting the global north/global south divide: privilege and positionality</u>

We are currently witnessing a southernising turn in criminology. The mandate of this approach is:

> [T]o elucidate the power relations embedded in the hierarchical production of criminological knowledge that privileges theories, assumptions and methods based largely on empirical specificities of the global north (Carrington, Hogg & Sozzo, 2016:1).

In light of this, it is important to reflect on my positionality as a white, British woman from the global North, conducting research in Malaysia. My nationality is particularly pertinent given Malaysia's historical experiences of British colonisation and subjugation, and indeed, the death penalty itself is a relic of colonial rule. I was acutely aware of this during my fieldwork, and was vigilant to be sensitive to the danger of straying into neo-colonial or 'white-saviour' territory. By working closely with partners on the ground, as well as engaging with local and postcolonial literature as part of my analysis, I hoped to ameliorate this issue somewhat. Furthermore, southern criminological scholars, whilst acknowledging white privilege, warn against getting stuck in the 'cul-de-sac' of identity politics, and state that arguments that southern criminology can only be carried out by scholars from the global south merely reverses the logic of metropolitanism, but does not fix it (Carrington, 2021)[23].

It also became apparent to me, through the course of my research, that Malaysia does not sit neatly within the global north/global south division. Criminologists have shown that this boundary can be blurred, and indeed Elliott Currie (2017) writes that there are enclaves of the South in the North, and so we may see aspects of this in the reverse too. While Malaysia is in theory a global south country, as it is located in the southern hemisphere, and it has a colonial history, it is also far more affluent than many of its Southeast Asian

[23] 'Metropolitanism' refers to Raewyn Connell's (2007) 'Southern Theory' which examines the global economy of knowledge production, and posits a division between what she terms the 'centre' and the 'periphery' (in essence, the global North and the global South). The former is where theories are developed, and the latter is regarded as a 'data mine' for the gathering and testing of those theories which are imported irrespective of the experiences of those in the global south (Connell, 2007:68).

neighbours. As we explore through my analysis, there is a significant flow of migrant labour from less developed nations in Southeast and also South Asia, creating a marginalised and subjugated ‘under-class’ of non-citizens (Dannecker, 2005; Miles et al., 2019). Moreover, I found that my research participants, especially the lawyers, tended to be extremely wealthy, highly-educated, middle aged men with thriving private legal practices who took death penalty cases *pro bono*. Time and time again, research participants would tell me about their UK law degrees, or about children or relatives currently studying in Britain, often at elite universities. The existence of a ‘global elite’, who have jurisdiction over the criminal justice process in places like Malaysia, present a barrier to truly ‘southernising’ criminology.

Furthermore, my experiences of applying for a research visa revealed some practical barriers to globalising criminology. Around the time that I was planning my fieldwork, news reports emerged of two Australian academics who had been arrested and deported from Indonesia for carrying out research whilst travelling on tourist visas (The Jakarta Post, 2019). One of the two academics, Dave McRae, of the University of Melbourne, had published on the Indonesian death penalty and other human rights issues (The Jakarta Post, 2019; McRae 2012). In researching these arrests, I discovered that this is not a new phenomenon and, in fact, in 2018 an Australian doctoral candidate was deported and ‘black-listed’ by the Indonesian government whilst she travelled on holiday (Reuters, 2018). It is believed it was due to her links to reporting on the separatist movement in hotly contested Papua (Reuters, 2018). Whilst it seems that these tight research visa rules have come into place due to concerns over ‘biopiracy’ and foreign scientists conducting research on Indonesia’s rich ecosystems taking biological samples out of the country, it increasingly appears that these research visas are being used to police and prevent foreign researchers from conducting studies that may criticise the Indonesian government in any way (Rochmyaningsih, 2019; Davies, 2019).

With this in mind, I decided to apply for a research permit for neighbouring Malaysia. It was an accurate assumption on my part that the government might want to oversee potentially contentious research, as indeed the Ministry of Economic Affairs (the body which issues foreign research passes) gave strict instructions that ‘the study should avoid sensitive issues pertaining to local values and norms as well as political elements’. From talking to local researchers, I decided that it would be best to describe my project in my application in very general terms as a study focusing on women in prison for drug trafficking (but not over-emphasising my specific focus on the death penalty).

The application process itself was opaque and cumbersome, as well as time consuming: I started the paperwork in June 2019, and it was only by late January 2020 that everything was approved and I was able to travel. The inefficiency of this process and the research oversight present potential barriers to globalising research on sensitive criminological issues.

Conclusion

This chapter has provided an overview of the practical and analytical considerations of my methodology. Malaysia was selected as a case-study through which to analyse the issue of women becoming embroiled in the drug trade in Southeast Asia as well as a case-study of the gendered impacts of the mandatory death penalty. This jurisdiction was especially suitable due to it having the highest recorded number of women under sentence of death for drug trafficking in the region. And in terms of practicalities, English is widely spoken throughout society and the legal world, and indeed case judgments are often recorded in English, and the common-law system afforded me some familiarity. Furthermore, unlike some other jurisdictions in Southeast Asia – namely Vietnam and Singapore – there were no real concerns about my safety nor my research participants' safety in talking about the sensitive issue of the death penalty.

In order to overcome the dearth of official data on the current administration of the death penalty in Malaysia I triangulated my evidence, and turned to several different sources. In terms of secondary data, I conducted media and legal database searches for information on women's cases. In so doing, I compiled a database of 146 women's cases between the years 1983-2019. These data were also useful for gaining insights into judicial attitudes towards women's cases as well as the media framing which serves as a proxy for public reactions to these cases.

One of the main ethical and substantive conundrums of my methodology was whether or not to interview the women on death row themselves. Can you conduct research on women without the women? Through discussions with academics and lawyers both in Oxford and on the ground in Malaysia, I decided that it would be ethically unsound to interview women in very vulnerable situations as they await execution, particularly given my positionality as a foreigner and the fact that academic research has very slow ‘returns’, and my research would be unlikely to influence the outcome of their individual cases. Not to mention, there were practical barriers, including prisons precluding researchers from interviewing death row inmates in the past, as well as the COVID-19 pandemic. Substantively, it also made sense not to interview the women themselves on their life histories, because as has been argued by feminist scholars such as Julia Sudbury (2005b) and Toni Williams (2007) there is a tendency in ‘pathways’ research to individualise women’s offending and ‘mine’ their personal history and trauma, which obscures the broader structural issues at play that lead to the criminalisation of marginalised women. So instead, I spoke with ‘elite’ interview participants (including lawyers, NGO activists, consular officials and others working on the women’s cases) and asked more general questions about why and how women become involved in drug trafficking that leads to the death penalty in Malaysia, in order to elucidate the relationship between the elites’ perceptions and the structural factors which have led women to death row.

The majority of my interviews were conducted during fieldwork in Kuala Lumpur which as I have explained, was disrupted and cut short by the COVID-19 pandemic, and in reflecting on this and the necessary changes that were made to my methods, I posit that online interviews may be the future of sensitive international death penalty research.

Additionally, I reflect upon my positionality as a white, British woman conducting research in Malaysia – a former British colony – on a penal relic of colonisation (the death penalty). I sought consultation with local scholars and NGOs from my project's inception, and I engage with local and postcolonial literature as part of my analysis. My experiences of research in Malaysia also challenged the binary of global north/global south and added complexity to notions of 'southernising' criminology, as although my research took place in the global south in a former colony, many of those whom I interviewed, particularly lawyers, were part of a global elite class – many were wealthy, middle-aged men who were internationally educated – and thus the power dynamic was multi-directional. Moreover, as I found from my data and analysis, many of the women subject to the death penalty in Malaysia are from less affluent countries within the region and elsewhere in the global south, and thus the Malaysian penal system serves to penalise a new, post-colonial 'other': economically precarious foreign national women.

After gathering my data, I conducted a 'thematic analysis', and arrived at the following key themes: 'precarity', 'disposability' and 'exploitation'. I will address each of these themes in turn in the following three empirical chapters.

5. A continuum of precarity: from feminised labour to drug courier work

Introduction[24]

During interviews, familiar phrases were repeated to me: women engage in drug couriering in order to make ‘quick money’, ‘a quick buck’, ‘easy money’ or ‘fast money’. Often, it was asserted, this was to supplement money coming in from other sources, hence the references to ‘*extra* income’ or *‘extra* money’. As stated by one international NGO worker (8) I interviewed: ‘[drug couriering] is not a career as such; it’s just to fill a present need’ or to ‘get you on your feet again’. Because it is referred to in economic terms by my participants, I conceptualise an international drug run as an extension of precarious work, as in many ways it meets the criteria, due to the fact that it is a casual, temporary arrangement, and does not offer a steady income or job security (Standing, 2011). By way of reminder, precarity can be defined as follows:

> [W]ork for remuneration characterized by uncertainty, low income, and limited social benefits and statutory entitlements. Precarious employment is shaped by the relationship between employment status (i.e. self- or paid employment), form of employment (e.g. temporary or permanent, part-time or full-time), and dimensions of labour market insecurity, as well as social context (e.g. occupation, industry, and geography) and social location (or the interaction between social relations, such as gender, and legal and political categories, such as citizenship) (Vosko, 2009:2).

[24] Some of the findings from this chapter are presented in Harry (2021).

Moreover, economic precarity is gendered and disproportionately affects women in the global south, a trend exacerbated by globalisation (Standing, 1989). With regards to drug courier work and precarity, Merrill Singer and colleagues (2013) write that:

> All jobs within the illicit drug trade must be considered forms of precarious labor as a result of the War on Drugs, drug industry rivalries, and the lack of protections from unsafe working conditions. Given the illicit and hierarchical nature of the drug industry, drug workers often cannot change jobs within this sector in order to maximize their potential earnings. Thus their work is not only risky but also is constrained in terms of advancement or working conditions. These constitute some of the extra burdens of work in this understudied employment sector (131).

However, this assertion is not explored in great depth, nor is there any investigation or acknowledgment of the *gendered* dimensions of precarity, particularly as it relates to drug courier work. To overcome the gap in the literature, this chapter explores the continuum of precarity experienced by women sentenced to death for drug trafficking in Malaysia: many of the women were from the global south and were employed in precarious work prior to their arrest. The way that they were recruited into drug couriering mirrors methods of recruitment for couriering work in the semi-legal and legal industries. Many claimed they were duped into carrying drugs through their recruitment for a job overseas (thus I connect the feminisation of drug courier work with the feminisation of migration). And there are clear overlaps between informal cross-border trading and drug courier work in this context. However, it appears that the Malaysian judiciary are ignorant of the plight of *precarious* female drug couriers, which is a misconception, on which this work seeks to shed light.

'Thai maid sentenced to death for drugs in Malaysia': female precarious workers from the global south

My review of legal documents pertaining to 146 women's cases between the years 1983-2019 found that many of the women came from other countries in the global south, and many were engaged in precarious employment prior to their arrest. Of those who stated their employment in their legal defence, many were employed in feminised and precaritised industries: for example, 29% were working in the retail, hospitality and beauty industries (in roles such as waitress, hairdresser, bartender, beautician, cleaner); 13% stated they were primarily working as a courier (either for someone else or couriering goods for their own small business); 17% were unemployed or did not have any official employment; 9% were working in healthcare or as domestic workers; and 8% were in the entertainment and sex industry (the majority of whom stated they were working as masseuses). Only one woman claimed that she was engaged in sex work, but I surmise that there were likely more but they may not have disclosed this status for fear of stigma or judgement, or may instead have used the synonym 'entertainment industry'.

More still stated they had 'no specific work' or 'did odd jobs', or held down multiple jobs that changed over time – an indictment of the precarious job market: '[the appellant] had worked as a domestic worker, restaurant assistant, hotel maid and hotel employee in Singapore and Hong Kong' (Court report; Defence testimony; Case 79). Therefore, we can imagine that they may have held a number of different roles in these feminised and precaritised industries, and the type of employment stated in their legal defences was just what they were engaged in at that time. As an NGO worker (8) I interviewed stated: one of the things that unites these cases is ‘unstable employment statuses’.

My media database search revealed that often the women’s precarious employment status featured prominently in the reporting on cases. Some examples include, the following newspaper headlines from the region:

> Thai maid sentenced to death for drugs in Malaysia (Media article title).
>
> Thai masseuse sent to the gallows for drug trafficking (Media article title).
>
> Thai bartender faces death sentence for drug trafficking (Media article title).

Of the 146 cases reviewed between 1983-2019, 90% of the women were foreign nationals, many of whom were from the Southeast Asian region, such as Thailand (18%), Indonesia (11%) and the Philippines (9%), and other countries in the global south such as China (11%) and Iran (11%). As we saw in the conceptual chapter, we have witnessed the feminisation of precarity in the global south in recent decades, which explains the over-representation of precarious workers in this research sample (Standing, 1989). The integration of the post-colonial Malaysian state – and indeed other states within Southeast Asia – into the globalised economy from the 1960s to the 1980s was accompanied by the proliferation of feminised and precaritised export-based industrialisation (Lim, 1993; Kaur, 2000; Gills, 2001).

More recently, with the ‘feminisation of migration’ in the region, we have seen women migrating to engage in precarious sectors such as domestic work and as carers in healthcare settings (Piper, 2008). Moreover, it is important to note that precarity in the global south countries, such as Malaysia, did not first emerge during this period – in fact, colonial history is characterised by the economic disenfranchisement of local populations – and thus this jurisdiction did not follow the historical trajectory posited by mainstream (and western) scholars of precarity (characterised by a shift from the Keynesian, Fordist and welfare state to a situation of precarity) (Munck, 2013; Scully, 2016; Barchiesi, 2017).

Not only were women engaged in precarious labour prior to their arrest, but the data suggest that women were recruited into drug couriering at their place of precarious work. Other studies of women’s involvement in drug trafficking have found that women are often recruited through their family networks, romantic partners and friendship networks (van San & Sikkens, 2017). Here, the focal point was their place of work, as the following evidence from court documents and interview data attest:

> She went to work in Bangkok as a waitress in a restaurant. Whilst working there she got to know a couple who patronised the restaurant daily. This couple offered her a job which entailed the collection and bringing back of medicine from Buenos Aires, Argentina which was not available in Thailand. The couple told her that they would make the travel arrangements… The accused accepted the job [and was intercepted whilst transiting in Malaysia] (Court report; Defence testimony; Case 27).

> One of the women took part in order to pay for her mother and father’s medical bills. She was working at a hair salon, and

> someone saw her looking sad, and they asked her, 'why?'. She said that she was worried about her parents' medical bills, and she needed to find more work to get more money. So, they suggested that she go and collect a bag abroad for money (Lawyer 1).

> The appellant testified that she came from Manila and was selling fruits there with her friend, Rosa. She told Rosa about her family problems with her husband and Rosa advised her to travel to Thailand for a holiday. She agreed and together with Rosa, they flew to Thailand. In Thailand, she met Mike, the boyfriend of Rosa. Mike then offered her an assignment to carry diamonds from Hong Kong to Malaysia. She was offered USD1,000 for the job (Court report; Defence testimony; Case 131).

A police officer (1) interviewed claimed that through his interrogations of drug traffickers he discovered that people working in low-level employment are routinely targeted by syndicates: recruiters will focus on people working in precarious jobs, such as someone working as a supermarket cashier, and they will then follow the person home to see whether or not they are living in low-cost accommodation or in a more expensive condominium, and if it is the former, they will pursue this person as a potential drug courier who may be looking for extra cash. In Malaysia, those from lower socio-economic incomes are colloquially referred to as 'B40' (bottom 40%).

Having established that many of the women were previously engaged in precarious work, I will now evaluate the methods that are used to recruit women for drug courier work in Southeast Asia, and explore how these methods overlap with recruitment for courier work in the legal and semi-legal sectors.

'They are just everyday people in the gig economy': overlapping methods of recruitment between legal, semi-legal and illegal courier services

The women's legal defences detail the ways in which they were recruited to travel to courier 'goods' (drugs) to Malaysia, and often this appears to mirror the ways that couriers are recruited in the semi-legal and legal courier industries. It was mentioned in interviews and in court documents that the women were often recruited online via social media applications like WeChat, WhatsApp, Yahoo Messenger, as well as websites such as 'dateinasia.com'. I was told in interviews, 'the stories [of their recruitment] are pretty much the same' and include the same types of scenarios:

> Usually these women need extra income and they are recruited through the internet or through friends of friends who have succeeded previously without being caught and then those friends recommend their friends to earn some extra money (Prosecutor 1).
>
> They are asked to take an item for a business reason: usually for women it tends to be fashion items like shoes or clothes (International NGO worker 4).
>
> The person who offered them the trip would normally buy their ticket and the way they present it to the victim is always like: "I'll buy you a holiday, you just need to help me bring a bag over to this place and you'll get money or a holiday" – so that is the very traditional kind of storyline we always get (Malaysian NGO worker 1).

As is indicated above, several of the women were recruited via the internet. A journalist (2) whom I interviewed provided some additional details about how this occurs in practice, and stated the following: 'people are recruited via adverts on social media and they tell you it's some form of dispatch work, and they advertise the amount they will pay you right at the beginning'. Thus, he explained: 'they are just everyday people in the gig economy' and are recruited in much the same way that someone else would be recruited to work in formal or informal courier businesses. In some instances, the 'job' advertisements were not just promoted on the internet, but, as one international NGO worker (9), who is based in another country in the global south, described: 'we've got cases where they advertise in the newspaper, offering a job, and people get caught there.'

For a more detailed exposé of the methods that drug syndicates use to recruit couriers in Southeast Asia, I refer to the work of the investigative journalist Hazel Friedman (2014). As part of her investigation into South African drug mules being caught in Thailand, she discovered a case of a South African woman who had been duped into smuggling drugs, but miraculously managed to escape:

> The 30-year-old woman said she had responded to an advert in the classified section of newspaper *Isolezwe* in October 2011. "I phoned the number and I was interviewed at the Teacher's Centre in Durban for what seemed like a legitimate job at a shoe factory, where I would be in charge of transporting shoes from Nepal to South Africa," she said... When she landed in Nepal, she was informed of the real purpose behind her recruitment: "…the Nigerian guy told us that we have got to be kidding to think that we can be brought all the way from Africa to Asia just for shoes. That's when we were told that we will be transporting drugs from one country to another." (Friedman, 2014:191-192).

In this example, the women were eventually told they were to be transporting drugs; it is unclear if this was ever the case for the women arrested in Malaysia. The Malaysian investigative journalism outlet R.AGE (2019) conducted an in-depth investigation into the Malaysian drug trade, and as part of this they explored the methods that syndicates use to recruit couriers:

> Drug syndicates operating in Malaysia have been using Facebook pages and WeChat groups with devastating effect, luring impressionable young people with “paid holidays”… or part-time courier jobs. Some openly say the job involves drugs (no page number).

Further, the journalists conducted an interview with a drug mule recruiter:

> Q: Do all of these people know they were carrying drugs?
> A: No, they don’t even know there are drugs in the bag. All they know is there are documents (R.AGE, 2019: no page number).

This was confirmed by the sibling of a Malaysian woman, Sharon, who is currently imprisoned in Hong Kong for drug smuggling: ‘[t]hey say it is a dispatch job. Their agency got a valid license. They’ve got a travel license, everything. They will provide flight tickets, shopping money’ (R.AGE, 2019: no page number). And as part of R.AGE’s investigation they searched for these ‘job ads’ on social media:

> Ironically, drug mule recruiters are not too hard to find on social media. A quick search [of Facebook] brought up dozens of suspicious job postings. Most ‘recruiters’ give vague details but some admit that the jobs involve drugs (R.AGE, 2019: no page number).

Translated examples from the advertisements include ‘earn quick money for Chinese New Year’ and ‘go to New Zealand to receive stuff, and bring them to Hong Kong’ (R.AGE, 2019: no page number). A R.AGE journalist contacted the poster of one of these adverts, and the following provides a transcript of their conversation:

> J [journalist]: What type of job is it?
> R [recruiter]: You just have to carry some packages and pass it to our friend there.
> J: What kind of items will I have to carry?
> R: Just some valuable documents and items. You'll be paid RM12,000[25] for this trip (R.AGE, 2019: no paper number).

Additionally, a reporter for CNN, Preeti Jha (2020) wrote a piece exploring the over-incarceration of women in Asia as part of the region's 'War on Drugs', and in so doing she interviewed a 21-year-old Indonesian woman, Yuni (alias), who was arrested for drug trafficking in Hong Kong, and she describes how she was recruited:

> Yuni was elated when a friend told her about a lucrative "travelling job". I wanted "to learn about the world," she says in a WhatsApp video call from the Indonesian city of Medan. The high school graduate had dreamed of going to university to study economics but drifted into waitressing jobs to support her family. Her mother was ill and her father's ad hoc building work didn't cover their bills. Yuni says her recruiter, an older Indonesian woman, flew her to a nearby island for an interview. There, she was told that her job would start in Cambodia and that her local boss would be a man named Peter (no page number).

However, much like the stories detailed above, this was not to be the case, as Jha (2020) continues:

> Back in 2018, hours before her flight, her new boss had given her a padlocked bag in the Cambodian capital of Phnom Penh. She

[25] RM12,000 is equivalent to approximately GBP2,165.

> says the middle-aged Nigerian man, who she knew only as Peter, claimed it was “just clothes” and promised to pay her $1,000 if she took it to Hong Kong. But she never saw Peter again. The crystals turned out to be 2kg of methamphetamine, worth $140,000 when the haul was seized (no page number).

This case fits the established pattern: she is from a neighbouring country in the global south, she was working a precarious job (waitressing) and had pressing familial financial needs (her mother was ill and her father’s income was insufficient), and so she was recruited for what was packaged as a ‘travelling job’ where she was instructed to transport ‘clothes’ across Asia in return for a one-off payment. Clearly, these methods of recruitment of women into the illicit drug trade are rife across Southeast Asia, and not unique to Malaysia.

Having established that the methods of recruitment (and indeed the tasks involved) mirror those of couriers in the legal and semi-legal sectors, my use of the term ‘drug *courier*’ is deliberate. There is some debate over whether ‘mule’ or ‘courier’ is a more appropriate term amongst those who conduct research in this area, and indeed the European Monitoring Centre for Drugs and Drug Addiction (2012) noted the ambiguity and lack of consensus regarding the definition of a drug mule/courier, and provided the following commentary:

> A review of existing literature identified two distinct types of courier: the self-employed courier and the drug mule. The main differentiation between the two forms of couriers centres on the level of organisation and commercial interest in the transportation of the drug, with those who are paid a fee, wage or salary (including the reduction of debts) to transport drugs referred to as “drug mules” and those who derive benefit from the sale (or use) of the drugs upon arrival at their destination referred to as “self-employed”. Using this information as a base, the following definition of “drug mule” is proposed: *A drug courier who is paid, coerced or tricked into transporting drugs across an international*

> *border but who has no further commercial interest in the drugs* (3).

This definition accords with the findings from my research, where women were – in many cases – paid for their courier services (whether or not they knew they were carrying drugs is another matter) but they did not seem to be profiting from the eventual sale of the drugs. In the legal documents pertaining to 26 women's cases, the amount they were paid for couriering was listed, and these amounts ranged from approximately United States Dollars (USD) 50 to 5,000 and was paid in a range of currencies including USD, Malaysian Ringgit, Thai Baht, Chinese Yuan, Vietnamese Dong and Indonesian Rupiah. These amounts pale in comparison to the actual street worth of the substances they were transporting – many were caught with methamphetamine and, according to latest reports, one kilogram of methamphetamine was worth just under USD 10,000 in Malaysia in 2020 (United Nations Office on Drugs and Crime, 2021:16).

Elsewhere, Jennifer Fleetwood (2014), writing about women involved in the cocaine trade in Ecuador, reflects on the language of 'mule' (versus 'courier'):

> I use the term "mule" throughout this book. First, it marks out a methodological and conceptual distinction: a mule is someone who carries drugs across international borders *for someone else*… Secondly, respondents used the term mule (including mules, and those who had recruited, employed, and managed mules). Thirdly, I disagree that the word "courier" is necessarily less problematic. It suggests similarities with the work of legal couriers who escort important documentations or goods internationally (7).

Her objection is precisely why I use the term ‘courier’ within this thesis – due to the parallels with legal/semi-legal international courier work – as this was often precisely what the women claimed they thought they were engaged in, as stated in their court defences and as they told their lawyers.

‘Recruited for a job abroad’: the feminisation of migration alongside the feminisation of drug courier work

Research suggests that there has been a ‘feminisation’ of drug courier work in Southeast Asia, with regional governments noting that over the past decade or so women have been increasingly recruited by international drug syndicates, they presume because women are less likely to be suspected and thus intercepted at the border (Martel, 2013). This has occurred alongside the ‘feminisation of migration’ in Asia, whereby since the turn of the 21st century an increased number of women have been migrating to work in feminised sectors, such as healthcare and domestic work, in more affluent Asian countries such as Hong Kong, Singapore and Malaysia, as well as countries in the global north (Piper, 2008:1292). Some of these female migrants form part of what is known as ‘global care chains’ which are ‘a series of personal links between people across the globe based on the paid or unpaid work of caring’ (Hochschild, 2000:131). As precarious *migrant* workers, these women may experience what is referred to in the literature as ‘hyper-precarity’, a situation of exacerbated precarity brought about by ‘the ongoing interplay of neoliberal labour markets and highly restrictive immigration regimes’ (Lewis et al., 2015:582).

Relatedly, I found from my interview data and database sample that several of the women arrested for drug trafficking in Malaysia claimed they had been deceived into drug trafficking as part of their recruitment for a job overseas. For example, some of the women claimed they had travelled to Malaysia after being recruited to work as domestic workers (and were deceived into carrying drugs as part of that process). One of the legal files (Case 101) details the case of a Vietnamese woman, who was divorced and had three children to support. She was struggling with her low income as a maid, when her friend suggested that she might travel to Malaysia for work, where she could earn over double her current salary. Her friend arranged for her to work with her sister, and requested that she give a bag (with drugs secretly concealed within) to her sister upon arrival in Malaysia, where she was then arrested at the airport. There are yet more examples of similar situations to this in other legal files:

> According to the appellant, she worked as a vegetable seller in a market in Indonesia to support her younger sisters. She met a woman named Dewi through her vegetable selling. Dewi introduced the appellant to a woman called Fitri and the three of them had a meeting where the appellant was offered a job in Malaysia as a factory employee or a maid. The appellant trusted Dewi because Dewi always provided her with financial assistance, and the appellant believed that working in Malaysia would change the destiny of her family. [She was then asked by her recruiter to carry a bag – with drugs concealed inside - to give to her new employer in Malaysia] (Court report; Defence testimony; Case 32).

Another woman, this time from India, details in her court defence (Case 96) that she was recruited to work as a domestic worker in Malaysia, and before travelling her recruiter gave her a bag, which she was told contained 'clothes, shoes and a small bag' to be given to the family she would be working for.

Again, we find examples of this practice in the work of the investigative journalist Hazel Friedman (2014) who details one case of a South African woman who was arrested in Thailand for drug trafficking after being recruited for a job abroad:

> Thembi [recruiter] had promised Thando a job driving ambulances in Bangkok… When she landed in Bangkok, Thembi was not there to meet her. Thando was soon to discover that driving ambulances was not the career path Thembi had in mind for her… "When I saw Thembi the next day, I asked her about the ambulance job. Thembi told me that the job she does is drugs and that because she bought me a ticket I must now pay her back." (46-47).

In other research on women in prison for drug trafficking in Thailand, the Thai Institute of Justice (2014) provide the following vignette about a foreign national woman:

> She is from a poor family. One day a woman contacted her in her home country and asked her if she would like to work in a restaurant in Thailand. The woman said that as [a] commission she would take part of her salary. When she arrived in Thailand the woman took her passport and said that she should sell her body to earn a living. She refused. Another woman from her country introduced her to a Nigerian man who said that he would arrange for a passport and buy her ticket home if she would bring drugs back from Pakistan. When she returned with the drugs she was arrested at the airport (148).

In a later empirical chapter I will evaluate further evidence of women becoming entrapped in drug smuggling after being recruited for a job abroad, when we explore the much-publicised case of Mary Jane Veloso, a Filipina former migrant worker, who is currently on death row in Indonesia, after being duped into smuggling drugs by a woman who offered her a job overseas (Holmes, 2016).

Evidence reviewed in the conceptual chapter suggests that there is a transnational flow of a feminised labour force in the region, particularly domestic workers, who amount to roughly 300,000-400,000 of the Malaysian population (Harkins, 2016; Miles et al., 2019). However, this transnational workforce is incredibly vulnerable: for some, this is their first experience of waged work, making them even more susceptible to exploitation, and indeed, vulnerable to human trafficking through unscrupulous recruiters (Rosewarne, 2014:138). Others have suggested that domestic workers are a particularly attractive proposition for drug syndicates, due to their possession of passports and economic need making them willing and able to travel for money (Cornell Center on the Worldwide Death Penalty, 2018:12; Komnas Perempuan, 2016 & 2018).

As well as domestic work, we see a pattern of women on death row in Malaysia having either worked as a masseuse previously, or having travelled to Malaysia in order to seek employment in the massage parlours. This may also be 'code' for sex work, as stating they work as a masseuse may be more palatable to judges. Some of the court testimonies highlight this:

> The Accused stated that she was told that there is work in Malaysia and it was her friend who made the arrangements for the Accused to work as a masseuse in Malaysia… and it was her

> friend who gave her the luggage the night before she departed for Malaysia (Court report; Defence testimony; Case 117).
>
> She had lived in Bangkok and worked as a traditional masseuse… She came to Kuala Lumpur as her friend had informed her that she could earn money here and planned to work as a masseuse (Court report; Defence testimony; Case 105).
>
> She told the court that she had a friend by the name of Beam back in Thailand and they had come to Thailand together at least three times in the past. Beam and the appellant were once colleagues; they came here to work as masseuses…. Sometime later, when the appellant met Beam back in Thailand… Beam asked her whether she was interested in working in Malaysia… The appellant accepted Beam's offer… Beam offered a backpack bag to the appellant for her to put her clothing inside (Court report; Defence testimony; Case 129).

Moreover, a lawyer interviewed recounted the following information about his client:

> She worked in a factory, and she was divorced with two children. She was given a work opportunity to come to Malaysia to work as a masseuse. She had never travelled before. She didn't even own a suitcase; she turned up at the place where she would collect a ticket with just plastic carrier bags with clothes in them. The person who offered her a job as the masseuse gave her a bag to take with her to Malaysia, and once she arrived in Malaysia she was supposed to drop that bag off at a particular address to a particular person. She had all of this information in a text message. So, she accepted the bag, put her clothes into it, and travelled to Malaysia. When she arrived, the x-ray showed something suspicious in the bag, and drugs were found in the lining (Lawyer 9).

Often it was the employment agent who gave the accused a bag to carry to their new employer in Malaysia, as illustrated in the following court defence:

> [T]he accused said she was promised a job in Malaysia by an employment agent named Agung [who gave her a new bag] and

> he said that upon her arrival at Kuala Lumpur International Airport, someone would contact her (Court report; Defence testimony; Case 102).

Others were taken advantage of, given their relative naivety about the employment process: one woman, who had been supporting herself through sex work, fell in love with a man who promised her he could find her a stable job in Malaysia:

> She stated that she had gone to Dhaka, Bangladesh on the instructions of her boyfriend to collect documents for the purposes of her employment in Malaysia and for her boyfriend's business in diamonds. In Dhaka, her boyfriend's friend gave her the luggage (Court report; Defence testimony; Case 57).

In another scenario, detailed in a court report (Case 85), the woman had been working in a hotel when her colleague suggested that she work in a hotel in Malaysia where 'the pay is lucrative'. Other accounts suggest that if a woman was looking for work, she was an easy target for drug syndicates. We see this in one woman's court testimony:

> I was looking for a job and I came here (Malaysia) to find one. So I tried to find job opportunities for work in Malaysia as a cook. As I entered Malaysia I was drinking at a restaurant when I was greeted by an African man who asked me about my purpose for being there. I explained that I wanted to find a job. The African man said he was running a shirt business in Bangkok and Malaysia. He suggested that I bring shirt from Bangkok to Malaysia as I was used to Malaysia. He added that he had a problem with his passport and he could not enter Thailand. I agreed to the proposal and I was given RM500.00[26] in advance

[26] RM500 is the equivalent of GBP90.

> and RM1500.00[27] would have been given to me on the day the goods were received (Court report; Defence testimony; Case 47).

Significantly, in many of the cases the economic motivations for migration were gendered. Several of the interview participants cited cases involving single mothers, divorcees or pregnant women in need of money to take care of ‘family problems’. These findings accord with existing research on women’s motivations for drug trafficking, which finds that often women are motivated by gendered factors. By way of example: in Fleetwood’s (2014) work on women sentenced for drug offences in Ecuador, she utilises the concept of ‘provisioning’ to portray how women may engage in drug smuggling in order to ‘meet the demands of parenthood’ and ‘fulfil their gendered selves (as mothers, daughters and girlfriends)’ (98,104). Likewise, in Tracy Huling’s (1996) work on mainly foreign national women imprisoned at Riker’s Island, New York, she describes how women felt compelled to drug smuggle in order to fulfil their ‘duties’ as sisters, daughters, or wives of dealers (49). In some cases, women drug trafficked to protect their families from threats (Huling, 1996; Torres, 2007; Fleetwood, 2014; Sumter et al., 2017). Some examples from the Malaysian interviews, legal and media database searches include:

> The main reason she travelled was because this guy promised to find a job for her. She knew that she had a little child to support, she was a single mother, and her own mother was old. She was a student at a national university, so it’s not like she was just trying to find an easy way out [through drug trafficking]; I think she was just desperate to get a job to support her family (Lawyer 15).

[27] RM1,500 is the equivalent of GBP270.

> According to the appellant, she works as a stylist doing manicures and pedicures in her country to support her sister and her blind mother. She came to know a woman by the name of Zahra through her neighbour, Geoffrey, who suggested to her that she should carry some cosmetic substances to Malaysia…She told the court she needed money for her mother's eye operation and that all of her expenses were paid for by Geoffrey, who additionally gave her USD3,000.00 (Court report; Defence testimony; Case 86).
>
> She claimed that her mother was sent to Malaysia to work as a housemaid by a travel agent, as her mother wanted to get her fourth daughter married… She had earlier worked in Dubai and got the other three children married. She could not afford to get them gold jewellery for their marriages, but she wanted to at least buy some for her youngest daughter (Media article).

In another case, a lawyer (12) explained to me that her client was in the business of selling electronics with her husband, when they were fined for tax evasion and amounted a significant level of debt. They were threatened by their debtors, and told that she must smuggle drugs in order to repay their debt. This fits with other studies' findings that women do smuggle drugs under duress, and oftentimes a family member may be threatened (Huling, 1995 & 1996; Office of the Sentencing Council, 2011; Bailey, 2013; Fleetwood, 2014).

These findings, that women were duped into couriering drugs *whilst being recruited for a job in Malaysia* fit within the regional economic context: Malaysia is one of the most prosperous nations in Southeast Asia (alongside Singapore and Brunei). Nicola Piper (2006), in writing about Singapore and Malaysia, states that both peninsular countries have over the past few decades have:

> [E]xperienced rapid economic development, the concomitant expansion of the middle classes, a rise in educational standards

> as well as women's increasing entry into the labor force (359-360).

Which has led to a rise in demand for foreign workers, and especially female domestic workers. One of the religious counsellors whom I interviewed provided the historical context:

> 10 to 15 years ago Malaysia was not very strict with immigration and it was perceived as "the land flowing with milk and honey", where anyone could come and get work, especially those from ASEAN countries, and places like Sri Lanka, Myanmar, India, and the Philippines. Most of the women who came were house helpers. But sometimes the agents are not legitimate and deceive them, so they end up doing something other than what they had thought. However, immigration has tightened up recently (Religious counsellor 1).

Further, an interview with a consular official from a developing nation in the global south further elucidated this trend. He explained to me that there are a significant number of female nationals from his country who are incarcerated in Malaysia – due to drug trafficking (but also human trafficking and sex work) – and he believes this is caused by the high rates of unemployment in his home country. He said:

> Because of the lack of jobs back home, most of the youth are frustrated and looking for work. If someone told them, "I want to take you outside the country for some kind of business", they would not hesitate to accept, because there is nothing to do at home (Consular official 2).

Similarly, an international NGO worker (1) whom I interviewed discussed how drug syndicates may target people in developing nations where 'chronic unemployment and chronic wealth inequality make it the perfect grooming ground'. Another consular official (1) added a gender dimension to this: 'women are not necessarily targeted by drug syndicates, but due to the gaps in social welfare women are more likely to be reached by them'.

Repeatedly, during the interviews, participants would state that the women had travelled in search of a 'better life'; not just for themselves, but also for their families. In one case, detailed in court documents (Case 94), a Thai woman travelled to seek manual work in Malaysia, and was accompanied by her young son when she was intercepted. And in another example, one of the lawyers (9) whom I interviewed, in the course of discussing cases involving clients from the Philippines, stated that if the women are offered US dollars or Malaysian Ringgits for couriering items, 'they could build a house in their country with that money'. These findings are in keeping with what Saskia Sassen (2003) has deemed the 'feminization of survival', whereby the new globalised economic order has led to the increased international migration and trafficking of women for low-wage jobs, and resultantly in parts of the global south 'households and whole communities are increasingly dependent on women for survival' (258). Therefore, I find that these women's narratives link to the broader economic migratory trends in the region, as discussed in the conceptual chapter.

From parallel trading to drug courier work: links with precarious informal cross-border trading

The data suggest that there may be overlaps between women's involvement in cross-border informal trading and drug courier work. As we saw in the concepts chapter, informal cross-border trading is dominated by women in the global south (Garni, 2014; Marques, Santos & Araújo, 2001; Ulysee, 2007), it occurs in the Asian context (Joe Laidler & Lee, 2014; Wan et al., 2016; Hung & Ngo, 2019), and it sometimes involves migrant domestic workers (Milgram, 2012). Parallel trading is a gendered form of 'globalisation from below', defined as follows: 'the transnational flow of people and goods involving relatively small amounts of capital, informal, often semi-legal or illegal transactions' (Mathews & Alba Vega, 2012:1).

Strikingly, 73 of the 112 women (65%) arrested at the border in my sample claimed to have been paid or asked to courier items internationally at the behest of another, or were transporting commodities for their own small businesses. Some examples from my data of the overlap between drug courier work and informal cross-border trading include the following court defences:

> In her defence, the accused said David (an African man) is in the boutique business as well as a cloth supplier. She had known and worked with David for a year as a courier to deliver luggage with clothing samples and ladies' accessories to designated clients of David around Asia. For this simple errand the accused was paid handsomely with all expenses covered for the entire trip (RM3,814)[28]. The job entails considerable travel to most of the Asian region, and since working with David she had travelled twice to Hong Kong, Thailand, the Philippines, once to Laos and

[28] RM3,814 is the equivalent of GBP690.

> including this trip she had travelled to Malaysia three times. Essentially, her task is just to bring a luggage of clothes samples to each designated destination instructed by David. Upon arrival at each designated country the luggage would be handed over to the informed client of David who would come to pick up the luggage at a hotel (Court report; Defence testimony; Case 129).
>
> The defence of the appellant was that she was carrying the luggage as instructed by her employer John (a Nigerian) from Guangzhou, China to Malaysia. John had offered her a job with a salary of 10,000 Chinese Yuan[29] to transport children's things and clothes to places outside of China (Court report; Defence testimony; Case 121).
>
> Peter promised to give her some money if she succeeded in bringing the cosmetic substances to Malaysia. Peter told her that she needed to swallow the substances which were wrapped in capsules and to then pass them to Peter's brother in Malaysia. She said Peter showed her how to swallow the capsules in order to avoid customs duties (Court report; Defence testimony; Case 86).
>
> The appellant stated in her defence that she worked as a domestic worker in China. One of her colleagues, Maria, told the appellant that she had a business of selling clothes and asked the appellant whether she was interested in joining the said business. If the appellant was interested, then the appellant would be sent to another country to collect the dresses. Maria told her to collect the dresses from Peru and deliver them to Malaysia (Court report; Defence testimony; Case 31).

The references to 'Nigerian' and 'African' recruiters here is in keeping with the finding that in Guangzhou, China, West African entrepreneurs dominate the cross-border informal trading market (Yang, 2012).

According to women's legal defences, others claimed they had travelled to Malaysia in order to procure goods for their trading businesses; the goods were thought to be much cheaper as compared to their home countries. These products ranged from hair salon equipment to cameras (similar items to what

[29] 10,000 Chinese Yuan is the equivalent of GBP1,200.

is reported in the literature on informal cross-border trading). Often these were small-scale businesses, such as street-stalls, as court defence testimonies attest: ‘before her arrest she was doing small business as a hawker selling ladies products such as creams, panties and camisoles’ (Case 64), and in another case, ‘she wanted to purchase imitation bags to be sold in Thailand’ (Case 23). And, according to these women’s stories, whilst purchasing goods for their businesses, they were deceived by business partners or friends into carrying contraband items. These claims are backed up by evidence from the literature, as scholars talk of how couriers (working between Hong Kong and Mainland China) face a high risk because ‘they may not be fully aware of the contents of the goods they are delivering and their licitness’ (Hung & Ngo, 2019:247).

However, evidence from the review of legal judgments suggests that judges were incredulous of women’s claims, and perhaps are unaware of the proliferation of female informal cross-border traders across the region, and indeed in the global south in general:

> This was not the normal cost for carrying out such a simple task, unless it was for something unlawful. An express service the likes of DHL or services equivalent in China, would have done the job far cheaper, better and speedier […] The accused agreed that the samples of clothes that she brought are not exclusive, in fact from the exhibits tendered they look most ordinary. Therefore, one would very well ask oneself if these samples of clothes are not exclusive or valuable or expensive nor require extra care to handle, why the need for personal courier unless it is something unlawful (Court report; Judge; Case 124).

And in another instance, the judge’s comments were included in a media article:

> On [the accused person's] claim that she had arrived in Penang to purchase jewellery, [the judge] said Penang was not famous for jewellery (Media article).

Overall, the literature on informal cross-border trading helps us to better understand the claims made by the women arrested in Malaysia that they were engaged in semi-legal courier work, and that they were deceived into drug couriering through the course of this precarious employment.

'The appellant is not naïve or a simpleton': judicial blindness to precarity

From my review of the legal judgments, it became clear that judges would comment on women's socio-economic statuses as inferences of their guilt or intent, and additionally it appears that members of the judiciary were ignorant of the plight of economic precarity. When it came to evaluating the women's claims of being 'innocent carriers' (a limited legal defence explained in the introductory chapter) judges commented on their socio-economic background when dismissing their claims, as exemplified by the following statement from a judge:

> Her handbag contained make-up, ladies' accessories, a Gucci watch, sunglasses and a wallet containing American Dollars… These items are not a poor lady's possessions, but the items indicate she is a socialiser – a lady of the "world" (Court report; Judge; Case 72).

The women's levels of education were also used as a way to dismiss their claims of economic desperation or claims of being duped. Judges made multiple references to the accused persons *not* being ‘uneducated’, ‘naïve’ or ‘simpletons’. In several of the cases, the judges commented on the accused person’s higher education: ‘she was doing part-time classes in business management’ (Case 64), ‘she is a reasonable person who is educated as a computer secretary graduate’ (Case 131), ‘she claimed to have graduated from a teaching institution’ (Case 56) and ‘the appellant is an educated person; a university graduate in Economics’ (Case 140). Yet more of the many examples include the following extracts from judgments (in the third example, her education record is used as a justification for her acquittal):

> We are of the considered view that it is very unlikely that the respondent, who is a diploma holder… could have placed herself in a situation where she could be exploited to commit a crime (Court report; Judge; Case 87).
>
> The background of the accused revealed that she was quite capable of taking care of herself. She had a High School education, she understands and speaks simple English (Court report; Judge; Case 124).
>
> Given her past records as socially active, and academically successful student, and the fact that she was not in financial difficulty at the time, suggests that she was not involved in drug dealings… The respondent would not jeopardize her future and do something foolish like selling drugs (Court report; Judge; Case 92).

Notwithstanding these comments, the fact that several of the women were university-level educated is not that remarkable, particularly as students are a key demographic in the precarious workforce, or so-called ‘precariat’ (Standing, 2011:59). Indeed, one of the lawyers whom I interviewed relayed that:

> Some of them are students; they want extra money, to support their lifestyle or what not. To them 800 ringgit is a big deal, on top of the free holiday package that they are offered (Lawyer 16).

Furthermore, others may have been affected by economic austerity in their home countries which impacted their ability to gain meaningful employment after graduation. One religious counsellor (1) discussed the situation faced by an African woman on death row in Malaysia: she had initially engaged in drug trafficking to Malaysia so she had enough money to 'study and still survive'; and later, once she had graduated from university and her country was experiencing chronic unemployment, she returned to drug trafficking as a means of supporting herself.

Another factor that judges tended to comment upon when assessing guilt or intent was whether or not the appellant was an urban or a rural dweller. The stereotype of the 'country bumpkin' (to borrow a judge's phrase) dupe was frequently invoked. We see this in the following comments from judges:

> The accused was from Bangkok city and not a simpleton from a small village in one end of Thailand who could easily be tricked in carrying illegal items (Court report; Judge; Case 113).
>
> Learned counsel tried to convince us that she accepted the job offered by Diana without any suspicion as she was not a highly educated girl who hailed from the village. There was no telephone and television in her house. However, the evidence showed the appellant was a seasoned traveller (Court report; Judge; Case 32).

In fact, as I will show in the next two chapters, the 'schemes' that entrap and dupe women into drug couriering in Southeast Asia are often very sophisticated scams that draw upon psychological techniques of persuasion, and thus one need not be a 'simpleton' to become ensnared (Whitty, 2021).

Age was another issue for judges. They appear to believe that only young (and thus naïve) women can be deceived by drug trafficking syndicates into smuggling drugs. For example, one judge commented that the fact that the appellant was 28 years old was evidence that she was unlikely to have been 'exploited' (Case 87). Other judges cited the woman's age as a reason to dismiss their defence of having travelled to seek employment:

> It was unreasonable for her as a 60-year old… to have come all the way to Malaysia to work as a domestic helper… it was very unlikely that there would be any employer willing to employ an old and sickly lady as a domestic helper (Court report; Judge; Case 107).

However, evidence from my interviews dispute the claim that only young women are likely to be targeted by drug syndicates. As one international NGO worker (1) commented: 'it doesn't just happen to the young, naïve ones; it could happen to just about anybody I think'. And, a lawyer (12) interviewed discussed his client who: 'is not the type who is uneducated and naïve and aged 16 or 17. When this happened she was already 40 years old'.

In fact, evidence from the interviews and other academic research shows that the stereotype of a young, uneducated and naïve female drug mule is inaccurate. Fleetwood (2014), when conducting research on the cocaine trade in Ecuador, discussed with drug traffickers who they thought constitutes an 'ideal recruit' for syndicates, and found that the main factors were: '[a]ge, being well travelled, having a passport, speaking a foreign language, and being socially connected' – none of these factors fit with the stereotypical impoverished victim (76). In terms of age, she found that there were several mules in prison who were over the age of fifty, as syndicates thought that they were less likely to be suspected by customs (Fleetwood, 2014:77). Importantly, she discovered that:

> [S]ome mules were approached precisely because they did not fit the stereotype of a mule as a poor person from the developing world. For example, many mules were employed, or came from countries that participated in the visa waiver scheme (Fleetwood, 2014:77).

This mirrors what one academic researcher (2) said to me about potential drug couriers: she said that it was unlikely that a woman experiencing abject poverty would make a good courier, as 'you have to have your wits about you; you have to be presentable - there are a whole range of things you need not alert the authorities about'.

Nayeli Urquiza-Haas' (2017) analysis of the sentencing appeals of female drug mules in England and Wales is particularly applicable to the Malaysian situation. Here, she argues that the legal 'discourses on [female] drug mules' vulnerability mobilize the trope of the colonial victim in need of protection, which is often translated into legal mercy' (Urquiza-Haas, 2017:543). Crucially, Urquiza-Haas (2017) also finds that 'this strategy risks marginalizing women even more, as the court's mercy is granted only to *exceptionally* vulnerable offenders' (545; my emphasis). I would go further to say that it not only marginalises women who do not fit this 'exceptionally vulnerable category', but the stereotype actively works against them, as we have seen with judges pointing out that an accused woman is *not* 'naïve', 'ignorant' nor a 'simpleton' when dismissing her defence. Overall, my data show that often the situations leading to women's involvement in drug trafficking are more nuanced and economic precarity may be less *visible* than situations involving overt threats or abject poverty.

Conclusion

This first empirical chapter has made the case that many of the women sentenced to death for drug trafficking in Malaysia have experienced a continuum of precarity, and that precarity permeates the interviewees' accounts of these cases as well as what was reported in court judgments and media files. I use the framework of 'precarity' to understand the claims made by the elite participants (in particular, lawyers, consular officials, religious counsellors, journalists and NGO activists) that, on the one hand, the women were motivated by economic need, yet on the other hand, in the court reports judges disparagingly described individual women as 'a seasoned traveller', 'a diploma holder', 'a socialiser – a "lady of the world"'. The framework of 'precarity' assists us in bridging these accounts, as a woman may be educated, employed and well-travelled yet, at the same time, facing chronic financial insecurity as a result of her status as a precarious worker.

As one international NGO worker (1) interviewed described the situation: their economic lives are characterised by 'fragility'. This sentiment was shared by a journalist (2) interviewed: 'I don't think people do this wholesomely or 100% [of the time], they are just ordinary people doing a bunch of things'. Similarly, another international NGO worker (9) said that ‘the majority of them are people who are looking for work’. As this chapter has shown, this precarity is multi-faceted and multi-staged: according to the legal defences, media articles, and lawyers’ testimonies, prior to their arrest, many of the women were engaged in precarious work in the domestic, care, entertainment and retail sectors. Many of the women were from other nations in the global south, most often from countries such as Thailand, Indonesia, China, Iran and the Philippines. These findings fit with arguments made by scholars about the feminisation of precarity, as well as the ‘feminisation of migration’ in the global south (Standing, 1989; Piper, 2008).

Often the women were recruited for drug couriering at their place of precarious work, and in several instances the methods of recruitment mirrored the methods used in the legal and semi-legal courier sectors, including online recruitment advertisements. Furthermore, I have highlighted that drug couriering in this context has many overlaps with the established practice of informal cross-border trading in Asia, and elsewhere in the global south. Many of the women claimed – both to their lawyers and in their court defences – that they were duped into drug couriering after having been recruited for a *precarious* job overseas, including domestic work (a finding I will return to in chapter 7). Thus, the data presented in this chapter reinforces the finding that ‘migration cannot be seen as a linear path into precarity’ and female migrants in Asia are not necessarily travelling from a non-precarious situation into a condition of precarity (Piper & Lee, 2016:48), in fact precarity permeates all aspects of the process.

This precarity is gendered: the data suggest that often the ‘extra money’ or ‘quick money’ that women required was for a gendered familial need, that had arisen as a result of, for example, being a single mother. The precarious industries women were employed in prior to arrest – and ‘recruited’ into as part of their drug couriering – were feminised industries, such as the care and entertainment industries, and indeed cross-border trading is dominated by female traders in the global south (Marques, Santos & Araújo, 2001; Gauthier, 2012; Milgram, 2012; Garni, 2014; Dodson, 2018). These findings concur with much research which shows that precarity is historically and presently a gendered phenomenon (Precarias a la deriva, 2005; Fantone, 2007; Vosko, 2009; Mies, 2014).

To reflect the precarious status of many female drug couriers, in this thesis I purposely use the term ‘courier’ (as opposed to, for example, ‘mule’) to reflect their status within the precarious economy, and to highlight the blurred lines between legal, semi-legal and illegal courier work in this context. It is also worth emphasising here that drug courier work is even more precarious than ‘regular’ precarious work due to the illegality of the drug economy:

> Issues of legality, however, can significantly impact the nature of social relationships in labor. As a result of the war on drugs, for example, drug work may be comparatively unstable and shifting, and may carry local and broader stigmas… Secondly, not being subject to unionization or protection under the law, some forms of toil in the drug trade involve high degrees of coercion that move this labor beyond working class categorization and into various forms of enslavement. Thirdly, if detected, illicit drug laborers are subject to arrest for “doing their jobs”, and hence must fear legal authorities to a far greater degree than most legal workers (Singer, Tootle & Messerschmidt, 2013:125).

And this is especially the case in the Malaysian context where accused persons face the death sentence if convicted of drug trafficking.

Additionally, this chapter has shown that the judiciary have preconceptions about the stereotypical female drug courier. However, many of the women do not fit the image of the young, naïve, impoverished female dupe and are therefore deemed less worthy of paternalistic mercy, and their 'innocent carrier' defences are dismissed. Therefore, we see that the women's structural statuses as precarious workers are compounded by the judiciary's lack of understanding of their plight, as this misconception leads judges to view them as 'suitable penal subjects' who are deserving of the death penalty (Cunneen et al., 2013:91).

6. Female drug couriers in Southeast Asia: the ultimate disposable worker?

Introduction

In the previous chapter, I explored how female drug couriers in Southeast Asia experience a ‘continuum of precarity’. Many were employed in feminised and precarious industries (such as migrant domestic work, massage parlours and sex work) prior to their offending; when recruited for drug couriering it was advertised as a form of precarious work, and their precarity was exacerbated by their engagement in the illicit drug economy. In this chapter, I will hone in on one particular aspect of precarity – gendered disposability – to further explore the experiences of women on death row for drug trafficking in Malaysia, and to make the argument that female drug couriers are the ultimate disposable worker.

Other scholars of women and drug trafficking have referenced the disposability of couriers. Tracy Huling (1996) writes about Jamaican women who have been imprisoned for drug trafficking in the United States (US) and laments that ‘the poor or unfortunate women of Jamaica have become yet another source of cheap and expendable labour’ (57). Likewise, Julia Sudbury (2005b) again writing about the plight of Jamaican women, this time intercepted in the United Kingdom (UK), states that ‘women are exploited, poorly remunerated, and ultimately disposable workers of the global drug industry’ (175). In both of these instances, female drug couriers’ disposability is mentioned in passing but not fully elaborated.

In this chapter, I substantiate these claims, and explore the different components of their gendered disposability in this context. The female drug couriers are replaceable labourers in the drug market, who are controlled by drug syndicates. Their disposability is embodied: it is thought that they make better drug couriers as they are believed to be less suspicious to authorities by virtue of the way they perform their gender. The data show that drug syndicates often 'tip-off' authorities about drug couriers and 'dispose' of them in this way. Not only are drug couriers treated as disposable workers by drug syndicates, but also by Malaysian law enforcement agents who use them as scapegoats in their 'War on Drugs'.

Replaceable and expendable couriers: an exploration of the modus operandi of drug syndicates in Southeast Asia

By exploring the 'modus operandi' of drug syndicates – from the women's court testimonies about how they were recruited into drug couriering, as well as their lawyers' accounts of their testimonies – we see that many of the female drug couriers who were intercepted in Malaysia were considered to be highly replaceable and thus expendable by drug syndicates. This is illustrated by how similar many of the women's accounts were, which would suggest that drug syndicates are running large-scale operations, involving a vast 'reserve' of female couriers, who are recruited using very similar means. So, for example, one lawyer (8) whom I interviewed discussed how he had represented women from Mainland China in about six or seven cases and 'from China, the MO [modus operandi] is always similar'. He went on to explain:

> It is always the case that they are befriended by an African guy! So after a few months of knowing this guy, then they get involved in a romantic relationship… the guy will then ask them to help deliver a package for that guy's friend in Malaysia… they will promise to help deliver the package and then they will go for a holiday and it will be an all-expenses paid trip to Malaysia… They go by themselves and strangely all of my clients have come from Guangzhou. And there is a hotel in Guangzhou, called the Big Hotel – I think it is a Hilton – and by that hotel is a McDonalds where they meet an African guy… and even the brand of suitcase is always the same, so it is definitely the work of a syndicate. Some of the women are from Guangzhou, some are not, but they travel there to meet with a friend of the original man, and the bag will be passed to them in Guangzhou. Then they will either fly from Guangzhou to Kuala Lumpur (KL), or they will transit through Hong Kong or Shenzhen (they may get the bus there from Guangzhou and then fly to KL). The arrangement is that when they arrive in Malaysia someone will contact them and collect the baggage from them… I think they are not intercepted at the transit in Hong Kong because if you are transiting there your bag does not actually go through customs (Lawyer 8).

And, indeed, this claim was substantiated by my review of court testimonies, which found nine cases of women travelling from Guangzhou, China to Kuala Lumpur – under very similar circumstances – between the years 2013 and 2015. They were all arrested with methamphetamine, having travelled at the behest of a Nigerian man (with the same name referenced in the different cases), whom they claimed to have met through social media (through sites such as 'WeChat', 'DateinAsia.com') and who had asked them to carry 'clothing samples' to Malaysia in return for payment. They all met him or his associate at the McDonalds fast food restaurant near the Big China Hotel in Guangzhou (as was mentioned by the lawyer quoted above). My review of court reports also revealed that the 'stunning similarities' and 'strikingly similar' details of women's cases were referred to in their legal defences, as is outlined in the submission below:

> Learned counsel for the appellant submitted that there was truth in the appellant's defence. He submitted that 2 weeks before the appellant was arrested, another young woman from China named [redacted] was also arrested at KLIA [Kuala Lumpur International Airport]. He contended that [redacted] case gave credence to the appellant's story as there was stunning similarities between the two cases, namely:
> (i) The time period between the two arrests was very near to each other. The appellant in this case was arrested on 6th July 2014 while [redacted] on 22nd June 2014.
> (ii) Both were arrested at KLIA Terminal 2.
> (iii) The luggage involved was the same American Tourister brand and size and the same pink colour.
> (iv) In both cases, the secret compartment was the same i.e. one had to take out a fabric lining, metal handle bar and a plastic layer to get to the secret compartment.
> (v) Same Air Asia flight AK238 from Hong Kong to Kota Kinabalu.
> (vi) Both had same itineraries in Malaysia i.e. they travelled from Guangzhou to Hong Kong Airport, flew to Sabah from Hong Kong, stayed overnight at Kota Kinabalu, travelled to Kuala Lumpur the next day and they returned to Hong Kong from Kuala Lumpur.
> (vii) The flight tickets for both were booked by the same person [redacted].
> (viii) Both tickets were purchased using the same credit card under the name of [redacted].
> (ix) Both of their stories were strikingly similar. The appellant had told her version of the story to the immigration officers in two cautioned statements exhibit D1 and exhibit D2.
> (x) Both were given a bag by an African man to travel to Malaysia to send clothes samples.
> (xi) Both luggages contained various brands of new clothes or clothes sample.
> (xii) All the similarities were agreed by PW6 who was the Investigating Officer (IO) for both cases.
> Learned counsel for the appellant further submitted that the facts above gave an inference that a drug syndicate used drug mules to send drugs from China to Malaysia (Court report; Defence testimony; Case 127).

This issue has also been discussed by journalists, and indeed, an article was published in the *South China Morning Post* alerting readers to the fact that:

> Statistics quoted in the report from the Malaysian Chinese Association (MCA) said that more than 20 Chinese women have been arrested or convicted for bringing drugs into Malaysia between 2013 and 2015 – all of whom claimed to have been duped by a smuggling ring operating in Guangdong. Several women – all aged between 20 and 24 years old with limited education – said they had been asked to deliver a suitcase of clothing samples that they collected in Guangzhou city by a man they met online. The men claimed to be from Nigeria and promised a romantic relationship with them. The man, who said he ran a clothing export business, provided air tickets and promised some financial reward, but cut off contact after their arrests, according to the report. None of the women met the man in person and had collected the case from a proxy. Three of the woman have been sentenced to death and are currently appealing (Moon, 2018).

As I have discussed in previous chapters, this finding accords with the presence of female cross-border informal traders in the region (who may have been duped into smuggling drugs through the course of this work) as well as the trend of West African men running informal (and semi-legal) export businesses from Guangzhou, China (Laidler & Lee, 2014; Yang, 2012).

The data suggest that it is not just Chinese women who are entrapped by these schemes. My review of court documents also revealed eerily similar cases of four Thai women, who each claimed to have been sent to Brazil at the behest of their ‘employer’ or ‘boyfriend’, where they were subject to physical, sexual and emotional abuse, and forced to ingest ‘capsules’ (containing cocaine) or put them in their vaginas (and they claimed they did not know the ‘capsules’ contained drugs), before travelling to Malaysia where they were subsequently arrested. There were also two further cases of Thai women who were sent to Buenos Aires, where they were forced to swallow ‘capsules’ (again, of cocaine) before being sent to Malaysia where they were intercepted. The legal files also revealed a trend of women from the Philippines being arrested after smuggling cannabis to Malaysia on a bus from Bangkok. Interestingly, in both cases the women were arrested with the exact make of bag, ‘Blaze’.

Yet more patterns of cases have been identified in news outlets elsewhere in Asia, for example, an article from the *Philippine Daily Inquirer* reported that:

> Seven Filipino women allegedly acting as drug couriers for an international syndicate have been arrested in Kuala Lumpur in a joint operation by the National Bureau of Investigation, Philippine Drug Enforcement Agency and the Royal Malaysian Police… the Filipinas were lured by the Nigerians by dangling free plane tickets, accommodation and pocket money…Stressing the rampant use of Filipino drug mules, Ilco Norte Representative Roque Ablan said some 69 Filipino drug couriers remained behind bars in China – 62 of whom are women (Lopez, 2008).

Likewise, media reporting from South India, stated that:

> An international cartel may be deploying Thai sex workers as “merchants of death” to smuggle heroin out of India for African dealers in Kuala Lumpur. This follows the arrest by Indian airport authorities of a second Thai woman in less than two weeks, in attempting to smuggle heroin worth RM2 million into Malaysia’s capital… The modus operandi in the Hyderabad and Chennai incidents were almost identical, said Hyderabad police officials (Vijian, 2008).

Later reports from India found that:

> With the arrest of two women who were deployed as drug mules en route to Malaysia this week, sleuths in South India are beginning to suspect regional drug cartels have begun recruiting local women as narco couriers (Malaysia General News, 2010).

What all of these findings suggest is that the individual couriers are replaceable 'pawns' in large scale drug trafficking schemes.

More recently, there has been a rise in online romance scams that lead to women being embroiled in drug trafficking (Whitty, 2021). Lawyers whom I interviewed in Malaysia talked about cases of women they had represented who were facing the death penalty as a result of this predicament:

> She met an African man online through social media, and the guy promised to get to know her, to marry her, and to take care of her family. He also promised to set up a shop for her mother, so that her mother could earn. He asked her to come to Bangkok to meet him, and so she went. He paid for her ticket to Bangkok. When she got there, they were meant to meet, but he kept on postponing it for a couple of days, and then eventually asked her to come and meet him in Malaysia. The night before she flew to Malaysia he asked her to carry a bag for him. He said he had secured a job for her in Malaysia at the same company he worked at, and as part of the job, he needed her to bring a sample bag for a customer in Malaysia. So she met with one of his African male friends at her hotel in Bangkok, who gave her the bag. She inspected the bag, and it seemed normal and she couldn't find anything. She said she thought the bag was a bit hard, but it was a laptop bag, so she thought that was just to protect the laptop. When she arrived at KLIA [Kuala Lumpur International Airport] the scanning officer saw something suspicious on the screen, and so they opened the bag and found drugs in the bag (Lawyer 15).

Likewise, in another Malaysian case, that made international headlines:

> [A woman] facing execution on drugs charges in Malaysia could be the victim of a military romance scam that has entrapped thousands of people… under a scam the US army warns has become “epidemic”, fraudsters use the fake or stolen identities of soldiers serving overseas to promise “true love” before duping their unsuspecting victims in various scams (Media file).

And what is significant about this scam, is the scale at which it operates. As was explained in my research interviews by NGO workers who had worked on cases like this:

> The net is thrown very wide, and thousands of people are being scanned or identified as potential victims, and then it’s just a very small percentage of those that are worked on extensively (International NGO Worker 7).

And, as they said, ‘it is to do with cost-benefit’ because:

> Then you’ve got one person who is prepared and able to carry a kilo of meth from one jurisdiction where it’s very cheap to make, to another jurisdiction where you can sell it at a great price – that is where your profit is (International NGO Worker 7).

Experts on online romance scams have shown that they are highly sophisticated, and tend to follow a particular formula and, for example, draw on established ‘persuasion techniques’ with elements such as reciprocity, scarcity and authority[30]. Therefore, cases involving online scams should not be considered one-off occurrences, but instead should be evaluated within the context of a larger, sophisticated and well-established scam. Research has

[30] For more information on the ‘anatomy’ of online romance scams that lead to drug couriering, see Whitty (2021).

shown that online scams are used to recruit drug couriers in other jurisdictions, with reports of individuals having been arrested in Argentina and China:

> In each case, the scenario is identical. Each of the accused was involved with a partner they had met online. Each was travelling at the request of their partner. Each had accepted a suitcase from their partner (or partner's associate), which had drugs sewn in the lining (Cross, 2018).

The above evidence speaks to the interchangeability and disposability of female drug couriers arrested in Malaysia. As was discussed in the conceptual chapter, the 'myth of the disposable third world woman' is underpinned by the patriarchal and racist logic that 'women have historically been deemed the natural performers of low-status and low-paid work' and therefore 'femininity itself *and* women's labour are devalued, resulting in the production of cheap labour that can be disposed of and replaced at any time' (Bachour, 2014:179). And as we saw in the work of Melissa Wright (2006), in the global factories of China and Mexico, there was a constant 'turnover' and seemingly endless flow of young women willing to enter the precarious workforce, as seems to be the case with these drug couriering schemes.

My interviewees also discussed how female drug couriers are 'disposable' within drug syndicates. Many shared the opinion that drug couriers are low-level players in the drug trade who, as an academic researcher (5) whom I interviewed stated, 'have no affiliation with the wider drug network' which makes them 'easily exploitable and very expendable'. He explained that 'it's like an army of ants that are moving and very few are being trampled on!'.

Much like the descriptions of the global factories in Melissa Wright's (2006) work, there is a sense that there is an infinite stream of young women from the global south who would be willing to take on this courier work ('the myth of the disposable third world woman'). I interviewed an international NGO worker who said:

> The cartels are sophisticated in how they recruit, so they'll find people, there's no shortage of people that come from poverty, that are suggestable, that are desperate, that will ultimately be recruited (International NGO Worker 2).

This sentiment was echoed by a journalist (1) who I interviewed: 'you are disposable and dispensable – where you come from there are thousands more just waiting for a quick buck'. Interestingly, gender was not explicitly mentioned when discussing the disposability of drug couriers. Indeed, a consular official (1) whom I interviewed stated: 'within these big syndicates, women are not seen through a gendered lens, but in fact are just seen as *assets*'. However, this view lacks nuance as disposability must be understood within the context of the feminisation of disposable work, both historically and presently, and it is also necessary to consider the structural inequalities that disproportionately expose women to disposable work as the only viable source of income (Bachour, 2014).

Most revealingly, a lawyer (8) who has represented women in these cases, in our interview talked about how she thought that female drug couriers in particular are 'easy pickings' for syndicates: 'particularly in the Southeast Asian region where there are a lot of domestic workers travelling back and forth' and so they are 'easy targets' as 'the fact that they are domestic workers in a foreign country means that they are desperate for money. And there's lots of them; they are disposable'. Here, the disposability of female migrant domestic workers morphs into their disposability as drug couriers (Chang, 2016). Moreover, she stated that:

> These people are disposable: when that person goes [to prison] another will fill their place, and judges don't really understand that, or they refuse to accept or see it (Lawyer 8).

In this way, she is speaking to the ineffectiveness of 'incapacitation' of drug couriers through incarceration and the death sentence, as those at the low-end of the drug market are readily 'replaceable' (Cece, 2012). Her comments also reveal how judges – despite having seen so many of these 'strikingly similar' cases – view women as perpetrators and are blind to the obvious criminal networks surrounding them.

<u>Disposable yet controllable: two sides of the same coin</u>

A seemingly paradoxical feature of disposable work is that, while on the one hand it is low-skill, low-paid and under-valued, on the other hand the worker is tightly controlled. As was outlined in the concepts chapter, Barbara Grossman-Thompson (2019) discusses this fact in relation to her work with Nepalese women who work as domestic helpers in Gulf Nations, where, in addition to globalisation marking 'women's bodies as disposable components of capitalist production', they are also subjected to a 'control' framework, whereby:

> [I]nternational capitalist enterprises, and individual capitalists work to maximally control the embodied labor of women workers in order to efficiently extract value and accumulate capital. In this framework, particularly gendered forms of control are used as various stakeholders are used as various stakeholders attempt to manage, discipline, and constrain women workers (338).

The examples from the literature show that female disposable workers are often subject to masculinist control. Mark Johnson and colleagues (2020) write about the use of surveillance cameras ('nanny cams') to monitor Filipina migrant domestic workers within Hong Kong employers' homes. The researchers found that this surveillance is gendered as the:

> [W]atching extends the male gaze (even if not exercised exclusively by men) and re-enacts the gendered division of doing care (gendered feminine) and the control of the care (gendered masculine) (277).

Likewise, Melissa Wright's (2006) work on women in Chinese global factories demonstrates how male managers used:

> [T]heir paternal duties justify draconian disciplinary measures for controlling their labor force as well as invasive procedures for monitoring female workers' mobility and sexuality (27).

As we shall see below, the female drug couriers in my sample appear to have been controlled by their *male* recruiters and handlers.

My review of the research data reveal that the female drug couriers were subjected to a range of different forms of control. At the most extreme end, women were subject to physical control and abuse. Earlier, I mentioned cases of Thai women being sent to Brazil through the course of their couriering job, and these women described being confined to hotel rooms and physically and sexually assaulted:

> While there, the appellant claimed two men who were friends of [her recruiter] confined her in a house, and after threatening that she would be killed if she did not cooperate, forced her to swallow the packages and inserted them into her vagina (Court report; Defence testimony; Case 93).

In the majority of cases, the control was more insidious, and appears more benign, with women following specific instructions from their (predominantly male) recruiters. In these cases, the women appear to have readily consented to these instructions (based on their court testimonies), and, to borrow the wording used by judges, these instructions did not 'arouse their suspicions'. Some examples of these scenarios from the review of court documents include:

> She did not know who she was supposed to meet in Malaysia, which hotel she was going to stay in, and he bought her flight ticket and suitcase. However, he instructed her to buy a sim card and to call him when she was in Kuching (Court report; Defence testimony; Case 142).
>
> Essentially, her task is only to bring a luggage of cloth sampling to each designated destination instructed by Christian. The luggage upon arrival at each designated country will be handed over to the informed client of Christian who would come to pick up the luggage at the hotel. The hotel she stayed at had earlier been booked by Christian but will only be known to her upon her arrival acknowledgment via mobile call to Christian at the designated city. Christian will then inform his client to pick the luggage at the chosen hotel for the accused to stay. The client will come to pick the luggage from the accused and leave the hotel. The accused alluded to the series of steps taken in each of the designated destinations she undertook (Court report; Defence testimony; Case 124).

As we see in the above quotation which references the use of mobile phones to communicate these instructions, and as we saw in the work of Mark Johnson and colleagues (2020) on Filipina domestic workers who were monitored via surveillance cameras, technology often facilitates the control of disposable workers. From my review of court cases, I found that in one case transcripts from a woman's social media history were included as evidence that she was an 'innocent carrier' working at the behest of another (and surprisingly – as judges usually dismiss this type of evidence – she was acquitted on these grounds):

> 12 Mar 21.50 Aisha[31]: What Im doing in India?
> 12 Mar 21.50 Joe79: to collect money for me
> 12 Mar 21.51 Aisha: Why I should going to Penang?
> 12 March 21.52 Aisha: what for
> 12 March 21.52 Joe79: hold on, am on call
> 12 March 21.53 Aisha: Ok, Im waiting
>
> 12 March 22.37: Joe79: Because of the sample you will come back with, I will show it to the wholesalers that I am going to buy it from, and they are in Penang and I will be in Penang
> 12 Mar 22.38 Aisha: So you will pick me up
> 12 Mar 22.38 Aisha: Ok babe
> 12 Mar 22.38 Joe79: yes babe, in penang.
>
> 15 Mar 16.53 Aisha: What time he will come babe?
> 15 Mar 16.54 Aisha: He come to my room or im going to the lobby
> 15 Mar 16.54 Joe79: he will come to your room dont worry.
>
> 15 Mar 19.31 Aisha: He is already at my room
>
> 15 Mar 19.34 Joe79: take the bag and the money ok
> 15 Mar 19.42 Aisha: So he will come again?
> 15 Mar 19.42 Joe79: not him
> 15 Mar 19.42 Aisha: Btw he already give me 300$

[31] To preserve the woman's anonymity, the names have been changed.

15 Mar 19.42 Joe79: His Boss will bring $35,000 us dollars

15 Mar 19.47 Joe79: the clothes and the bag is sample

15 Mar 19.48 Aisha: Very heavy babe
15 Mar 19.48 Joe79: they want to give me contract to supply it by next 2 weeks

15 Mar 19.59 Joe79: you will check koper [bag] in the flight, then ransel [bag] will be hand carry

15 Mar 20.01 Aisha: But the ransel [bag] was so heavy babe
15 Mar 20.01 Joe79: make it hand carry.
(Court report; Defence testimony; Case 97).

The above evidence suggests that they were in a romantic relationship, with her referring to him affectionately as 'babe'. She is kept in the dark about most of the details of the arrangement until the very last minute, for example, she is given non-specific details about when the 'associate' is going to come; where they will meet; how many times he will come; and how much money he is going to bring her. She clearly trusts him and the only time she questions the situation is when she says that the bag is 'so heavy', yet he dismisses this concern. It is unclear whether this is the case in the above scenario, but research has shown that online romance scams that lead to drug couriering often include 'grooming':

> Sometimes these relationships vacillate between appearing loving and close, whereas at other times (especially when the criminal is attempting to coerce the victim into giving money) can be quite cruel and abusive (e.g. personal attacks on the victim's physical appearance and/or personality). As with other types of groomed relationships (e.g. paedophiles), the criminal socially isolates the victim (Whitty, 2021:4).

And indeed, others have drawn parallels between online romance scams and domestic abuse (Cross, Dragiewicz & Richards, 2018).

My research adds a new dimension to the disposability 'control framework': that of deception. A large number of women sentenced to death for drug trafficking in Malaysia claimed – to their lawyers and in their court defences – that they did not know they were couriering drugs and that they had been deceived by their recruiters. Many stated that they thought they were transporting clothing items or samples (and the drugs were found concealed in the lining of their bags). And in cases where women had swallowed drugs or carried them in/on their bodies, they similarly claimed to have been misled:

> In her defence, the appellant claimed she had all the while thought the packages contained diamonds not cocaine (Court report; Defence testimony; Case 93).
>
> She claimed that she did not know the contents of the capsules as they were nicely wrapped. Paul told the appellant that the capsules contained traditional medicine (Court report; Defence testimony; Case 75).

In one notable case in Malaysia, where a woman was deceived into drug couriering as a consequence of an online romance scam, the media reported how, for a long time, the woman disbelieved the claims that she had been set up. In her case, it was only once she was in prison, that her lawyer 'finally convinced [her] she had been scammed by producing printouts of social media profiles using the same photograph of her [online boyfriend] under hundreds of different names' to which the woman told the press: '[w]hen I saw those, I felt so betrayed'. Other research on female drug couriers in Ecuador found that there is usually some degree of 'deception' or misinformation in these operations, as drug couriers are given the drugs pre-packaged which 'meant that mules had very little information about what or how much they were carrying' (Fleetwood, 2014:138). My data show that the deception is multi-faceted and varied by case, including: deception as to the nature of the relationship, deception about the nature of the courier business and deception about the type of commodity being couriered.

Embodied disposability: the less suspicious body of a female drug courier

As highlighted in the conceptual chapter, disposability is an embodied condition, and this is certainly the case for female drug couriers in Southeast Asia, many of whom are tasked with carrying drugs on or within their bodies. My use of the term 'embodiment' draws on theorising from the anthropological discipline, where prior to the 1990s, the 'body' was viewed 'as the passive bearer of various political and social meanings, including gender or ethnicity, for example' (McDonald, 2018:191). However, more recently, scholars have:

> [B]rought a new attention to the performing and understanding body, the active body, the lived body… a world of bodies that are constituted and reconstituted through an inherence in their environing world (McDonald, 2018:192).

In what follows, we will see that drug courier work is an embodied practice that involves performing femininity (Butler, 1999).

A stark example of embodied disposability from the literature is the femicide occurring in Ciudad Juárez, Mexico. Here, many of the female victims worked in the maquiladora factory industry, and thus some scholars argue that the violence against women in this context is underpinned by a violent patriarchal logic involving 'the crafting of the Mexican woman as a figure whose value can be extracted from her, whether it be in the form of her virtue, her organs, or her efficiency on the production floor' (Wright, 2006:87; Livingston, 2004).

Likewise, when discussing her work on 'disposable third world women' working in global factories in China and Mexico, Melissa Wright (2006) talks of how:

> [The] managers face the challenge of devising a strategy for keeping women electronic assembly workers just long enough to extract the value from their dexterity, attentiveness, and docility before the process of injury, illness, and anger overcome them (25-26).

In relation to female drug couriers' disposability, female drug couriers are being targeted by drug syndicates as: 'they generally generate mild suspicion from authorities and the female body has more cavities possible to insert the drugs in, therefore posing less detection risk' (Philippines Drug Enforcement Agency, no date).

The most obvious example of the embodied nature of disposability arises with cases of female 'body-packers' – 'body packing' is a term used to describe 'the practice of smuggling drugs in the body in the carrier's vagina, rectum, or stomach' (Fleetwood, 2014:141). There was ample evidence from my review of the legal files of women who were arrested after swallowing drugs or inserting them into their vaginas. The amounts of capsules swallowed ranged: the largest amount was 98 capsules, followed by 86 capsules, 80 capsules, 75 capsules, 73 capsules, 70 capsules, and the smallest number was 40 capsules.

In their legal defences, women described being forced to swallow capsules under duress:

> In a nut-shell the defence of the accused was that she had no knowledge that the 73 capsules she had swallowed were drugs. And, that she was forced to swallow the said capsules when she was in Buenos Aires under threat of not being allowed to return to Thailand otherwise (Court report; Defence testimony; Case 95).

The fact that women 'body-packers' are disposable is demonstrated by how dangerous this practice is, as is explained by the following quotation from the United Nations Office on Drugs and Crime (UNODC):

> The balloons are made with multi-layered condoms and are often force fed to the victim. The traffickers use a special machine to open the condom and put drugs into it. On many occasions, the drug mules are first given a soup laced with drugs to numb their throats. The soup is very oily and makes the balloons slide down their throat. The victim's mouth can also be sprayed with anaesthesia, enabling them to swallow up to 120 balloons. A drug mule may be forced to swallow up to one kg of illicit drugs and this painful procedure can lead to serious injuries in the throat. During the journey, they are given medication to inhibit bowel movement. Once they have reached their destination, they are fed laxatives and the balloons pass through their bodies. This medically dangerous way of transporting drugs can lead and has led to the death of persons, if and when balloons rupture within the body. Stomach acids can sometimes cause the rupture of the balloons and death is very quick (United Nations Office on Drugs and Crime, no date).

The conceptual chapter outlined that factory workers in Mexico were often constituting gender through disposable work, so '[d]ocile and dexterous women are produced in production relations, they do not autonomously enable them' (Salzinger, 2003:15). In the same way that gender is constituted through disposable work, we also see gender being performed as part of drug courier work in Southeast Asia (Butler, 1999). From my review of the legal files we find that when women were arrested, often the drugs were concealed in traditionally 'feminine' items within their luggage, by way of examples: within handbags; women's dresses soaked in liquid cocaine; drugs concealed in the heels of women's shoes; drugs concealed within cosmetic products; and drugs concealed within the lace of sarees.

Other research on women and drug trafficking has found that women may conceal drugs on their bodies to accentuate their 'feminine features' and to avoid detection. So, for example, Jennifer Fleetwood (2014) writes of female drug mules in Ecuador, and of the five respondents who carried drugs strapped to their bodies or hidden in clothing she found:

> Women mules often carried drugs packed into underwear: usually in a bra or packed around their buttocks and hips… This reflected the heterosexual male "gaze" which designates those supposedly most natural aspects of the female body – curves of breasts and hips – as the normal object of men's view (139).

Similarly, Howard Campbell (2008) discusses female drug smugglers carrying drugs from Mexico to the United States (US):

> [M]any female smugglers have refined the ability to "perform" expected gender behaviors in order to trick border inspectors. For example, both men and women drive loaded cars. Yet, as a female customs inspector put it, women have unique spaces in or on their bodies where they can conceal drugs: vaginally, between

> breasts, in brasseries, in other distinctively female clothing items, in faked pregnancies or surgically implanted in the buttocks. They may hide drugs in purses (one informant said "you hide a pound in a purse") or in diaper bags or wrapped gifts. Women smugglers may also deliberately dress in provocative attire and flirt with male agents and inspectors in order to pass undetected (254).

I found similar patterns in the review of the legal documents detailing the circumstances of the women's arrests in Malaysia. Some examples from the arrest reports include:

> During examination, the appellant, who was wearing a blouse and a fairly long skirt, was asked to remove her skirt. Underneath her skirt, was a panty girdle, which was bulging on both the left and right sides and was found to conceal two plastic pockets containing white powder which were later confirmed to be 665.1g of dangerous drugs comprising 616.5g heroin and 48.6g monoacetylmorphines (Court report; Investigating Officer testimony; Case 49).
>
> As SP4 felt a bulge at the appellant's waist, she told the appellant to follow her to a room for a full body search. The appellant reluctantly followed and when they arrived at the room the appellant allegedly knelt and plead with SP4 not to search her. SP4 found the appellant was wearing a girdle containing five plastic packets of the methamphetamine (Court report; Investigating Officer testimony; Case 146).
>
> The drugs were found within her slippers and under her dress… [she] wore two pairs of tight aerobic shorts, one worn on top of the other… Upon examination PW7 discovered three more packages, oval in shape, tucked inside the shorts (Court report; Investigating Officer testimony; Case 10).
>
> The drugs which were strapped to both thighs, the abdominal region and the upper right side of the body below the armpit of the accused using masking tape (Court report; Investigating Officer testimony; Case 40).

As the above quotations show, women were concealing the drugs in 'feminine places' such as in a girdle, in their underwear, and around their buttocks (as was the case with the aerobic shorts). Interestingly, several of the women, in their testimonies, claimed that they had concealed the drugs on their bodies in this way, at the behest of a male recruiter:

> On the advice of Abdul, she concealed the traditional medicine inside her underwear (Court report; Defence testimony; Case 72).
>
> She admitted that she had tied the plastic packet to her thigh but her defence is that she had no knowledge of the contents of the plastic package and that she was an innocent carrier. She said that she was instructed by someone known as Amin to tie the drugs on her thigh (Court report; Defence testimony; Case 59).

One of the lawyers (6) whom I interviewed mentioned that he had represented a pregnant woman who was accused of smuggling drugs, and that she had concealed the drugs around her (already enlarged) stomach. There was evidence from my review of media and legal articles to substantiate this claim. Indonesian scholars, Azhara Khayati and Mamik Sri Supatmi (2014) have written about the use of pregnant women as drug couriers in the region and claim that this exploitation of the pregnant female body by transnational criminal syndicates is tantamount to gender-based violence.

In another case, reported by the media, a woman was intercepted at the airport, and it was remarked that she was dressed in business attire (and did not fit the young, impoverished female drug courier description, as discussed in the previous chapter) in order to evade suspicion:

> The 40-something woman, dressed in a business suit to look professional, was arrested while she was about to catch a flight [out of Malaysia]… after a thorough investigation, police found the

> drugs wrapped in plastic strapped to her body and also in her undergarments (Media article).

All of the above findings from Malaysia accord with the work of Ellie Schemenauer (2012) who analysed the policing of female drug couriers at the US border and argued that they are represented by border officials according to the discourse of 'victims' and 'vamps'. With regards to the latter:

> Vamps are generally constructed as those drug couriers who are said to knowingly use notions of femininity and womanhood to try and thwart the suspicions of authorities… They are seen as performing – strategically using gender (Schemenauer, 2012:91).

Border agents discussed different 'categories' of vamps. First, there are those who 'fak[e] motherhood' and hide drugs in fake pregnancy bumps and in children's toys (Schemenauer, 2012:91-92). Second, there are those who 'accentuat[e]' their female bodies and conceal in their bras, on their thighs, hips and buttocks (Schemenauer, 2012:92). Third, 'the professional woman' who disguises as a business traveller (Schemenauer, 2012:92-93). Finally, the 'sexy other' who flirts with border agents in order to deflect attention (Schemenauer, 2012:93).

<u>Sacrificing scapegoats: the retrenchment of female drug couriers</u>

One of the main aspects of female drug couriers' disposability is the fact that they can be 'retrenched' by drug syndicates at whim. By retrenchment, I am referring to the fact that drug couriers have no 'job security', and are constantly being replaced by new couriers. Their retrenchment will be explored in detail, as the way it plays out in practice is through syndicates ‘tipping-off’ authorities about a drug courier’s movements so that they are arrested, and this ultimately leads to their death sentence in Malaysia.

It is worth revisiting how retrenchment is a key feature of gendered disposable labour. The retrenchment of female disposable workers is a key strategy used in global factories, and this is especially gendered as it is often justified with reference to women’s ‘reproductive age’, and thus they were being let go in order that they may fulfil their domestic duties:

> The fact that only young women work in world market factories is also rationalized as an effect of their capacity to bear children – this naturally means they will be either unwilling or unable to continue in employment much beyond their early twenties. Indeed the phenomenon of women leaving employment in the factory when they get married or pregnant is known as “natural wastage”, and can be highly advantageous to firms which periodically need to vary the size of their labour force so as to adjust to fluctuating demand for their output in the world market (Elson & Pearson, 1981:93).

Melissa Wright’s (2006) exploration of global factories in China and Mexico, finds that one of the main responsibilities of the managers is controlling the ‘turnover rate’ of inefficient female assembly-line workers (16-17). Moreover, the retrenchment of migrant domestic workers is key to their disposability: commentators have noted that often host governments employ a ‘use and discard’ policy when it comes to migrant workers (Yeoh, Huang & Gonzales, 1999). And indeed, research on Indonesian female migrant workers providing elderly care in Japan found that central to the workers’ disposability is: ‘the construction of migrant care workers as people who can easily return (or be sent back) to their country of origin' (Saraswati, 2017). Thus, in this way, their disposability is interlinked with their precarious migration status.

Investigative journalists claim that drug syndicates in Southeast Asia regularly 'tip-off' airport authorities about drug couriers – 'decoys' – 'who are used to divert attention from the professional mules slipping through with larger quantities of drugs' (Friedman, 2014:xi). This argument has also been made in academic work on women and drug trafficking. Julia Sudbury (2005b), when writing about Jamaican women who have been arrested for smuggling drugs to the UK, claims that:

> With such intensive policing, drug networks are likely to send more women with smaller amounts of drugs or as decoys, thus increasing the number of women exposed to the risk of arrest (175).

Here, I am suggesting that the act of a drug syndicate 'tipping off' and 'sacrificing' a drug courier is akin to 'retrenching' a disposable worker.

Lawyers were interviewed about whether this practice occurs in the Malaysian context. Many agreed that most of the arrests of drug couriers resulted from a 'tip off', which they believe was aimed at distracting the authorities whilst other couriers, carrying larger amounts of drugs, pass through the airport uninterrupted:

> What actually happens is that the syndicate or someone will inform the police or customs, so they will give the information… I think between the syndicates and authorities there is some sort of corruption involved, and maybe if there are 10 consignments coming in, they will give up one or two, the rest will pass, because it's quite strange that for all these cases they always receive the

exact information of the person travelling… It's in the report… or it's the witness who says that "before the operation, we were briefed" and it's very specific to the person – so it's not like "a young Chinese traveller" it will be like "a young Chinese traveller in her early 20s wearing white coloured trousers, carrying a white coloured bag." So it's very, very specific. So for all my cases it is not like random checks at the scanning machine, it's always the authorities will have information. So the moment this girl walks through customs she will already be targeted, and I think the reason she will always be arrested at the scanning machine is that they want to affix liability (Lawyer 8).

In the police reports that are tended in court, it will always say "acting on information", so it's not just pure scanning – pure scanning picks up very few cases… You cannot cross-examine on that information because the law does not allow that… but when you get "information" they are referring to a "tip-off"… they mobilise the team who are waiting for hours for them to come through (Lawyer 14).

So they would be sending several couriers at the same time, and just to distract. So you get the excitement and the noise of having caught one, and as a result everyone else comes through, because you know people say "we've got a victory, we've met our quota for the month!" (Lawyer 4).

In some cases people are arrested purely on observation, either they are walking funny – these people who have drugs tied up to their legs or thighs or whatever. So they actually get picked up, because the customs officer obviously can see something is not quite right. But in every other case it is a tip-off. And how the syndicates work is this: for example, if they are bringing drugs in the base of their shoes, they will send ten mules in one go, and then what they will do is this: they will ring up the customs here, and tip them off about one of the mules. So the one mule gets arrested and the nine walk through normally (Lawyer 5).

From the syndicate side of things, once they don't need you anymore they tip you off, and there is always somebody else to do it… syndicates want them to get convicted because they don't need them anymore; they are disposing of them… This is the case when the mule has done the route several times, they know the route and the people they are dealing with, so they are getting rid of the information (Lawyer 9).

Other lawyers believed this to be the case due to the fact that several had represented clients who had explained the following to them:

> According to her story there were actually three women at the same time passing immigration, she was the first one in the line and then she walked past and they caught her, and the other two behind her managed to escape (Lawyer 12).
>
> Many a client say, "why me? Ten us came, why me?" So you know this happens all the time…So the syndicate gets someone to pretend to be a police informer, because everything they give information someone gets caught, and so they feel they are doing a good thing, because "hey we got an arrest!". So this guy just sits there and just keeps tipping them off, and the police just focuses on what he says, and meanwhile the rest are coming through! (Lawyer 6).

Most surprisingly, a prosecutor interviewed also acknowledged that this is the case:

> The tip-off [from syndicates] is for drugs with lower amounts, in order to divert attention from a bigger supply. That means we let the bigger supply through, but you catch these people with the lower supply of drugs… So the drug syndicate will inform the police informers that there's a flight with this serial number, flight number, coming into Malaysia, just be aware that she's carrying drugs (Prosecutor 1).

These claims were corroborated by evidence from the review of legal files. Time and time again, in the description of the arrest it was stated that officers were 'acting on information' and often this information was very specific including: 'received information from an informer that a female person wearing a chocolate-colour dress' (Case 17), and in another case the narcotics unit 'was fed information by someone that a woman would be carrying a raffia bag containing cannabis and that this woman would emerge between 4.00pm and 4.30pm' (Case 6).

<u>'It is just a case of KPIs': disposable drug couriers in the Asian 'War on Drugs'</u>

Several of the lawyers interviewed highlighted that not only are drug couriers viewed as disposable by drug syndicates, but they are also seen as disposable by law enforcement, who do not bother to conduct follow-up investigations into the wider drug operations that the couriers may be a part of:

> There are cases where the client told us that the person [recruiter] will be waiting at the airport, at the arrival gate. So then my question to the authorities is that if you really want to nip the problem in the bud, then you must actually follow up, rather than just arresting the mule and the matter ends there, because they will get more mules coming in (Lawyer 8).
>
> It is just a case of KPI [Key Performance Indicators] really… So maybe one month you have to make ten arrests, another month five arrests… Because you know sometimes when we cross-examine the police officers and we say, "why don't you follow up? You have access to all this information, why don't you investigate further to try to get to the real trafficker?" and they will always say, "oh, what we have is sufficient to convict this person" (Lawyer 9).

In a recent podcast episode, Malaysian defence lawyer Samantha Chong describes a similar situation with one of her clients, a foreign national woman who was arrested at the Malaysian airport carrying tea bags for a friend, which, unknown to her, contained drugs:

> And she has all the details of this friend, so when she was stopped by Malaysian customs and they found a concealed item in the tea bag she was supposed to pass to her friend… she could have given [them] all the details: the name of the friend, the national ID

> of the friend, and the exact location [they were due to meet], she even had [her] contact on [her] phone. So if the authorities [are] interested in dismantling international drug syndicates, you would think they would arrest this culprit who is behind this trafficking? But they didn't. So in the cross-examinations we asked these questions: "she has given you all the details to track down the trafficker, why didn't you do so?" And the custom officer came to court to say that "well I didn't look into it because I already had enough evidence to convict her for drug trafficking so there is no need to track the real trafficker" (Women Beyond Walls, 2022).

Throughout the court judgments and their descriptions of women's arrests, there were examples of women receiving calls on their mobile phones from their alleged recruiters or handlers who were due to meet them at the airport to receive the 'shipment'. However, the investigating officers disregarded these calls and seemingly made no effort to work out who they were due to meet once they had arrived in Malaysia:

> She gave her full cooperation when the customs officers scanned her bag. Her phone was ringing while the customs officers checked her bag. [Her recruiter] told her that someone would call her and pick her up at KLIA. But she was unable to answer the call as her handphone had been impounded by customs officers. The appellant argued with the customs officers that the caller is the owner of bag P7 and that she had no knowledge that the bag contained drugs (Court report; Defence testimony; Case 131).
>
> During a police check of the bag, the telephone [P9 (10)] that was brought by the accused sounded. The accused wanted to answer the call but was not allowed by the police. Then another call [P9 (10)] sounded but the accused was not allowed to answer the call. The accused knows the call was from [him] (Court report; Defence testimony; Case 133).

In this way, we see how the ‘drug courier’ has become ‘an expressive target in the State’s offensive against illegal drugs… the courier provides a cheap, expendable, diversionary scapegoat’ (Green, 1996:18).

Conclusion

In this chapter, I have explored my interview data and the women’s legal defences through the frame of disposability. The conceptual chapter showed that ‘disposability’ is a gendered phenomenon, as is demonstrated by the literature on the ‘myth of the disposable third world woman’ (Wright, 2006). Female drug couriers’ disposability manifests in several ways. First, many of the women’s testimonies of how they were recruited into drug trafficking were near identical, suggesting they were interchangeable and replaceable players in large scale drug trafficking schemes, as illustrated by the rise in drug couriering as a result of online romance scams (Whitty, 2021). The literature shows that in addition to being expendable, disposable workers are often tightly controlled by their employers, and the same is true of the drug couriers (Grossman-Thompson, 2019). This control ranges in severity, from accounts of physical and sexual abuse to claims of being deceived about what they were couriering. In many of the women’s accounts there was a male ‘recruiter’ or ‘handler’ involved.

Disposability is embodied, as highlighted by discourse on female factory workers’ ‘nimble fingers’ (Elson & Pearson, 1981:93). Many of the women were caught with drugs on their body, or had swallowed capsules of drugs (up to 98 capsules) and performing their gender was essential to their disguise, with drugs hidden in false pregnancy bumps, and in 'accentuated' thighs and buttocks (Schemenauer, 2012). Journalists, academic literature and my interview data suggest that it is common for drug syndicates in Southeast Asia to 'tip-off' authorities about the movements of a drug courier, in order to distract enforcement agencies while a larger shipment of drugs passes through the airport undetected. This mirrors the regular 'retrenchment' of female disposable workers in global factories, who are 'disposed of' once they have reached their peak productivity (Wright, 2006).

Finally, data from the elite interviews with lawyers and also court testimonies from investigating officers suggest that law enforcement view these female drug couriers as 'disposable scapegoats' in their 'War on Drugs', as often no effort is made to investigate the wider drug trafficking syndicate within which they are employed, and the drug couriers are just a useful tool for bolstering their arrest and conviction statistics, 'KPIs' (Key Performance Indicators). Therefore, while the structure of the Southeast Asian drug trade renders the women 'disposable workers' who may be 'tipped off' to law enforcement officers at whim, their disposability is exacerbated by investigating officers' attitudes towards them as expendable 'arrest quota'.

Overall, the disposability of female drug couriers speaks to the futility of the death penalty as a means of 'incapacitating' drug offenders and thus stemming the flow of drugs because, as this chapter has shown, drug couriers are highly replaceable and thus this has little effect on the wider market.

7. Criminalised or victimised? The links between drug couriering and human trafficking in Malaysia

Introduction[32]

Building upon the findings from the previous chapters regarding the precariousness and disposability of drug couriers – and thus their exploitability – this chapter will explore the nexus between drug couriering and human trafficking in the Southeast Asian context. Around the time that my research commenced, the issue of women, drug trafficking and the death penalty featured in international news, through reporting on the case of Mary Jane Veloso, a Filipina former domestic worker currently on death row in Indonesia, who, it is claimed, is a victim of human trafficking and unwittingly couriered drugs. As I will detail below, this case prompted international civil society and legal activism to focus on explicating the link between human trafficking and drug trafficking in Southeast Asia, as crucially, under international law (and indeed, Malaysian domestic law), victims of human trafficking cannot be held criminally liable and thus should not be subject to the death penalty.

There is a gap in the literature, as current analyses of women and drug couriering do not explore the possible links to human trafficking. Therefore, in this chapter, I explore the relationship between drug trafficking and human trafficking in Malaysia. In so doing, I examine the factual scenarios of the women's cases, including their recruitment and claims of deception, coercion

[32] Some of the findings from this chapter are presented in Harry (2022).

and duress, and compare these to the established international definition of human trafficking: the Palermo Protocols (United Nations Office on Drugs and Crime, 2000). I also consider the potential adverse impacts of anti-human trafficking measures on women's rights to mobility in the region.

The test case: Mary Jane Veloso

The relationship between cross-border human and drug trafficking is most clearly exemplified by the case of Mary Jane Veloso, a Filipina woman on death row for drug trafficking in neighbouring Indonesia. Veloso, a single mother of two, was once a migrant domestic worker in Dubai but had fled after an attempted rape. Back in the Philippines, Veloso was recruited for a job as a domestic worker in Malaysia. On the day that she left the Philippines, Veloso was given a bag of clothes to carry with her by the people who had recruited her for the job. Whilst transiting in Yogyakarta, Indonesia, she was stopped at customs and 2.6kg of heroin was found in her luggage. Despite professing her innocence, Veloso was sentenced to death in 2010 and narrowly avoided execution in 2015 (Holmes, 2016). Since then, cases have been brought in the Philippines against the people who recruited her for overseas work and, indeed, in early 2020, these individuals were found guilty of illegally recruiting three further women for work abroad, and sentenced to life imprisonment (Buan, 2020). It is argued by key actors involved in this case, such as Veloso's lawyers, international legal experts, migrant workers' groups in the region (such as *Migrante International*), and the Indonesian National Commission on Violence Against Women (*Komnas Perempuan*), that Veloso is a victim of human trafficking as she was sent across a border to carry out an illegal activity against her will, and this involved an abuse of her vulnerability (her economic desperation) (Damazos-Santos, 2015; Gerry et al., 2018; Komnas Perempuan, 2018). Additionally, these actors argue that many other women on death row for drug trafficking in the region may also be victims of human trafficking, as the circumstances of Veloso's case are unfortunately all too common, and so they should seek reprieve on these grounds. Therefore, this chapter will explore these claims within the Malaysian context.

Perpetrator or victim: legal and criminological definitions

To begin with, it is necessary to define drug trafficking and human trafficking, and the domestic and the laws that govern these two crimes. In Malaysia, the offence of drug trafficking does not always necessitate movement across an international border. Furthermore, whilst human trafficking offences often involve cross-border transportation of the victim, the Malaysian Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 stipulates that the 'movement or conveyance of [the] trafficked person is irrelevant' to the prosecution, but instead what is central to this offence is the 'exploitation' of the victim. This chapter, however, focuses on cases, similar to Veloso's, that *did* involve drug trafficking across international borders, as – not only are these the most common scenarios – but it is these women's cases that legal experts and civil society groups have argued involve human trafficking, due to the methods of recruitment and transportation involved[33]. The United Nations' (UN's) Palermo Protocols defines 'human trafficking' as follows:

> [T]he 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 (United Nations High Commissioner for Refugees, 2000).[34]

It is therefore argued by lawyers and academics involved in the Veloso case that: '[a] drug mule who is tricked or coerced into trafficking drugs fits the definition of human trafficking victim perfectly' due to the 'recruitment' involving 'threat', 'use of force', 'coercion' or 'deception' with the person being 'exploited' for criminal activities (Gerry et al., 2018: 180).

As mentioned earlier, under Malaysian law, a distinction is made between drug 'possession' and 'trafficking' with the latter subject to a mandatory death sentence. Under the Dangerous Drugs Act 1952, whether the accused is deemed a trafficker is largely determined by the weight of drugs in the accused's possession. A limited reform was made to the legislation in 2017, which has given judges the discretion not to impose a death sentence on 'couriers' – whose role in the operation 'is restricted to transporting, carrying, sending or delivering a dangerous drug' – when certification is provided by the

[33] As opposed to the minority of cases in Malaysia where women were arrested, not having travelled internationally, but with drugs in their possession, which may have been for personal use, but the amount surpassed the threshold of what is considered 'trafficking' under the law.

[34] This, again, does not necessitate movement across a border.

Public Prosecutor attesting that the accused person had assisted in disrupting wider drug trafficking activity (Hood, 2013:3). This requirement is nevertheless almost impossible to satisfy because drug couriers, by definition, have little knowledge of the wider drug trafficking operations.

An accused person may also put forward an 'innocent carrier' defence. Here, it is proffered that the accused person accepts that they were carrying, for example, a suitcase. However, they deny knowledge of the drugs within it. But, this defence, which is frequently invoked by female accused persons, is rarely accepted by the court (Antolak-Saper et al., 2020: 32). Thus, in practice, the death penalty for drug trafficking still operates on a largely mandatory basis, and there is little opportunity to explore mitigating factors such as duress, deception and exploitation of vulnerability. Crucially, the defence of duress is not available to accused persons facing capital charges in Malaysia (English, 1983).

Importantly, the advantage of arguing that women sentenced to death for cross-border drug trafficking are victims of human trafficking is that under the Association of Southeast Asian Nations (ASEAN) Convention Against Trafficking in Persons, Especially Women and Children (2015) victims cannot be held criminally liable, and the same is true of Malaysia's domestic anti-human trafficking law (Gerry et al., 2018: 174-175).

Whilst the legal definition of human trafficking is rigid, we can explore this concept more freely from a criminological perspective. One of the leading scholars of human trafficking, Maggy Lee (2011), writes that 'human trafficking is an imprecise and highly contested term', and definitions of human trafficking tend to be devised by state actors and supranational organisations, with little input from the victims themselves (16). In academia, over 22 definitions of human trafficking exist (Salt & Hogarth, 2000). Albeit, the Palermo Protocols (2000) (above) is the generally accepted definition of human trafficking used in both legal and sociological academic research (Hoyle, Bosworth & Dempsey, 2011:316). Nevertheless, Lee (2011) finds that in contemporary society, human trafficking is predominantly framed as a 'transnational organised crime' and 'immigration control problem', resulting in the following:

> [A]n unprecedented growth in transnational law enforcement, a meshing of state criminal justice and immigration control functions, and troubling consequences for trafficked persons and other migrants caught up in the "war on trafficking". Relatively few policies and actions directly address men and women's desires to be mobile and the conditions of their mobility, the rights of those at risk of trafficking, or the broader challenge of poverty, discrimination and exploitation that vulnerable migrant groups are faced with in countries of origin and destination (36).

While it might seem obviously advantageous to argue that women on death row are victims of human trafficking in order for them to seek reprieve, the above quotation sheds light on the fact that the situation is more complex and the rights and needs of victims are not always prioritised by transnational law enforcement.

Gender, drugs and human trafficking in Southeast Asia: what do we know?

The relationship between drug trafficking and human trafficking is under-theorised, particularly from a gendered perspective. As we saw in theoretical chapter, the majority of existing literature on women's involvement in cross-border drug trafficking focuses on women from Latin America, the Caribbean and West Africa, usually smuggled to the United States (US) or United Kingdom (UK) (Bailey, 2013; Del Olmo, 1986; Fleetwood, 2014; Green, 1996; Huling, 1995; Office of the Sentencing Council, 2011; Sudbury, 2005b) with the notable exception of studies of Thai women incarcerated for drug trafficking in Cambodia (Jeffries & Chuenurah, 2019; Jeffries et al., 2021). Crucially, these studies routinely find examples of women who had been forced, coerced or threatened to carry drugs, recently by a male intimate partner. Indeed, a study conducted with female drug couriers imprisoned in the UK found that nine of the twelve women interviewed claimed not to know that they were carrying drugs (Office of the Sentencing Council, 2011:4).

Regarding the existing literature on the possible overlap between cross-border drug trafficking and human trafficking, several studies have compared the two, but with a focus on the organisational structures of syndicates, rather than examining the micro-level recruitment and operations, and particularly the gendered aspects (Cornell, 2009; Shelley, 2012).

Moreover, existing academic studies of human trafficking in the Malaysian context do not currently encompass consideration of cross-border drug trafficking. Thus far, studies focus on the policy challenges and governmental responses (Kaur, 2008). Others consider the plight of migrant workers, particularly from Indonesia and the Philippines (Saat, 2009; Sulaksono, 2018). Elsewhere, the focal point is the trafficking and smuggling of Rohingya refugees (Routray, 2019). And, when it comes to the trafficking of women in Malaysia, sex trafficking has been the primary consideration (Hamid, 2019). Clearly, there is a gap in the literature, and it is necessary to explore the relationship between drug trafficking and human trafficking in Southeast Asia, especially from a gendered perspective, in order to provide an evidence-base for civil society efforts, as well as enrich academic understandings of the different forms of trafficking.

<u>The case for reprieve: legal and activist scholarship</u>

The possible connection between cross-border international drug and human trafficking has been highlighted by legal scholars and activists in the Southeast Asian region. One of the first to link these two phenomena was the anthropologist Sulistyowati Irianto and her colleagues (2005) who conducted interviews with six women under sentence of death for drug trafficking in Tangerang Prison, Indonesia. They argue that many of these women were victims of human trafficking 'at the hands' of usually male intimate partners from the African continent (Irianto et al., 2005). These women were deemed susceptible to recruitment into the drug trade because of poverty and familial economic need, and because they lacked the courage or power to scrutinise the veracity of the accounts of those asking them to courier items, and they were too trusting of those who enlisted them especially when these recruiters were their intimate partners (Irianto et al., 2005).

Civil society groups in Indonesia have also picked up on the relationship between the two, arguing that human trafficking for the purposes of transporting illicit drugs across international borders disproportionately affects female migrant workers. By way of example, *Komnas Perempuan* (2018) - the

Indonesian National Commission on Violence Against Women - reported that, at the time of their writing, there were 45 Indonesian women migrant workers facing the death penalty in Malaysia and a further 32 on death row in other jurisdictions in Asia and the Middle East (2). All of these women had been sentenced to death for cross-border drug trafficking. The Commission stated that female migrant workers, such as domestic workers, are 'easy recruits' for drug trafficking syndicates, as they already possess a passport and are accustomed to international travel and, given their lowly pay, are enticed by the promise of extra money (Komnas Perempuan, 2018: 49-53).

The civil society activism in the Veloso case brought the relationship between cross-border drug and human trafficking to the attention of legal academics. In particular, Felicity Gerry QC, has become a vocal advocate for this cause. It is argued by Gerry et al. (2018) that Indonesian law needs to recognise the difference between a drug trafficker and 'those whom they coerce, deceive, or force to commit crime' (167). The latter need to be protected by international obligations towards human trafficking victims, including non-prosecution. The cases of Mary Jane Veloso and Lindsay Sandiford who were convicted for drug trafficking in Indonesia, and sentenced to death, are cited as examples of human trafficking victims who acted under the control of others, lacked knowledge of the drugs they were couriering and there was an abuse of their positions of vulnerability (including economic desperation and threats against family members) (Gerry et al., 2018:168-171).

Moreover, journalists working in the region have reported on this connection between drug couriering and human trafficking. In her book, *Dead*

Cows for Piranhas, investigative journalist, Hazel Friedman (2014), argues that South African drug mules arrested in Southeast Asia are victims of human trafficking due to the ways in which they are coerced, transported and exploited for the purpose of drug smuggling. However, when she brought her argument to the attention of the South African government and law enforcement she was 'met with indifference, even hostility' as it was a case of 'out of sight, out of mind' (Friedman, 2014:ix).

Relatedly, in death penalty scholarship and activism more generally, there is an acknowledgement that foreign nationals and especially migrant workers are at a greater risk of capital punishment in foreign jurisdictions. These disadvantages can be placed into three categories (Hoyle, 2019). First, foreign nationals face practical barriers to adequate representation, including ignorance of their legal rights in an alien criminal justice system and language barriers (Hoyle, 2019:184-185).

Second, these defendants are at disadvantage due to the types of crimes that warrant the death penalty in foreign jurisdictions – namely drug offences and terrorism – which evidence has shown are more likely to be committed by foreign nationals due to their transnational nature (Hoyle, 2019:185-188).

Third, with regard to religious laws governing the death penalty, research has shown that ethnic minorities are more susceptible to harsher interpretations of Sharia law in capital cases, and it is more challenging for foreign nationals (whose families are abroad, and may be from lower socioeconomic backgrounds, as would certainly be the case for migrant workers) to benefit from dispensations such as ‘blood money’ (*diyya*) whereby a defendant provides a victim’s family with financial compensation in exchange for mercy (Hoyle, 2019:188-190)[35].

Moreover, in general, there is evidence to suggest that foreign nationals’ rights under the Vienna Convention on Consular Relations (1963) – chiefly, the obligation on the side of the host state to notify the relevant embassy without delay in the event that a foreign national is arrested or detained – are not uniformly guaranteed (Hoyle, 2019; Cullen, 2021).

Concerning the cross-border human/drug trafficking relationship, this is touched upon by some abolitionist groups, such as Reprieve, but not fully elaborated:

> There are indicators to suggest that a number of migrant workers facing the death penalty for drug offences may have been victims of human trafficking, who were vulnerable people who were forced to act as “drug mules” to transport drugs across the border (McCulloch, 2018: 1-2).

The argument pertaining to the relationship between human and drug trafficking could be instrumentalised to seek clemency for women facing the death penalty. However, there are several possible unintended consequences of this – mainly regarding possible restrictions on women’s mobility – which I explore below.

[35] Albeit, in Malaysia the death penalty is not governed by Sharia law.

Beyond the 'third world woman victim': feminist critiques

Within the feminist criminological and activist literature, several critiques have been raised that act as a warning against utilising the drug-human trafficking juncture as a platform from which to challenge the use of capital punishment. These concerns sit at the intersections of patriarchal and racialised subjugation with resultant constraints on women's mobility and, in turn, 'collateral damage' to human rights which prevent women from exercising the right to freedom of movement, and right to secure a livelihood (Global Alliance Against Traffic in Women, 2007: 2).

First, sex work is often conflated with human trafficking even though labour abuse is a more prevalent form of human trafficking (Global Network of Sex Work Project, 2011; Agustin, 2003; Lepp, 2002). International borders become a site of gendered and racialised oppression where women from certain ethnic groups are over-policed as part of anti-sex trafficking measures (Pickering & Ham, 2014). For example, Sharon Pickering and Julie Ham (2014) find that East Asian women are being targeted at the Australian border. Officials will stop East Asian women and search their luggage for 'sexy clothing' and ask them to provide a justification for such items; policing their sexuality and mobility under the guise of anti-human trafficking measures (Pickering & Ham, 2014: 9). These women become 'Third World victim subjects', 'Third world prostitutes', devoid of agency and framed within discourses of entrapment, sexual slavery, and submission (Kapur, 2002; Kempadoo, 1998: 12). Such narratives are then used to justify infantilising imperialist interventions to protect women 'for their own good'. This strips women of their agency over migration, and 'reinforces a dichotomy that presents First World women as free and Third World women as forced' (Jeffrey, 2005:34).

Second, gendered and racialised profiling at international borders for human trafficking is used to legitimise the over-policing of women in other ways. For example, research has shown that before 9/11 South Asian women at the US-Canada border were treated in a paternalistic manner by the border force who saw it as their duty to 'save' Muslim women who, they thought, were travelling to 'escape patriarchal culture' (Ameeriar, 2012:181). However, as a result of the War on Terror, the perception of South Asian women changed and they became 'suspects' who are over-policed and 'harassed' at the border (Ameeriar, 2012:181, 184). Moreover, in another example, African American women are disproportionately stopped and searched for drugs at the United States border, which, it is argued, constrains women's spatial mobility and acts as a wider mechanism of social control (Newsome, 2003: 53).

Finally, concerning the plight of migrant domestic workers, multiple studies have shown that these women are already subject to scrutiny, surveillance, and criminalisation at the border and their places of employment which would be exacerbated if they were also screened as possible victims of human trafficking (Constable, 1997; Lee, Johnson & McCahill, 2018). The different types of surveillance and policing that occur involve invasive medical checks by recruitment agencies before the migrant worker is deployed (Constable, 2007:76). Upon arrival in their host country – in this case Hong Kong – research shows that migrant domestic workers are already subjected to additional checks and scrutinised by border officials:

> A number of them described how they were routinely singled out by immigration officials and told to line up at a separate queue – or in a "discrimination line" implicitly reserved for foreign maids, as one of our research participants called it – for sustained questioning and thorough inspection of documents at the airport (Lee, Johnson & McCahill, 2018:19).

Once working within the domestic sphere, migrant workers are often subject to other forms of surveillance, such as being monitored by their employers via 'nanny cams' (Johnson et al., 2020). And, in Hong Kong, employers are entrusted to monitor their employee's visa and 'conditions of stay', and in this way become an arm of the state (Lee, Johnson & McCahill, 2018:21). Moreover, evidence from Singapore suggests that surveillance of migrant domestic workers has intensified during the COVID-19 pandemic (Antona, 2020).

Furthermore, research into the institutional responses to human trafficking victims in Southeast Asia finds that 'there is overwhelming evidence to suggest that women are disproportionately swept into a quasi-punitive system of *protective custody* with very little legal protection, judicial oversight or critical scrutiny' (Lee, 2014:218; my emphasis).

'Drugs are different': views from the frontline

Turning now to an analysis of my empirical data from Malaysia: most of my interviews (17) were conducted with lawyers representing women on death row, and when I asked them about the possible link between cross-border drug and human trafficking, the majority stated that they had never considered this overlap before. The lawyers tended to have a rigid legalistic understanding of what constitutes human trafficking, and there was a sense that, in Malaysia, cross-border human trafficking refers to other forms of labour exploitation, as lawyers explained to me:

> I think human trafficking here is solely for the purpose of using women for other things like prostitutes; slaves; forced labour; domestic workers. I think that is much more of a concern than using them for drug trafficking (Lawyer 9).
>
> In Malaysia, the predominant number of cases of human trafficking have to do with the poor treatment of migrant workers, so it is not so much a drugs issue, it is more a trade in humans issue (Lawyer 4).

When I asked whether there is a nexus between human and drug trafficking in Malaysia, other participants answered the question literally, and tended to focus on the imagined structure of criminal syndicates:

> It is likely that they involve the same routes and the same organisations (Academic Researcher 5).
>
> I would tend to think the criminal syndicates would probably use the same networks to cross the border, to break through barriers, so I don't think it is illogical to think that those smuggling people across the borders are also quietly smuggling drugs (Malaysian NGO Worker 5).

Many of the responses revealed to me that human trafficking is viewed purely from the perspective of illegal migration, as the following quote from a lawyer I interviewed attests:

> I don't think these people fit the criteria, because most of the time they knew they were coming, and they actually have valid travel documents, so it wouldn't fall under human trafficking, it is just that they didn't know what they were carrying (Lawyer 8).

Furthermore, several lawyers pointed out to me that whether there is a relationship between cross-border drug and human trafficking is in many ways an academic question, because there is little room in the Malaysian Dangerous Drugs Act 1952 to consider factors such as duress, coercion and exploitation of vulnerability, and the 'innocent carrier' defence is very rarely accepted by judges as credible. Surprisingly, one lawyer whom I interviewed had raised the human trafficking argument in one of his cases, but the presiding judge was unable to consider this issue because the accused person was charged under the Dangerous Drugs Act, and so it was not considered a human trafficking matter. Additionally, it was pointed out to me during my interviews that the Malaysian Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 is predominantly designed to protect against labour and sexual exploitation, and indeed there is no mention of drug couriering in the legislation. Moreover, my participants thought that the government would never incorporate drug couriering under duress into existing definitions of cross-border human trafficking because 'drugs are different', and, as one NGO activist (4) speculated, 'authorities would think that everybody would use that as an excuse to bring drugs in'.

Overall, these legalistic understandings fit with the prevailing framing of human trafficking as a 'transnational organised crime and immigration problem' (Lee, 2011:35), as we saw above, and indeed, little attention is paid to the rights or motivations of the alleged victims, nor the circumstances surrounding their recruitment and travel.

Deception, duress and exploitation of vulnerability: similar modus operandi

Although drug trafficking against a person's will is not currently encompassed within Malaysian human trafficking laws, there were plenty of examples from the women's cases that demonstrate the human-drug trafficking nexus in terms of deception, duress and exploitation of vulnerability – if we are to follow the Palermo Protocols definition of human trafficking (United Nations High Commissioner for Refugees, 2000). If we return to the case of Mary Jane Veloso, which largely prompted this enquiry, I found almost identical factual scenarios in the cases of women on death row in Malaysia, with 14 claiming they were duped into drug trafficking after being recruited for a job overseas, three of whom were recruited for domestic work and seven stated they had previously worked as a domestic worker. Moreover, this is likely to be a conservative estimate, with many of the court judgments including sparse details about women's defences, and indeed many of the lawyers whom I interviewed talked about cases involving migrant domestic workers suggesting the figures may be higher.

Furthermore, as a reminder, my review of death penalty cases from 1983-2019 revealed that, of those whose nationalities were listed in court documents, over 90% of the women were foreign nationals from other countries in the Southeast region, such as Thailand (18%), China (11%), Indonesia (11%) and the Philippines (9%), as well as other countries in the global south, including Iran (11%). The trend of the high number of female foreign nationals on death row in Malaysia arguably relates to the 'feminisation of migration' in Southeast Asia, where, from the turn of the 21st century, women have increasingly migrated abroad to work within feminised labour sectors, such as domestic work and the entertainment sector (Constable, 2007; Piper, 2008). These women tend to be the primary familial breadwinners and send remittances back home to support their families financially (Sassen, 2000). As will be recalled from chapter 5, one lawyer I interviewed recounted to me the following case:

> [My client] she worked in a factory, and she was divorced with two children [to support]. She was given a work opportunity to come to Malaysia to work as a masseuse…The person who offered her a job as the masseuse gave her a bag to take with her to Malaysia, and once she arrived in Malaysia she was supposed to drop that bag off at a particular place to a particular person… She accepted the bag, put her clothes into it, and travelled to Malaysia. When she arrived, the x-ray showed something suspicious in the bag, and drugs were found in the lining (Lawyer 9).

Arguably, it is as a result of the 'commercialisation of migration' in Asia (Lan, 2006:32), that migrant workers are more likely to be exploited and deceived or coerced into trafficking drugs. This is because there is an abundance of private migrant labour recruitment agencies, many of which are unregulated and unlicensed, and therefore they may engage in unscrupulous practices unabated (Rosewarne, 2014:145).

Different aspects of the recruitment process are open to exploitation: recruitment agencies negotiate the conditions of the work contract with agencies on the ground in the destination country; agencies often offer to organise all of the travel documentation and arrangements on behalf of the migrant worker; and to cover the costs of the agency's services, indebtedness is a key part of the process (Rosewarne, 2014:145-146). Thus, the very nature of the industry creates a situation whereby migrant workers are disposable and exploitable commodities:

> This labour supply chain has institutionalised a system in which several stakeholders have a vested interest in promoting migrant domestic work as a profit-making enterprise, and this can be pursued by fair or foul means (Rosewarne, 2014:146).

Therefore, it is very possible that drug syndicates have seized the opportunity to mimic the processes used by legitimate labour export agencies – or existing labour export agencies are making additional money through nefarious means – to deceive and traffic women for the purposes of smuggling drugs. In many of the women's court defences they claimed that they had been recruited for a 'job' in Malaysia, and it was through the course of this precarious employment that they were duped into smuggling drugs. As they would with a legitimate employment agent, the women placed trust in their 'recruiter' who organised all of the details of their travel, including, crucially, their luggage (which was usually where the drugs were concealed). As the following court testimonies suggest, pre-travel it was commonplace for women to give their passports over to their 'recruiter', and from then on, they were under their control:

> Emmanuel manages the issue of visas and tickets for Malaysia (Court report; Defence testimony; Case 81).

> It was the practice, she claimed, for [him] to keep her passport (Court report; Defence testimony; Case 10).

> The accused told the Court that all matters of immigration and other matters to come to Malaysia is managed by Gabriel (Court report; Defence testimony; Case 105).

Moreover, my research data suggest that the modus operandi of drug trafficking syndicates is akin to human trafficking. From my review of the legal files, there were examples of women (or their children) being threatened if they did not comply, as well as women being locked up in hotel rooms or drugged and forced to swallow drugs or insert them into their vaginas, as the following cases demonstrate:

> The man showed his handphone to her… She saw that it had a picture of her son on the screen… The unknown man told her he had her son… He threatened to harm her son if she did not do what he wanted her to do… Being fearful for her son's safety she followed the unknown man to her room… In the room he gave her a plastic package and asked her to swallow the contents (Court report; Defence testimony; Case 33).

> While the appellant was in Benin, the appellant was locked in a room for three days (Court report; Defence testimony; Case 62).

> [The recruiter] had threatened the appellant with dire consequences if the appellant refused to wear the girdle (Court report; Defence testimony; Case 24).

In court testimonies, women would describe the 'series of steps' taken at each stage of the journey, and this usually included purchasing SIM cards at various locations on which to contact their recruiter who withheld information about where they were going, where they would stay, and who they were meeting until the last possible moment. Some journeys included up to seven layovers, including the following routes: Bangkok – Frankfurt – Moscow – Frankfurt – Sao Paolo – Barcelona – Singapore – Penang; and Nairobi – Addis Abba – Benin – Dubai – Brunei – Kota Kinabalu. The following extracts from court defences provide further evidence of this:

> John did not give her his brother's name or mobile number but promised to do so on her arrival in Malaysia. He asked her to purchase a sim card at the airport and call him (John) to obtain the brother's phone number. John informed her that his brother would collect the luggage from her once she had checked into a hotel. The accused said she did not know the name of the hotel as John had made the arrangements (Court report; Defence testimony; Case 102).
>
> She purchased a local sim card and called Martin. Martin subsequently sent her a message to her mobile phone to inform her which hotel to check into (Court report; Defence testimony; Case 105).
>
> All her hotel expenses were paid for by Ann… While in China, the appellant received a call from Ann who instructed her to meet the receptionist of the hotel to collect her flight ticket home (Court report; Defence testimony; Case 90).

Often flight details were changed at the last minute; one woman, in her court defence, described being approached at the airport by a 'Chinese woman', whom she had never met before, who handed her a flight ticket, to a new destination: '[l]ater she was handed a pink envelope which contained her passport, air flight ticket and the sum of USD500' (Case 127). Others would be sent a 'handler' who would supervise them on parts of the journey: 'Michael would send somebody to take care of her' (Case 99).

Overall, the data provide an abundance of examples of the exploitative practices of drug syndicates which clearly fit within the definition of human trafficking, with multiple examples of women threatened, physically and emotionally abused, with limited autonomy and knowledge of their (elaborate and suspicious) travel plans, and acting at the behest of, and controlled by, another who exploits their vulnerability – here, economic vulnerability and the need for overseas employment.

Indifference and disbelief: judicial responses

But the judiciary appeared ignorant of the plight of female drug couriers who may have been human trafficked. A recent Amnesty International (2019) report on the Malaysian death penalty found a lack of judicial understanding of how an accused person might act as a consequence of 'coercion' and 'duress', and quoted a judge dismissing a foreign national woman's defence, saying:

> If indeed she was under duress, she had ample time while at the Sao Paolo airport to inform the relevant authorities of her condition. However, she chose not to do so (21).

Further, my review of cases (1983-2019) found additional evidence of this:

> The reason given by the accused [in her police statement] as to why she did not inform the police that an unknown man had forced her to ingest the mini-sausages and she had complied with his demand because he had threatened to harm her son was inherently incredible and most probably untrue… Being a single mother of a small child it would be reasonable to expect that she would be most concerned about the safety of her son and that at the earliest opportunity she would seek help to save him if her story that he was in danger was true… Since she could speak the English language there was no good reason why she did not make the effort to inform police about the unknown man and his threat… The court is of the view that the unknown man did not exist and was deliberately concocted by her to support her

> defence of no knowledge in order to exculpate her from the two serious counts of drug trafficking (Court report; Judge; Case 33).

My review of cases also found that judges placed the onus on women to realise that they were in an unsafe situation:

> The keeping of her passport by her bosses, the "overprotectiveness" and restriction of her movement upon arrival at each designated destination, the immediate deliverance of the bag of "cloth samples" and all these other things she mentioned in her evidence should have caused alarm and triggered her curiosity (Court report; Judge; Case 127).
>
> Such an unusual arrangement would have aroused the suspicion of the appellant (Court report; Judge; Case 62).

This disbelief was echoed in one of my research interviews with a judge (1) who referred to the 'innocent carrier' defences – where someone is sent overseas to collect a bag at the behest of someone else – as 'very silly', as 'unless you are not sound of mind, why would anybody do that?'. Often these 'innocent carrier' defences were dismissed by judges as mere 'hearsay'. Indeed, in Malaysian jurisprudence there is a concept known as 'wilful blindness' – which is often invoked in drug trafficking cases, and appears to trump any claims of deception or duress – and 'arises where "a person deliberately shuts his eyes to the obvious, because he doesn't want to know"; that person is "taken to know"' (Antolak-Saper et al., 2020:32).

Further, other interviewees (including lawyers and journalists) noted that a judge's ability to assess these claims is restricted by a lack of resources, as adequately to investigate claims of human trafficking, it would be necessary to conduct an international investigation and cooperate with the law enforcement agency in the accused person's country of origin. Thus, any claims of having been human trafficked are hampered by the inability to fully consider mitigating factors under current drug trafficking legislation, and are restrained by a lack of resources to properly investigate any claims of duress or coercion.

Suitcase traders: the question of women's agency

When exploring the drug-human trafficking relationship, a key question is that of the women's agency and how this relates to their potential victimisation at 'the hands' of traffickers. It is first important to note that although most popular portrayals of human trafficking victims over-emphasise women's 'victimhood' to legitimatise the paternalistic and protectionist state response (Buckland, 2008), in fact research with women identified as sex trafficking victims in the UK sheds light on the fact that sometimes the women 'consented' as it was a 'rational choice' given their limited circumstances (Hoyle, Bosworth & Dempsey, 2011: 322). However, the 'consent' of a trafficked person is considered irrelevant under the Palermo Protocols (United Nations High Commissioner for Refugees, 2000), as well as under Malaysia's Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. Therefore, I can surmise that anti-human trafficking legislation is not victim-centred, and instead, crime prevention is considered more important.

Nevertheless, according to those who contend that women on death row for cross-border drug trafficking are victims of human trafficking, this argument is underpinned by the acknowledgement that the women lack 'autonomy' in the legalistic sense of the term:

> The impacts on autonomy […] extend to a woman deciding to commit a crime because of a situation of vulnerability relating to external economic or family or abusive factors. She may well be "deliberate" and she may "consent" to commit the crime but criminal responsibility lies firmly with the traffickers if she is not free, informed and deliberate (Gerry, 2020:17).

From a more sociological perspective, Jennifer Fleetwood's (2014) research into women involved in the cocaine trade in Ecuador found that most of the participants were 'willing' drug mules who agreed to the work but, once they had committed, there was almost no opportunity to 'back out' and at this stage their agency was more constrained (75, 159). Furthermore, other research from the region, concerning Thai women imprisoned for cross-border drug trafficking in Cambodia, found that not all of the women were driven by desperation, with one participant being 'motivated by self-indulgence or more specifically, money and a desire to travel' (Jeffries & Chuenurah, 2019: 50).

As I did not interview any women on death row, I can only make inferences about the women's agency or lack thereof. But, significantly, my research interviews and review of legal cases (1983-2019) revealed that whilst most of the women claimed in their court testimonies that they were duped into couriering drugs, 65% of those caught at the border said they had been paid to courier commodities for a 'boss', had agreed to courier items unpaid for a friend or they were transporting goods for their own small business.

As we saw in the conceptual chapter, this practice is referred to elsewhere as 'suitcase trading' or 'parallel trading', and research has shown that many women in the global south engage in this economic activity as an agentive response to exclusion from the globalised economy (Laidler & Lee, 2014; Ulysee, 2007). Indeed, the work of Belinda Dodson (2018) on female informal cross-border traders in Cape Town, South Africa, found that women:

> Expressed initiative and independence in describing their decision to migrate… several expressed a sense of pride and accomplishment at being able to provide for their families "back home" …[they] enjoyed both the adventure and the economic gains of their trading activity (105).

Therefore, these women inhabit an ambiguous position, where they are by no means hapless 'third world woman victims' (Kapur, 2002), in fact they are economic agents engaging in cross-border trading and establishing 'cosmopolitan identities' (Desai, 2009), but they are deceived or coerced into drug trafficking through the course of their entrepreneurial activities.

The Catfish: online romance scams and drug couriering

In several cases, women alleged that they had been tricked and recruited into drug couriering online. My review of cases from 1983-2019 found that online recruitment occurred through social media applications such as WeChat, Yahoo Messenger, or specific dating sites such as 'date.asia.com'. Usually, this online recruitment involved a romantic element: the women were groomed online (from a period ranging from several weeks to two years) and believed they were in a genuine relationship with a man (who was usually foreign) online. As one lawyer whom I interviewed recounted:

> They are vulnerable because they hope for love. They think they are so lucky, that they are Cinderella; they meet a guy who promises them everything. But in the end, she is actually a victim of human trafficking (Lawyer 7).

Through the course of the relationship, the man would request that they travel to meet with him or his associates, to carry out a task internationally on his behalf. There was an acknowledgment amongst interviewees that this type of scam mainly targets female victims. My interviews with lawyers who represent women in these situations provided scenarios similar to the below:

> We had one particular case of a Filipina woman, who had just lost her mother, and she was looking for love. She met this guy online, who very quickly declared his intent and his love for her. And he told her to come and meet him in Malaysia. She said she could not leave her father. He got her mobile number and kept calling her, and told her 'she is beautiful' etc. She did say she was scared, and unsure he really loved her. Then two days before the proposed trip to Malaysia, he suddenly told her to go to Cambodia. She asked why, and he said 'I want you to meet my brother there; he looked after me, and he wants to meet you'. She struggled with this idea, and you can see this from her Facebook messages. But he used another Filipina woman – who was the girlfriend of his African brother – to convince her to go, and convince her that it was legitimate… When she got to Cambodia, the brother took her sightseeing. Then in the taxi to the airport he gave her a bag. She opened the bag and it was full of new clothes and new shoes, and she just took it… She was arrested upon arrival in Malaysia (Lawyer 1).

Furthermore, in a recent report published by the Cornell Center on the Death Penalty Worldwide (2021), the authors detail a case of a woman who was sentenced to death in Malaysia after being victimised by an 'online military romance scam'. She was approached by a stranger on Skype, who claimed to be a Captain in the US military. They communicated daily for several years, and as their online relationship progressed, he expressed his love for her through poetry and romantic messages; eventually he proposed to her online, and she accepted. Through emotional manipulation and claiming he was facing a variety of ‘crises’ he was able to scam small amounts of money from her. Eventually the scam escalated:

> Anna [pseudonym] had communicated with the Captain on a daily basis for about two years when he told Anna that he was eligible to retire and could now marry her. He said that she needed to collect his retirement papers from his Commander in a third country, then return the paperwork to the United States Embassy in her home country. Anna quickly prepared for the trip and flew to the country with instructions and hotel accommodations that the Captain had supposedly pre-paid… The evening before Anna was to return home, a self-identified “representative” of the Commander appeared with the documents she had been waiting for. He then offered to give her a ride to the airport… and he asked Anna to take a backpack of Christmas presents for his loved ones back with her… when she looked inside the backpack, she saw new clothes wrapped in plastic (Cornell Center on the Death Penalty Worldwide, 2021:23-24).

On her return journey to her home country, she transited through Malaysia and customs officers found drugs in the lining of the bag.

According to media reports from the Malaysian government, online romance scams that lead to drug couriering, such as this one, are on the rise, as one article alerts the readers:

> The cyberspace is often the mode used by the syndicates to approach their victims. The victims are often students or youths, often ignorant, lacking in education, from broken or poor families, who are easily manipulated by drug syndicates (Malaysian Government News, 2010).

And similarly, when discussing online scam drug cases, my interviewees tended to focus on the individual traits of the women that made them more vulnerable to victimisation. So, for example, they talked about how the victims were 'gullible', 'trusting', and so:

> The cartels prey on these vulnerabilities… some of the women in these scenarios have a history of domestic violence [victimisation], and maybe if someone reaches out to them and shows them love, care and concern, they're easily convinced (International NGO worker 2).

However, as was outlined in the theories chapter, some feminist criminologists warn against focusing on the individual life histories of women, and associated 'risk-factors', when making sense of their offending behaviour, as this risks viewing criminality as an individualised pathology and takes the attention away from the structural forces that lead to women's criminalisation in the first place (Sudbury, 2005b). Therefore, instead of focusing on the victims of online scams, I believe it is more valuable to explore and understand the complexity of the scam itself.

To try to understand the working of these online scams, I turn to the leading academic expert on online scams, who has in fact published on the exact topic of online scam victims being unknowingly used as drug mules (Whitty, 2021). In this article, Monica Whitty (2021) outlines the 'anatomy' of the scam, which includes different phases such as identifying a suitable victim, perhaps someone who has been scammed in the past; creating an ideal online persona such as an attractive, caring and attentive male; 'grooming' the victim via emotional manipulation; and engineering a series of 'small crises' to 'test the waters' and request small amounts of money before the main sting (no page numbers).

The author highlights the key differences between the drug couriering scam and 'usual' online financial scams, which are: in other scams, the victim is usually actively seeking a romantic partner online when they are conned, whereas in these drug couriering cases, the victims are not necessarily seeking a romantic partner in the first instance (Whitty, 2021: no page number). And there is a 'discombobulation' stage in this type of scam, where the victim is disoriented, so that when they are asked to carry out an extreme request like travelling internationally, they will acquiesce (Whitty, 2021: no page number). Moreover, it is found that women are more likely to be the victims of online romance scams than men (Whitty, 2017:2).

Encouragingly, there is evidence that Malaysian judges are starting to accept online romance scams as part of the 'innocent carrier' defence in drug trafficking cases involving women. There have been two such prominent cases: in the first, the accused woman was acquitted based on transcripts on her social media account detailing the communications between her and the scammer; in the second, the accused woman was acquitted following expert evidence which confirmed she was indeed the victim of an online romance scam[36]. Albeit, lawyers conceded that the latter case was unique as the accused foreign national woman's embassy was able to provide funds to instruct the expert witness, and this resource is not available to the average accused person.

[36] To protect the women's identities, these cases are not referenced directly.

The ideal victim: profiling at the border based on gender, race and citizenship

During my research interviews, I discussed the policing and public responses to drug trafficking in Malaysia with my participants. I discovered that profiling for drug traffickers occurs at the Malaysian border, based on gender in conjunction with race and citizenship (the latter two are often conflated). First, it seems that local Malaysian women, caught at the airport with drugs, are more likely to be constructed within a discourse of victimhood than foreign national women. One lawyer I interviewed explained this with reference to media coverage of these cases:

> It depends on who the victims are. If it's a Malay girl and the community say, "look at how she was tricked", they can connect, because it could be one of your sisters, or could be one of your family members… It's very different if it is a Nigerian girl and you portray her, and then they don't relate (Lawyer 10).

There is also evidence of this in an opinion piece in the local *New Straits Times* newspaper, which lamented:

> Many of our young girls are also behind bars in other countries serving sentences and even face the death penalty for drug trafficking. There was a report of a father yearning for the return of his daughter who is in prison in China for almost eight years for being a drug mule. Many of them were offered free trips and vacations to exotic destinations by acquaintances who deceived them and used them as drug mules (Yesuiah, 2015).

There is also quantitative evidence to suggest that the Malaysian public is sympathetic to the plight of *local* female drug mules: a public opinion survey found that support for the death penalty drastically reduced from 74-80% to 9% when respondents were presented with the following case-study:

> A Malaysian woman, aged 21, was stopped by immigration at KL airport and when searched was found to have 100 grams of heroin hidden in a false bottom of her suitcase. She claimed that a foreign man she had met on holiday had asked her to carry the suitcase as a special favour. She had no previous criminal record. She was convicted of trafficking and sentenced to death (Hood, 2013:13).

Second, there was a sense that women of certain nationalities – connected to perceived privilege – simply do not engage in this kind of behaviour, and thus are less likely to be stopped at the airport and screened for drug trafficking. So, one interviewee explained, that as a white British woman, I would have relatively few issues carrying drugs through an airport. And, in another case, involving the arrest and conviction of a woman from an affluent East Asian nation, the media extensively reported on the fact that she was caught up in a 'drag-net' operation as security at Malaysian airports do not usually profile travellers from her country for criminal activities.

Third, my research interviews revealed a perception that women of certain nationalities were under constant suspicion at the airport, but they did not evoke sympathy, and were not viewed through the frame of 'victimhood'. According to the lawyers interviewed, the 'suspicious' countries and nationalities include women from mainland China, Iran, Indonesia, the Philippines, Nigeria, India, Ukraine, and Uzbekistan. In particular, the following stereotype of a 'risky' female traveller prevailed:

> There is a profile of a travel-savvy Chinese woman, of perhaps no known sources of income, who then is a professional drug mule, and she gets away with it because she is good looking; she is attractive; she dresses well; she looks professional… [Border control] are also looking out for high-class prostitutes, and tall, lanky, good-looking Mainland Chinese women could also be high-class prostitutes (Lawyer 4).

As well as for drug trafficking, this stereotype is used to single out women who are deemed at risk of being human trafficked for sex work, yet due to their 'savviness' they do not fit the 'passive' and sympathetic female 'victim' frame and thus are represented as a 'vamp' through 'linking women's trafficking to her sexuality, her body, or her improper womanhood' in order to 'shore up neo-colonial heterosexualities and state power' (Schemenauer, 2012:95).

<u>WADS: West African Drug Syndicates</u>

During my research interviews, when discussing the cases of women who claimed to have been coerced or tricked into couriering drugs to Malaysia, a persistent theme that recurred was the involvement of West African – and more specifically, Nigerian – men who allegedly recruited the women and were the 'masterminds' behind the trafficking operations. Indeed, as one lawyer (5) whom I interviewed recounted: 'in almost 99% of cases, there's a Nigerian or West African man involved'. The prevailing stereotype was that these West African/Nigerian men would be living in Malaysia (or elsewhere in Southeast Asia) and they would have a 'local' girlfriend who they would con into couriering drugs for them. A range of different interview participants – including consular officials, journalists, NGO workers and lawyers – talked about how these Nigerian men are 'sweet talkers', 'charming', 'romantics' and are easily able to entrap Southeast Asian women. Interestingly, lawyers (unlike other participants) appeared self-conscious when discussing this stereotype, because, as highly educated people, they were concerned about appearing racist:

> It's not racist; it's factual (Lawyer 1).
>
> I'm sorry to say it, but there will always be an African guy involved (Lawyer 9).
>
> It is a justified stereotype (Lawyer 8).

In any case, in Malaysia, there is a pernicious stereotype, as one lawyer (4) explained to me, of Nigerian men who come to the country under the pretence of studying English at a 'dubious educational institution' (a second-rate private college) who date local women in order to have access to their local bank accounts, and engage in nefarious activities such as drug trafficking and 'Macau scams' (a type of financial scam). This stereotype is pervasive in the mind-set of the judiciary, and indeed one lawyer (8) whom I interviewed stated that when representing a Nigerian man on a drug trafficking charge, the first thing the judge said to the accused person (without having examined any of the facts of the case) was: 'oh, so you are here studying English with a Malaysian girlfriend?'.

My review of legal files provided evidence of this stereotype, with many of the women (from a range of Southeast Asian countries) stating that they had an 'African' boyfriend who was responsible for their involvement in drug couriering; in some of these cases that boyfriend was allegedly a 'student'.

However, according to the legal defences and interviews with lawyers, in some cases there was no romantic involvement. Instead, the Nigerian man was their 'employer' who paid them to engage in cross-border informal trading (unknown to them, drugs were concealed in the luggage):

> The defence of the appellant was that she was carrying the luggage as instructed by her employer John (a Nigerian) from Guangzhou, China to Malaysia. John had offered her a job with a salary of 10,000 Chinese Yuan to transport children's things and clothes to places outside of China (Court report; Defence testimony; Case 122).

This trend fits with research which finds that there are 20,000 Africans living in Guangzhou, China, many of whom are Nigerians who act as 'middlemen' in the trading and exporting of textiles and electronics – a form of 'globalisation from below' which may be exploited by criminal syndicates (Yang, 2012; Mathews & Alba Vega, 2012).

From my review of media files, there was some evidence of articles warning about the dangers of Nigerian drug trafficking syndicates exploiting women as couriers:

> Two Iranians and a Nigerian have been employed as Casanovas by an international drug syndicate to entice Malaysian women into smuggling drugs abroad… Nineteen Malaysian women have been arrested this year in Argentina, Brazil, Peru and China for drug trafficking… They were believed to be victims of the Casanovas, aged between 30 and 35, who had swept the women off their feet by showering them with expensive gifts, lavish dinners and shopping sprees before sending them off on all-expenses-paid holidays overseas (The Associated Press, 2007).
>
> Nigerian drug runners who were recruiting women here [Singapore] to carry drugs do not appear to have had much

> success last year, based on statistics from the Central Narcotics Bureau (CNB). For the first time in five years, their honeyed words and empty promises of love seem to have fallen on deaf ears, with not even one Singaporean woman arrested for helping them smuggle drugs (Soh & Yuen-C, 2011).

With regards to online romance scams leading to drug couriering, I found from my research interviews, that West African – and especially Nigerian – men are thought to be the 'usual suspects' behind these scams. Research has sought to address the relative absence of Nigerian voices in the online scams academic literature (Cross, 2018). However, arguably, this research is rather descriptive, and does not critically address the construction of Nigerians as 'scammers'.

This appears to be a regional stereotype, as the Philippines' Task Force Drug Courier (TFDC), which was created in 2010 as part of the government's Drug Enforcement Agency, has warned on its website about 'African Drug Syndicates' who recruit female drug couriers unwittingly through befriending or marrying them in order to exploit them as mules, or to use them to recruit other Overseas Filipino Workers (Philippines Drug Enforcement Agency, 2011). Likewise, research carried out by anthropologist, Sulistyowati Irianto and colleagues (2005), into the experiences of women imprisoned in Tangerang Prison, Indonesia, for drug trafficking, argued that many of the women had been 'human trafficked' by their 'African' boyfriends. Indeed, this trope of 'foreign men' exploiting vulnerable local women is prevalent in the human trafficking and sex trafficking rhetoric more generally (Jeffrey, 2005), and often this discourse is racialised (Doezema, 2000).

But we know that it is not just West Africans, and that there are Malaysian drug syndicates recruiting mules throughout the country, as evidenced by reporting done by the investigative journalism outlet, R.AGE (2019), who interviewed a recruiter for a local drug boss referred to as 'Shanker' who sends unsuspecting mules to collect and deliver drugs in Brazil, the Middle East, Peru, India, Cambodia and elsewhere. Indeed, a police officer (1) whom I interviewed conceded that local Chinese and local Indian Malay men were also engaging in love scams and drug trafficking, not just West African men. Furthermore, there is some evidence to suggest that the Nigerian men involved in drug trafficking in Southeast Asia may themselves be victims of human trafficking, who are repaying the debts which they incurred from travelling to Southeast Asia by working for drug syndicates (Patin, 2012).

While this stereotype may be based on some factual reality – as evidenced by the sheer number of legal files where the woman's defence included reference to her male West African intimate partner – it is likely that it is also played up for instrumental purposes. This discourse is in keeping with the region's War on Drugs rhetoric – and namely the presentation of 'drug trafficking as an external predation' – caused by foreigners, which in turn, leads to immigration policies that exclude certain nationalities and racialised populations, here, West Africans (Martel, 2013:27,31). Troublingly, a lawyer (4) whom I interviewed said that West African men have 'targets on their backs' when passing through Malaysian airports, and many are refused entry or subjected to extensive screening and surveillance.

Collateral damage: potential limitations on women's mobility and freedom

The argument that women sentenced to death for cross-border drug trafficking are victims of human trafficking could lead to the introduction of restrictions on women's mobility and freedom, both in and out of Malaysia. By way of example, in 2008, as a result of reports that 119 Malaysians were imprisoned abroad for drug couriering – 90% of whom were women and many of whom were thought to have been tricked – a proposal was put forward by the Foreign and Home Ministries which advised that it should be mandatory for women, who plan to travel abroad alone, to first obtain a letter from either their parents or their employers to leave the country (Agence France Presse, 2008). This proposal was strongly condemned by women's groups and was consequently unsuccessful (Agence France Presse, 2008).

There have been other instances of travel ban proposals in response to the threat of execution (albeit, for the crime of homicide): as a consequence of Malaysia's proposed execution of Wilfrida Soik, a mentally unwell Indonesian migrant domestic worker, Indonesia threatened to ban domestic workers from travelling to work in Malaysia (Hawley, 2015). Likewise, in 2011, the beheading of Indonesian migrant worker, Ruyati binti Sapubi, in Saudi Arabia, caused a moratorium on sending Indonesian migrant workers to the Kingdom, and then in 2015, following the execution of two mentally unwell Indonesian migrant workers, Siti Zainab and Karni binti Medi Tarsim, the government decided to extend the ban to 21 – mainly Middle Eastern – states (BBC News, 2011; Agence France Presse, 2015).

Elsewhere, there have been warnings against women travelling abroad for fear of them being caught up in a drug couriering scam. The Malaysian Chinese Association warned women from China of a Nigerian ‘trafficking ring’ targeting women from Guangdong and tricking them into working as unsuspecting drug couriers, which, the Association claimed, has led to more than 20 women being arrested for smuggling drugs to Malaysia between 2013 and 2015 (Moon, 2018). My media database search also found articles from the Philippines, Singapore, India, Uganda and Iran, all warning local women about travelling overseas to Malaysia and being tricked into drug couriering (Iran Daily, 2013; Lopez, 2008; Malaysia General News, 2010; Soh & Yuen-C, 2011; Bagala, 2011). Placing curbs on women’s mobility or warning women not to travel overseas for fear of exploitation represents an affront to their human right to mobility and right to livelihood, particularly for would-be female migrant workers.

These findings fit with the argument that, within the Southeast Asian region, the rising trend of women being used as drug couriers has led to a ‘securitization process’, whereby drug trafficking is framed by governments as an ‘external predation’, usually involving West African drug syndicates (Martel, 2013:31). To combat this ‘foreign threat’ to local women, governments have implemented measures, such as the Philippine government forming a ‘Drug Couriers Task Force’ (Martel, 2013:22). However, their preventative measures ‘usually deprive women of agency in their own involvement’ (Martel, 2013:22).

Moreover, as briefly mentioned above, in Southeast Asia there is a troubling practice of detaining human trafficking victims in protective custody

(Lee, 2014). While it is claimed that these ‘shelters’ operate in order to provide support for victims, in reality they are ‘semi-carceral institutions’, and indeed, helping a victim escape from a shelter is criminalised in Malaysia (Lee, 2014:206, 210).

Thus, whilst arguing that a woman facing the death penalty for drug trafficking is a victim of human trafficking may serve the short-term goal of seeking reprieve in her case, this strategy must be considered alongside the potential long-term adverse consequences of labelling these women as human trafficking victims.

Conclusion

In this chapter, I have considered whether there is a possible relationship between drug couriering and human trafficking in the Malaysian context. This discussion was prompted in large part by the campaigning efforts of migrant workers’ rights groups and lawyers in Southeast Asia who have argued that drug couriering under duress constitutes a form of human trafficking, and thus women facing the death penalty for such offences should be granted clemency – as is argued in the case of the Filipina former migrant worker, Mary Jane Veloso, who is currently on death row in Indonesia.

What this chapter has revealed is that human trafficking is not a straightforward concept, and there are competing understandings and definitions, as has been highlighted by other scholars (Salt & Hogarth, 2000). The different elite actors whom I interviewed or from whose secondary sources I consulted had different understandings and ideas of what constitutes human trafficking. While regional NGO activists, as well as journalists and academics thought that these women are victims of human trafficking, for lawyers, it was generally inconceivable that being deceived or coerced into drug couriering could be considered a form of human trafficking, because in their legal experience, human trafficking mainly concerns sex trafficking and the exploitation of migrant workers. Furthermore, they take a rigid legalistic stance, and point out that drug trafficking cases are tried under the Dangerous Drugs Act 1952, not the Malaysian Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, and drug couriering under duress is not currently included under the latter legislation.

However, if we are to follow the Palermo Protocols – which is the most widely accepted international definition of human trafficking – and examine the constitutive elements of this framework – namely, recruitment and transportation by means of threat of force, coercion, deception and abuse of vulnerability – then the factual scenarios described by the lawyers whom I interviewed, and the defences depicted in the court files, would fit within this conceptualisation. So, there were plenty of examples of women who were threatened (or their child was threatened) and who were physically abused or drugged. The majority of my sample claimed to have been deceived into carrying drugs – usually they were either paid to courier clothing or other commodities for export, or they were carrying a bag given to them by a person who recruited them for a 'job' abroad such as a domestic worker – in both instances with drugs concealed within the luggage. Furthermore, their economic vulnerability and inexperience was exploited, or they were 'discombobulated' on an elaborate journey and then exploited.

My research shows that there has been a rise in online romance scams that have led to women being used as drug couriers. However, from my analysis of the court judgments, it seems that judges are unsympathetic, and lack understanding of the complexities of coercion and duress, and often dismiss these defences as mere 'hearsay'. Furthermore, judges are currently restricted in their ability to consider mitigating factors in capital drug cases, and there is also a lack of funds to properly investigate these claims of international human trafficking. Whether or not these women are viewed as victims of human trafficking by elites in the Malaysian criminal justice system impacts their cases, as victims of human trafficking are exempt from criminal prosecution (and thus cannot be prosecuted for the crime of drug trafficking).

To contextualise this issue: during the globalised era, we have witnessed the 'commercialisation of migration' and the rise of transnational feminised precarious and disposable labour in the global south, which has created the conditions for exploitative labour and migration practices – that are tantamount to human trafficking – to proliferate. This is in large part facilitated by private recruitment agencies who organise the travel and overseas employment contracts for would-be migrant workers, and due to the lack of regulation of this industry, could engage in unscrupulous practices – here some of the women claim that their employment recruiters were the people who set them up with the drugs, as happened in the Mary Jane Veloso case.

But arguing that women on death row for drug trafficking are victims of human trafficking is not without issues. Feminist criminologists have shown that anti-human trafficking measures are gendered and racialised and discriminate based on citizenship, and can lead to over-surveillance, criminalisation at the border, and ultimately, restrictions on women's mobility (Pickering & Ham, 2014). In Southeast Asia, and Malaysia specifically, there is the practice of 'protective custody' for victims of human trafficking who are held in 'semi-carceral spaces' with limitations on their freedom (Lee, 2014:206). This fits with states' framing of human trafficking as a 'transnational organised crime' and 'immigration control problem' rather than being victim-centred (Lee, 2011:35-36). Not to mention, that as part of the 'externalisation' of the War on Drugs in Southeast Asia (Martel, 2013), West African (and specifically Nigerian) men are viewed as the 'real traffickers' behind the exploitation of local Southeast Asian women, and face racism and restricted entry to Malaysia.

With all of these factors in mind, it seems most sensible to advocate for an 'instrumental' use of the human trafficking argument for short-term advocacy around a pending execution (as was done in the Mary Jane Veloso case). Unless legislation is changed in Malaysia – which seems unlikely given the government's perception of the drug 'scourge' – then prosecutors will prosecute drug couriers under the drug trafficking laws, and not consider the case a human trafficking matter. Therefore, in the short term, this argument could be used to mobilise international media attention and place international pressure on Malaysia to halt an impending execution of a woman on death row for drug trafficking, via civil society advocacy, rather than legal means. However, in the long-term, it would be more effective (and there would be less collateral damage) to focus on the importance of mitigation in capital trials and appeals, so that judges have the opportunity to consider – and receive proper training on the sensitivities of – coercion, duress, deception and exploitation. And ultimately, if the death penalty for drug trafficking were abolished, and drugs were decriminalised, then this would be a moot point.

8. Why does the mandatory death penalty for drug trafficking disproportionately affect precarious foreign national women?

Introduction

Following analysis of my empirical material in the three preceding chapters, this discussion chapter will explore the implications of my findings for the future of the death penalty in Malaysia and beyond. In particular, it focuses on the mandatory nature of the death penalty and, as my data have shown, its disproportionate effect on foreign national women. By way of reminder, latest disaggregated statistics show that there are 141 women under sentence of death in Malaysia, 86% of whom are foreign nationals (as compared to 39% of the male death row); 95% of the women on death row are sentenced to death for drug trafficking (as compared to 70% of the male death row); and 90% of the women on death row for drug trafficking are foreign nationals (Amnesty International, 2019:19-20). Similarly, my own database of 146 cases of women sentenced to death for drug trafficking between the years 1983-2019 revealed that 90% of the women were foreign nationals, predominantly from the global south, including the following nationalities: Thailand (18%), China (11%), Indonesia (11%), Iran (11%) and the Philippines (9%). These findings regarding the preponderance of foreign nationals accord with existing critiques of the mandatory death penalty which focus on its discriminatory and arbitrary nature (Lehrfreund & Hood, 2016).

In this chapter, I take a step back and consider: why does the mandatory death penalty for drug trafficking disproportionately affect foreign national women? To begin with, I discuss the findings of my preceding chapters which show that, as a result of the globalised labour market and global inequities, economically insecure women from the global south may engage in semi-legal or illegal activities, such as drug trafficking, and as such have heightened exposure to the risk of capital punishment in Southeast Asian retentionist jurisdictions. Moreover, these findings speak to the importance of mitigation – which cannot be considered in mandatory regimes – as the gendered economic trends I have identified reduce these women's culpability and blameworthiness. After reflecting on these more sociological factors, I then move on to consider the legal frameworks that lead to the disproportionate sentencing to death of foreign national women for drug trafficking.

I consider the history of the Dangerous Drugs Act 1952, which governs the death penalty for drug trafficking. The death penalty for drug trafficking was introduced for drug trafficking in 1975, and made the mandatory sentence in 1983. One of the core rationales for this introduction of capital punishment was 'to rid Malaysia of foreigners using Malaysia, particularly Penang, as a trafficking center' (Harring, 1991:403-404). Due to the particularities of the Malaysian constitution, it is exceedingly hard to challenge the constitutionality of this legislation, and as such, it has remained in place largely unchanged to this day (Novak, 2014). As a result of the ingredients of the legislation, cases of drug couriers arrested at the airport with drugs – so-called 'airport cases' – are considered 'unwinnable' by defence counsel in Malaysia. This is particularly the case due to what is known as the 'double presumptions' whereby if the accused is arrested and found in possession of *x* amount of drugs the accused is automatically assumed to have trafficked the drugs (rather than the state having to prove possession and then trafficking separately)[37]. In airport cases in practice, because of the operation of the double presumptions, there is an acceptance by the judiciary of a very low standard of evidence to prove that the accused had ‘custody’ and ‘control’ of, for example, a suitcase containing the drugs. While there was an amendment to the Dangerous Drugs Act in 2017 to introduce a very limited amount of discretion, in order for a drug courier to benefit from this sentence reduction, he or she must be able to ‘disrupt’ the ‘wider drug trafficking activities’. However, couriers, by their very nature, have little knowledge of the wider drug operation and thus are unable to benefit from this amendment in practice.

In general, other research has shown that foreign national defendants are at particular risk of the death penalty in alien criminal justice systems (Hoyle, 2019; Amnesty International, 2019; Antolak-Saper et al., 2020). All of the above factors come together to cause the ‘*hyper*-sentencing’ of precarious foreign national women to death for drug trafficking (Wacquant, 2010). These findings present a powerful argument for abolition, as a punishment that extinguishes a life can never be justified within a system with high levels of discrimination.

[37] For the exact amounts of different drug types that constitute ‘trafficking’ see Appendix 1.

Arbitrariness and discrimination: critiques of the mandatory death penalty

It is estimated that 29 countries around the world still retain the mandatory death penalty for one or more offences, usually for homicide (Jabbar, 2019:138). This is in large part due to the history of British colonisation as mandatory sentencing was part of English common law and was exported to former colonies (Novak, 2014). After independence, the mandatory nature of the death sentence was retained, and in some instances, as in the case of Malaysia, it was *expanded* to include new offences such as drug trafficking (Jabbar, 2019:139). Over the past half century there has been a global decline in the mandatory death penalty, in large part as a result of a 'transnational judicial dialogue' which has led to the development of international and domestic jurisprudence challenging the constitutionality of the mandatory death penalty in Commonwealth nations, led by the London-based NGO, The Death Penalty Project, and its local partners (Novak, 2017).

Indeed, the mandatory nature of the death penalty clashes with several established legal principles, namely proportionality (as there is no consideration of both the circumstances of the offence and the offender); the need for judicial determination of the appropriateness of the sentence (as it is an automatic sentence); and the right to a fair trial (due to, for example, the lack of opportunity to present mitigating evidence) (Jabbar, 2019:146-150). Furthermore, international legal bodies and domestic courts have also expressed their condemnation of the mandatory death penalty[38]. By way of example, the United

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[38] Those include the United States Supreme Court, the Indian Supreme Court, the Judicial Committee of the Privy Council, the Supreme Court of Bangladesh, the Supreme Court of Uganda, the Supreme Court of Malaysia, in addition to the Inter-

Nations Human Rights Committee (UNHRC), in *Chan v. Guyana* (2006) held that:

> [T]he automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without regard being able to be paid to the defendant's personal circumstances or the circumstances of the particular offence (Hood & Hoyle, 2015:340).

It is reported that 10 states retain the mandatory death penalty for drug offences, seven of which are 'actively' retentionist, including Malaysia (Hood & Hoyle, 2015:339). Elsewhere in Asia, the mandatory death penalty for drug trafficking has been abolished in India (Jabbar, 2019:145). Notably, the petitioner in the case that led to its abolition, *India Harm Reduction Network v. The Union of India* [2012], argued that the mandatory death sentence for drug trafficking was applied in a discriminatory way:

> The Petitioner is vitally concerned with the issue of meting out of mandatory death penalty for drug offences, which is excessive, unscientific and inhumane. In the Petitioner's experience, it is poor people, whether they are drug users or carriers, who are subjected to harsh penalties and bear the brunt of criminalisation… The imposition of a mandatory death sentence – a barbaric and irreversible punishment, disproportionately affects the poor and vulnerable (4).

American Court of Human Rights, the Inter-American Commission on Human Rights and the United Nations Human Rights Committee (Lehrfreund & Hood, 2016:143).

Importantly, one of the key critiques levelled at the mandatory death penalty is its arbitrariness. By way of illustration, a study of the mandatory death penalty for homicide in Trinidad and Tobago found that:

> [T]here was a great deal of arbitrariness affecting which defendants were convicted of murder and sentenced to death. This meant that a mandatory death sentence was being applied inequitably, without consideration of the differences between murders and the persons convicted of them, and by no means always for the "worst of worst" cases (Hood & Seemungal, 2006: no page number).

However, a discretionary death penalty does not eliminate arbitrariness nor discrimination. Indeed, the Law Commission of India (2015) recommended that the death penalty be abolished (for all offences except for terror offences) as the discretionary system is so flawed that capital punishment is a 'lethal lottery' (Amnesty International, 2008). Likewise, even in the US, where the death penalty is subject to '*super* due process', it is estimated that, for those who commit a culpable homicide, the probability of being sentenced to death is only 2.2% (Hood & Hoyle, 2015:369). Moreover, multiple studies have shown that there is discrimination in the application of the US death penalty, for example, on the grounds of the race and gender of the homicide victim (Williams, Demuth & Holcomb, 2007). Overall, considerable research has shown that, whether or not it is a mandatory or discretionary punishment, 'those who are sentenced to death and executed are much more likely to be among the least powerful of all who are convicted of capital crimes' (Lehrfreund & Hood, 2016:150).

Precarious foreign national women exposed to the mandatory death penalty in Malaysia

Chapters 5, 6 and 7 presented evidence that women's involvement in drug trafficking that leads to the death penalty may be explained with reference to globalised economic structures. During the post-colonial economic growth and structural adjustment process that occurred from the 1960s to the 1980s in the Southeast Asian region, there was an unprecedented increase in women's participation in the labour market (Lim, 1993). This 'feminisation of labour' occurred alongside the 'flexibilisation' of labour, which meant that women were moved into peripheral, temporary and part-time positions (Gills, 2001:9). This was prevalent in textiles and electronics manufacturing on the 'global conveyor belt' (Kaur, 2000) and was underscored by orientalist and misogynist discourses where women were considered to be 'naturally' more 'docile' and 'nimble' (Elson & Pearson, 1981:93). Since the turn of the 21st century we have witnessed the 'feminisation' of intra-regional migration in Southeast Asia, whereby an increased number of Asian women are migrating to work in feminised industries – such as healthcare, domestic work, entertainment, and the manufacturing and/or textiles sectors – in more affluent Asian countries such as Hong Kong, Singapore, and crucially, Malaysia (Piper, 2008).

As stated above, many of the women in my sample were from other countries in the global south. These structural economic factors help to explain why it is that these foreign national women are embroiled in drug trafficking in Southeast Asia. As outlined in chapter 5, many of the women were engaged in precarious work prior to their arrest, and I conceive of drug couriering as another form of precarious labour, as in many ways it meets the criteria, due to the fact that it is a casual, temporary arrangement, and does not offer a steady income or job security (Standing, 2011). As is found to be the case in other studies of women and drug trafficking, those who were paid for their couriering services were often motivated by gendered economic insecurity, for example due to their status as a single mother or a divorced woman (Del Olmo, 1986; Huling, 1995 & 1996; Green, 1996; Sudbury, 2005b; Bailey, 2013; Fleetwood, 2014; Constant, 2017; Jeffries & Chuenurah, 2019). Others became involved after being recruited for a precarious job in Malaysia, as the following quote from a court document, as presented in chapter 5, shows:

> According to the appellant, she worked as a vegetable seller in a market in Indonesia to support her younger sisters. She met a woman named Dewi through her vegetable selling. Dewi introduced the appellant to a woman called Fitri and the three of them had a meeting where the appellant was offered a job in Malaysia as a factory employee or a maid. The appellant trusted Dewi because Dewi always provided her with financial assistance, and the appellant believed that working in Malaysia would change the destiny of her family. [She was then asked by her recruiter to carry a bag – with drugs concealed inside - to give to her new employer in Malaysia] (Court report; Defence testimony; Case 32).

And indeed, other literature has explored the criminalisation of female migrant workers in Asia (Lee, Johnson & McCahill, 2018). Others still claimed to have been duped into drug trafficking through their business as an informal cross-border trader, a practice that is dominated by women in the global south (Garni, 2014; Gauthier, 2012; Marques, Santos & Araújo, 2001; Ulysee, 2007).

The following quote from a court document, referred to in chapter 5, attests to this:

> The defence of the appellant was that she was carrying the luggage as instructed by her employer John (a Nigerian) from Guangzhou, China to Malaysia. John had offered her a job with a salary of 10,000 Chinese Yuan to transport children's things and clothes to places outside of China (Court report; Defence testimony; Case 122).

And indeed, informal cross-border trading is in many ways similar to drug couriering, and as such the former practice is characterised as follows:

> [I]t resembles an informal courier service engaging in logistics delivery. While the goods being transported are often commonly found parallel goods, and the goal of the operation is the same – that is, to dispatch the goods in small quantities across the border without being taxed – the person carrying out the service does not pay to buy the goods. Instead, they are hired as couriers to ferry the goods across the border (Hung & Ngo, 2019:246).

This is an example of 'globalisation from below', defined as: 'the transnational flow of people and goods involving relatively small amounts of capital and informal, often semi-legal or illegal transactions' (Mathews & Alba Vega, 2012:1). Overall, I surmise that drug trafficking syndicates are capitalising on feminised migratory flows in the region, and are entrapping women as drug couriers.

Chapter 6 showed that these female drug couriers are 'disposable' workers in the Southeast Asian drug trade. The conceptual chapter demonstrated that women from the global south are over-represented in the disposable labour sector (Bachour, 2014). Their disposability is typified by the fact that drug syndicates often ‘tip off’ authorities about a drug courier in order for a much larger shipment to pass through the airport at the same time undetected. Further, Malaysian law enforcement agents appear to view these women as ‘disposable’, as the following quote from an interview with a lawyer, presented in chapter 6, highlights:

> It is just a case of KPI [Key Performance Indicators] really… So maybe one month you have to make ten arrests, another month five arrests… Because you know sometimes when we cross-examine the police officers and we say, “why don’t you follow up? You have access to all this information, why don’t you investigate further to try to get to the real trafficker?” and they will always say, “oh, what we have is sufficient to convict this person” (Lawyer 8).

Moreover, chapter 7 explored claims that these women are in fact victims of human trafficking whose financial desperation has been exploited by drug trafficking syndicates. And indeed, the data show many examples of women drug couriering as a result of coercion and duress, such as the following quotation from a woman’s legal defence:

> The man showed his handphone to her… She saw that it had a picture of her son on the screen… The unknown man told her he had her son… He threatened to harm her son if she did not do what he wanted her to do… Being fearful for her son’s safety she followed the unknown man to her room… In the room he gave her a plastic package and asked her to swallow the contents (Court report; Defence testimony; Case 33).

All of these findings should serve as mitigating evidence when sentencing these women, however, with the mandatory death penalty there is no space to consider these factors. In any case, yet further data presented in the preceding chapters show that, even when judges do have the limited discretion to hear an ‘innocent carrier’ defence, this is rarely accepted by the courts, who are extremely sceptical of the women’s testimonies, as the following extracts from judgments show:

> The keeping of her passport by her bosses, the “overprotectiveness” and restriction of her movement upon arrival at each designated destination, the immediate deliverance of the bag of “cloth samples” and all these other things she mentioned in her evidence should have caused alarm and triggered her curiosity. (Court report; Judge; Case 127)

> We are of the considered view that it is very unlikely that the respondent, who is a diploma holder… could have placed herself in a situation where she could be exploited to commit a crime. (Court report; Judge; Case 87)

Although there is a defence of duress under Section 94 of the Malaysian Penal Code, it is a very narrow defence and it is hard for an accused person to take advantage of it in practice. In order to prove ‘duress’ an accused person must establish that they were:

> [C]ompelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence (Laws of Malaysia Act 574 Penal Code, Section 94).

Pertinently, the defence of duress is not available to accused persons who are facing a charge punishable by death, such as drug trafficking (English, 1983). Despite this, in one notable case, tried under the Dangerous Drugs Act, the accused person did put forward an unsuccessful defence of duress. In

Mohamed Yusof Bin Haji Ahmad v. Public Prosecutor [1983], the accused person was caught trafficking cannabis, he claimed at the behest of a Thai man who threatened him with a pistol and followed him across the border. His claims of duress were rejected by the Court who stated the threat to his life needed to be 'imminent, extreme and persistent', and additionally he did benefit from the defence of duress because he 'place[d] himself in the situation by which he became subject to such constraint' (English, 1983). It is likely that the Court could apply the latter statement to all cases of drug couriers who agreed to courier items overseas and thus 'placed themselves in the situation'.

Furthermore, while there is little research on the gendered impacts of the mandatory death penalty for drug trafficking[39], we can turn to the existing literature on the impact of mandatory minimum sentences for drug offences in the United States (US) context. This work has shown that mandatory minimum sentences for drug offences – part of the US 'War on Drugs' starting in the 1980s – have a disproportionate impact on *women of colour* from low socio-economic backgrounds and their children (Huling, 1994 & 1995; Raeder, 1995; Gaskins, 2004; Lapidus et al., 2005).

Race plays a different role in the Malaysian context. In a region with a significant flow of migrant labour, race and ethnicity become conflated with citizenship (Hoyle, 2019). As Pei-Chia Lan (2006) writes in relation to female migrant domestic workers in Taiwan, there is a 'stratified otherization' of foreign workers, and a 'construction of racialized differences among migrant workers by national divides' (60). For example, in Taiwan, Hong Kong and Singapore

[39] Except for work by Cornell Center on the Death Penalty Worldwide (2021).

there has been a decline in recruitment of Filipina migrant workers who are considered ‘smart but unruly’ in favour of the recruitment of Indonesians who are seen as ‘stupid yet obedient’ and in this way:

> The fusion of an occupational categorization with an ethnic classification implies that these nationals are “naturally suited” to these dirty, dangerous, and demeaning jobs (Lan, 2006:60).

And indeed, when writing about the surveillance and criminalisation of migrant domestic workers in Hong Kong, Maggy Lee and colleagues (2018) note that:

> [These] practices are directed at and involve the production and social sorting of different sorts of gendered bodies, they are not primarily organized around distinctions based on skin colour. Rather, they create hierarchies of foreign Others that go beyond a black/white dichotomy (15).

Below, we will explore the historic logic that justifies the ‘hyper-sentencing’ of economically precarious women at the intersections of foreign nationality and race. ‘Hyper-sentencing’ is an appropriation of Loic Wacquant’s (2010) concept of ‘hyper-incarceration’ which he argues is a more accurate term to use as compared to ‘mass incarceration’ in the US context, as penal policies have been ‘targeted’ towards ‘(sub)proletarian African American men from the imploding ghetto’ (74). And this concept has since been applied to the ‘hyper-incarceration’ of indigenous women in Australia and explains how ‘particular penal strategies and social policies more generally have resulted in specific groups being defined as suitable penal subjects’ (Cunneen & Baldry, 2013:91). In what follows, we will see how historic Malaysian penal policies have created a situation whereby precarious foreign national women are at undue risk of capital punishment for drug trafficking.

The mandatory death penalty for drug trafficking in Malaysia: a 1980s-era punishment against foreigners

The mandatory death penalty for drug trafficking in Malaysia is a colonial inheritance. While there is evidence of a death penalty in the pre-colonial Malaysian states[40], the modern death penalty emanates from the penal system instituted by the British colonisers. During colonial times, the death penalty was used as a 'political tool' to suppress uprisings against the colonial government, and thus its usage was largely confined to the crimes of treason and homicide (Berrih & Ngeow, 2020:29). As was the case with other former British colonies, during this time capital punishment 'was not just a method of crime control or individual punishment, but an integral aspect of colonial networks of power and violence' (Hynd, 2008:403).

It was under British rule that drugs were first criminalised in Malaysia, efforts that culminated in the Dangerous Drugs Act of 1952 (Binti Md Isa, 2015). At this time, the crime of drug trafficking did not carry a death sentence; this was introduced after independence in 1957, when in 1975 the death penalty was expanded to include the crime of drug trafficking, and it was later, in 1983, that the death sentence became the *mandatory* punishment for drug trafficking. While official data on death sentences and executions are hard to come by, it

[40] For example, an inscription of Islamic law on a stone in Terengganu dating back to 1303 discusses the death penalty for adulterous women (Berrih & Ngeow, 2020:28).

is estimated that the mandatory death penalty for drug trafficking is responsible for 69% of total executions in Malaysia to date (Novak, 2014:81).

The death penalty was introduced for drug trafficking in response to a perceived ‘drugs crisis’ – the framing of which is of critical importance here. During the late 1970s and early 1980s it was believed that the drugs scourge was the ‘main threat to national security’, as during that decade it was believed that 65% of those addicted to drugs were young men, who ‘represented the backbone and the hope of the nation’s future’ and thus drug trafficking was framed as a threat to the newly independent state’s development (Kamarudin, 2007:8). Consequently, in order to suppress and deter future drug traffickers, the death penalty became mandatory in 1983, and suspected drug offenders were also detained under the Internal Security Act, which had traditionally been reserved for the detention of political insurgents (Harring, 1991). Drug trafficking was seen as an ‘external’ problem, propagated by foreigners, and thus the mandatory death sentence was designed ‘to rid Malaysia of foreigners using Malaysia, particularly Penang, as a trafficking center’ (Harring, 1991:403-404). Indeed, capital punishment in Malaysia:

> [I]s part of a broader state-centered philosophy of unity among diversity, including scepticism of foreigners on whom the death penalty for drug trafficking falls heavily (Novak, 2014:74).

Unlike fellow commonwealth countries in the Caribbean and Africa, that have abolished the mandatory death penalty[41], Malaysia and Singapore are

[41] Trinidad and Tobago is the only Caribbean state still to retain the mandatory death penalty. In Africa, the mandatory death penalty has been deemed unconstitutional in

'hold outs' who still retain this punishment (Novak, 2014). This is largely due to the 'cultural exceptionalism' of their constitutions which, unlike other commonwealth nations' constitutions, do not contain provisions that prohibit cruel, inhuman or degrading punishment; do not recognise the right to a fair trial; and what is more, they permit the suspension of certain liberties when in the interest of national security (Novak, 2014:73). Not to mention that neither Malaysia nor Singapore are signatories to the International Covenant on Civil and Political Rights (ICCPR), which limits the use of the death penalty to only the 'most serious offences' (generally understood to mean crimes with lethal consequences, i.e. not non-violent drug offences) amongst other restrictions (Novak, 2014:77). As such, the mandatory death penalty (and indeed the death penalty in general) has eluded successful constitutional challenge in Malaysia. Barring a minor amendment introduced in 2017 – the futility of which will be discussed below – the Dangerous Drugs Act legislation, originally formulated to target foreigners engaged in drug trafficking, has remained unchanged since the 1980s.

More recently, we have also witnessed a process of 'securitization' that has occurred in Southeast Asia, from the mid-1990s onwards, in response to the perceived threat of West African drug trafficking syndicates (WADS) who are thought to be targeting Southeast Asian women as potential couriers (Martel, 2013). As a result, the drug trafficking issue is again framed as a

Uganda, Malawi and Kenya. In Asia the mandatory death penalty has been abolished in India and Bangladesh (Jabbar, 2019).

‘foreign predation’ and this has resulted in a regional ‘securitized’ approach and cooperation on this matter (Martel, 2013:31). In Malaysia, specifically:

> Malaysian authorities began to emphasize the recruitment of Malaysian women as drug mules as a pattern for international drug syndicates in April 2011, about the same time the similar securitization process culminated in the Philippines. Public opinion movements of sympathy over drug mules arose with the case of Yong Vui Kong, a Malaysian national facing death row in Singapore in 2011. Representatives of the Ministry of Foreign Affairs repeatedly declared in April 2011 that the recruitment of single mothers and female university students by drug trafficking syndicates, especially from West Africa, through social networks on the Internet, was becoming more common… WADS’ recruitment of local drug mules was the subject of calls in 2012 for the enhancement of interstate cooperation between the Malaysian authorities and their counterparts in neighboring countries (Martel, 2013:29).

The following extracts from my media database search further highlight this trend:

> Two Iranians and a Nigerian have been employed as Casanovas by an international drug syndicate to entice Malaysian women into smuggling drugs abroad… Nineteen Malaysian women have been arrested this year in Argentina, Brazil, Peru and China for drug trafficking… They were believed to be victims of the Casanovas, aged between 30 and 35, who had swept the women off their feet by showering them with expensive gifts, lavish dinners and shopping sprees before sending them off on all-expenses-paid holidays overseas (The Associated Press, 2007).
>
> Nigerian drug runners who were recruiting women here [Singapore] to carry drugs do not appear to have had much success last year, based on statistics from the Central Narcotics Bureau (CNB). For the first time in five years, their honeyed words and empty promises of love seem to have fallen on deaf ears, with not even one Singaporean woman arrested for helping them smuggle drugs (Soh & Yuen-C, 2011).

The fact that the Malaysian public is sympathetic to the plight of local women embroiled in drug trafficking 'at the hands' of a foreign man is demonstrated by Roger Hood's (2013) study of public opinion on the death penalty in Malaysia. When presented with the case of a 21-year-old Malaysian woman, caught at the airport with 100g of heroin hidden within her suitcase, only 9% of people thought that the death penalty was the appropriate sentence, and 80% of those who had previously stated they were in favour of the mandatory death penalty would not have imposed it in this case (Hood, 2013:13). This fact is reaffirmed by the following quote from my interview with a lawyer, who discussed media reporting on women victimised by drug trafficking syndicates:

> It depends on who the victims are. If it's a Malay girl and the community say, "look how she was tricked", they can connect, because it could be one of your sisters, or could be one of your family members… It's very different if it's a Nigerian girl and you portray her, and then they don't relate (Lawyer 10).

Moreover, the stereotype of foreign men manipulating local women into drug trafficking was pervasive amongst the Malaysian lawyers whom I interviewed, one of whom stated that 'in almost 99% of cases, there's a Nigerian or West African man involved' (Lawyer 5). As another lawyer (4) explained, it is thought that Nigerian men come to Malaysia under the pretence of studying English at a 'dubious educational institution' (a second-rate private college), and then date Malaysian women in order to have access to their local bank accounts, and engage in nefarious activities such as drug trafficking and 'Macau scams' (a type of financial scam). As discussed in chapter 7, the

Malaysian judiciary also perpetuate this stereotype: one lawyer (8) told me that when he was representing a Nigerian man on a drug trafficking charge, the first thing the judge said to the accused person (without having examined the facts of the case) was, 'oh, so you are here studying English with a Malaysian girlfriend?'.

While Malaysian society and the judiciary may be sympathetic to local Malaysian women who become embroiled in drug trafficking after being entrapped by foreign – usually West African men – the previous section suggested that this sympathy is not extended to foreign national women in this situation. Therefore, I surmise that these economically precarious foreign national women's statuses as 'foreign nationals' supersede their gendered identities in this situation: they are viewed through the well-established trope of 'foreigner corrupting Malaysia with drugs', rather than seen through a paternalistic and sympathetic lens as vulnerable and exploited women, as local women often are in these situations.

Foreign nationals involved in 'unwinnable' airport cases

How does the Dangerous Drugs Act legislation disproportionately affect foreign national accused persons? The evidence presented in this thesis suggests that this legislation and its enforcement are primarily geared towards so-called 'airport cases', where individuals are arrested at the airport in Malaysia having smuggled drugs internationally. This is in keeping with statements made at the parliamentary debate of the 1983 amendment: it was stated that drugs come into Malaysia from other countries in the Golden Triangle region and the Middle

East, and it was recommended that the government give more power to Immigration and Customs officers to check anyone entering the country and to increase border surveillance (House of Representatives Parliamentary Debate, 1983).

Accordingly, almost two-thirds of my sample of 146 women sentenced to death between 1983-2019 were arrested at the airport. All of the women's cases researched in a recent Amnesty International (2019) report on the Malaysian death penalty involved airport arrests. Conviction rates in airport cases are especially high due to the fact that there is a low standard of evidence for proving that an accused person had 'custody' and 'control' of a suitcase containing drugs, with, for example, receipts of electronic baggage tags being used to prove possession, custody and control of drugs concealed within luggage in capital cases (Radhakrishna, 2017). Once custody and control have been established, what is known as the 'double presumptions' come into force: whereby if you are arrested and found in possession in *x* amount of drugs you are automatically assumed to have been trafficking said drugs (rather than the state having to prove possession and then trafficking separately)[42] . This is a violation of fair trial rights, as it is in contravention of the established legal principle of 'innocent until proven guilty' as the burden of proof is on the accused person to prove their innocence, rather than the onus being on the state to prove their guilt (Antolak-Saper et al., 2020:30). These 'double presumptions' were deemed unconstitutional in the case of *Alma Nudo Atenza v. Public*

[42] For the exact amounts of different drug types that constitute 'trafficking' see Appendix 1.

Prosecutor [2019], as whilst the Court recognised that there was a public interest in protecting society from being exposed to drugs, it determined that the reversal of the burden of proof was a disproportionate response to this legitimate interest. However, Parliament has yet to amend the legislation to correct the position (Antolak-Saper et al., 2020:15). The Amnesty International (2019) report provides a vignette which explains how these provisions play out in practice:

> A lawyer described to Amnesty International the case of a young foreign national he is currently representing. She was arrested at one of Malaysia's international airports, after the police scanned her bag and found drugs hidden inside. She claims she did not know her bag contained prohibited substances. She stated that she had in fact returned to the custom area of the airport, to check whether she needed to put her bag under the scanner since she had forgotten to do so the first time she passed through. The custom officers asked her to do so, triggering the discovery of the substances. Fearful and [in] shock, she did raise this point during the police interrogation but she claims that the officers did not record her objection in her statement. The trial judge blamed her then lawyer for not seeking to bring footage from CCTV cameras of the airport as evidence in her defence. Her current lawyer has been seeking to retrieve the footage and introduce it on appeal, but procedural grounds prevent the introduction of new evidence at this stage of the process (Amnesty International, 2019: 33).

Further, the amendment to Section 39B of the Dangerous Drugs Act 1952, which was introduced in 2017 to afford a limited amount of discretion in drug trafficking cases involving couriers whose role is 'restricted to transporting, carrying, sending or delivering a dangerous drug' – does not actually benefit low-level couriers in reality. This is because clause 2(d) requires that:

> [T]he Public Prosecutor certifies in writing to the Court that in his determination, the person convicted has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.

However, drug couriers, by the very nature of their role, are unlikely to have any information about the wider drug trafficking operation. Indeed, my data, presented in chapter 7, show that information about their own travel plans was withheld from the women until the last minute, as the following extracts from court documents attest:

> John did not give her his brother's name or mobile number but promised to do so on her arrival in Malaysia. He asked her to purchase a sim card at the airport and call him (John) to obtain the brother's phone number. John informed her that his brother would collect the luggage from her once she had checked into a hotel. The accused said she did not know the name of the hotel as John had made the arrangements (Court report; Defence testimony; Case 102).
>
> She purchased a local sim card and called Martin. Martin subsequently sent her a message to her mobile phone to inform her which hotel to check into (Court report; Defence testimony; Case 105).
>
> All her hotel expenses were paid for by Ann… While in China, the appellant received a call from Ann who instructed her to meet the receptionist of the hotel to collect her flight ticket home (Court report; Defence testimony; Case 90).

Again, we saw in chapter 7 that flight details were changed at the last minute; one woman, in her court defence, described being approached at the airport by a 'Chinese woman' whom, who she had never met before, who handed her a flight ticket, to a new destination: '[l]ater she was handed a pink envelope which contained her passport, air flight ticket and the sum of USD500'

(Case 127). Others would be sent a ‘handler’ who would supervise them on parts of the journey: ‘Michael would send somebody to take care of her’ (Case 99). Thus, it is unlikely they would be able to provide any information that may be used to disrupt the wider operation; with most claiming they did not even know they were engaged in drug couriering. Indeed, research has shown that since the 2017 amendment came into force, it has only been considered and applied in three cases (Anti-Death Penalty Asia Network (ADPAN) et al., 2021: no page number).

As was demonstrated in chapter 7, research has shown that foreign national accused persons are especially vulnerable when facing the death penalty abroad. Carolyn Hoyle’s (2019) work shows that foreign nationals – especially migrant workers – face intersecting forms of disadvantage centred around their citizenship, ethnicity and religion when faced with the death penalty in Asia and the Middle East. In the Malaysian context specifically, a report by Monash University revealed that foreign national capital defendants are only provided interpreters in the courtroom, and not in the pre-trial stages; a violation of their right to a fair trial (Antolak-Saper et al., 2020:22).

It appears that drug trafficking interdiction efforts at the airport focus on those entering Malaysia, as the overwhelming majority of cases in my sample were of foreign women who were arrested upon arrival in Malaysia. Malaysia is known to be a transit hub in regional drug trafficking flows, therefore, this begs the question of why there are not more people arrested for drug trafficking who are leaving Malaysia to proceed to a more profitable drug market abroad (R.AGE, 2019). This again may be explained with reference to earlier concerns about drug trafficking as a ‘foreign predation’ that threatens Malaysian society, meaning that policing efforts are focused on those entering the country (Martel, 2013). My research data, presented in chapter 7, show that profiling on the basis of their gender, race and nationality occurs at airport customs. According to the lawyers interviewed, the ‘suspicious’ countries and nationalities include women from mainland China, Iran, Indonesia, the Philippines, Nigeria, India, Ukraine, and Uzbekistan. In particular, the following stereotype of a risky’ female traveller prevailed:

> There is a profile of a travel-savvy Chinese woman, of perhaps no known sources of income, who then is a professional drug mule, and she gets away with it because she is good looking; she is attractive; she dresses well; she looks professional… [Border control] are also looking out for high-class prostitutes, and tall, lanky, good-looking Mainland Chinese women could also be high-class prostitutes (Lawyer 4).

This multi-layered discrimination – from legislation aimed at punishing foreigners, to law enforcement agents profiling particular nationalities of travellers for drug couriering and judicial ignorance of the plight of these foreign national women – results in the hyper-sentencing of precarious foreign national women to death for drug trafficking in this jurisdiction.

Conclusion

This discussion chapter has considered the question: why does the mandatory death penalty for drug trafficking disproportionately affect precarious foreign national women? From a review of the preceding empirical chapters it seems that the answer lies in both global socio-economic structures and Malaysian penal policy on drug trafficking. As chapters 5, 6 and 7 have shown, as a result of the feminisation of precarious labour, women have turned to informal, semi-legal and illegal means to resolve their economic insecurity. This includes practices such as informal cross-border trading – an illustration of the phenomenon of 'globalisation of below' – and women claim to have been deceived into smuggling drugs as part of this trading. Others had travelled abroad for work as part of the regional 'feminisation of migration' and alleged to have been tricked into couriering drugs by their recruiters.

This sociological context is compounded by the Malaysian legislation on drug trafficking, which was introduced in the late 1970s and early 1980s in order to combat the perceived threat of foreign drug traffickers. Due to constitutional particularities, it is near impossible to challenge the constitutionality of the mandatory death penalty in Malaysia, and thus the original legislation remains intact today. The legislation appears to be geared towards prosecuting cases involving foreigners arrested at the airport trying to enter Malaysia with drugs on their person or in their luggage. Particular features of the Dangerous Drugs Act 1952 make these cases 'unwinnable' for defence counsel, in particular the fact that there is a low threshold of evidence to prove an accused person's 'custody' and 'control' of the drug, and once this has been established the 'double presumptions' apply, whereby the onus of the burden of proof shifts and the accused person must prove their innocence. Further, my data suggest that foreign national women are profiled at the Malaysian border for drug trafficking. While local Malaysian women caught drug couriering are viewed by society as victims of foreign drug trafficking syndicates who deserve sympathy, this does not seem to be the case for the women in my sample, whose status as a non-citizen appeared to trump their gendered status, and consequently they were viewed as 'suitable penal subjects' (Cunneen & Baldry, 2013:91).

It should be noted that the 'hyper-sentencing' of foreign national women to death for drug trafficking would not be fully resolved by the introduction of a discretionary death penalty. Not least because this would not address the drivers behind women's involvement in drug trafficking – global inequalities and economic precarity – but also because my data have shown that the Malaysian judiciary often misunderstand and do not believe women's accounts of deception, exploitation and coercion. My research is yet more evidence of the discrimination inherent in the mandatory (and discretionary) death penalty, and is the first to examine how this discrimination operates at the intersections of gender, foreign nationality and precarious economic status.

9. Conclusion

Introduction

In this final chapter, I reflect on my data and their implications. I consider each chapter's findings individually and cumulatively and reflect on the significant and original contributions they make to both the scholarship and legal practice. In concluding, I make the case for abolition of the mandatory and discretionary death penalty for drug trafficking in Malaysia due to its disproportionate impact on economically precarious foreign national women.

In reflecting on the research process, I am reminded that several of my (male) interviewees mentioned that they did not really see the death penalty for drug trafficking in Malaysia as a 'gender issue' (even though their responses to interview questions did indeed reveal gendered trends). They pointed out that the majority of those on death row in Malaysia are male (Amnesty International, 2019). They expressed a concern that focusing on women would detract attention from the large male death row population, and that the Malaysian government might champion the cause of women on death row ('low-hanging fruit') in an effort to appease the UN and other abolitionist bodies, whilst avoiding making any meaningful change. This has occurred in other jurisdictions, such as Zimbabwe, where the 2013 Constitution abolished the death penalty for women, but males are still sentenced to the ultimate punishment (Sato, 2018). Unsure of the 'gender dimension' of the crime of drug couriering, these interviewees thought it would be easier to make the argument that the death penalty has gendered impacts for the crime of homicide, for example in the cases of women convicted of killing their abusers as a result of 'battered woman syndrome' – as has been shown by research in Ghana and Sierra Leone (Peters, 2019). However, my thesis shows that the death penalty for drug trafficking in Malaysia has a disproportionate impact on economically precarious foreign national women, and thus a gender lens is imperative.

In the introductory chapter, we saw that there are few existing accounts of women, drug trafficking and the death penalty in Southeast Asia beyond a handful of testimonies from the 'grey literature'. These publications are quick to emphasise women's vulnerability and victimisation, without exploring properly the structural factors responsible for their exposure to drug trafficking that leads to the death penalty in Southeast Asian retentionist states. I seek to address this gap in the literature. My work responds to calls from the UN and civil society groups (namely Cornell Center on the Death Penalty Worldwide (2018 & 2021)) to incorporate a gender-based approach to capital punishment (Callamard, 2018).

Moreover, my thesis comes at a time when the future of the Malaysian death penalty is uncertain, and abolition of the *mandatory* death penalty is under consideration. It serves as further evidence that the Malaysian death penalty is 'fatally flawed', involves fair trial violations (particularly in so-called 'airport cases'; see chapter 8), and disproportionately affects foreign national populations (Amnesty International, 2019; Antolak-Saper et al., 2020). There are few academic accounts of the gendered impacts of the death penalty for women, beyond one or two limited accounts of women convicted of homicide in the US (Streib, 2006). Additionally, the death penalty in Asia has historically received little attention, despite it being the site of approximately 95% of the world's executions (Johnson & Zimring, 2009). Overall, my findings have implications for women on death row in the Southeast Asian region, and worldwide – as the trends I identify are likely prevalent across the global south where there are feminised migratory flows – and can be applied to situations where the death penalty is discretionary (for example, neighbouring Indonesia) or where it may be mandatory (including another neighbour, Singapore). My research sits at the intersections of studies of capital punishment and research on criminal justice, migration and citizenship, and it contributes to both.

Overview of findings

To begin with, this thesis establishes that there are a disproportionate number of foreign national women on death row in Malaysia[43]. Through my legal and media database searches I gathered information on 146 cases of women sentenced to death for drug trafficking in Malaysia between 1983 and 2019 (see chapter 4, Tables 7-11). I found that many of the women were working in feminised and precaritised sectors prior to their arrest[44]. The majority were

[43] By way of reminder, the latest disaggregated statistics show that there are 141 women under sentence of death in Malaysia, 86% of whom are foreign nationals (as compared to 39% of the male death row); 95% of the women on death row are sentenced to death for drug trafficking (as compared to 70% of the male death row); and 90% of the women on death row for drug trafficking are foreign nationals (Amnesty International, 2019:19-20). Similarly, my own database of 146 cases of women sentenced to death for drug trafficking between the years 1983-2019 revealed that 90% of the women were foreign nationals, predominantly from the global south, including the following nationalities: Thailand (18%), China (11%), Indonesia (11%), Iran (11%) and the Philippines (9%).

[44] 29% were working in the retail, hospitality and beauty industries (in roles such as waitress, hairdresser, bartender, beautician, cleaner); 13% stated that they were primarily working as a courier (either for someone else or couriering goods for their own small business); 17% were unemployed or did not have any official employment; 9% were working in healthcare or as domestic workers; and 8% were in the

arrested at airports (91) and most were arrested for trafficking methamphetamine (82)[45]. For those arrested at the airport who stated their reasons for travel in their legal defence, many were engaged in couriering services and were paid to courier items (51); were asked to courier a bag for an acquaintance (11); or travelled to purchase and export goods for their small business (11) – all of these findings speak to the feminised practice of 'informal cross border trading' (Desai, 2009; Ulysee, 2007; Joe Laidler & Lee, 2014). Others travelled because they were recruited for a job abroad (8) or they travelled to Malaysia in order to seek employment (6). This finding is supported by research that suggests that female migrant workers are an attractive proposition for drug syndicates due to their possession of a passport and economic need (Cornell Center on the Death Penalty Worldwide, 2018:12). There is overlap between these two categories, with research showing that migrant domestic workers are involved in informal cross-border trading in Southeast Asia (Milgram, 2012).

Through consideration of the existing criminological literature on theorising women's offending – which has shifted over time from viewing women's criminality as an individual pathology towards exploration of the structural causes of female crime – I adopt a transnational feminist approach to

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entertainment and sex industry (the majority of whom stated they were working as masseuses).

[45] Indeed, Southeast Asia is one of the largest producers of methamphetamine in the world, and Malaysia is a transit hub in the regional drug trade (United Nations Office on Drugs and Crime, 2021; R.AGE, 2019).

understanding the relationship between gender, globalisation and criminalisation (chapter 2), which:

> [C]onnects the multiple and intersecting identities of individual women – race, class, gender, culture and nation – with the processes of globalization, militarism, patriarchy, and neo-colonialism to understand the resultant criminalisation of racialised, foreign national women from the global south (Reynolds, 2008:73).

Relatedly, my conceptual framework consists of an engagement with two overlapping and gendered concepts: precarity and disposability. The former relates to the changing nature of labour in a globalised economy and the preponderance of casual, temporary work, which does not offer a steady income or job security (Standing, 2011). Both historically and presently this work has been dominated by women, often from the global south, and thus we can speak of the 'feminisation' of precarity (Standing, 1989). Disposability is a feature of precarious work, and can be explained with reference to the fact that '[t]he discursive production of racialized women's bodies as inherently inferior has become integral to the current operation of intensifying global capitalism' (Bachour, 2014:174). Women from the global south's precarious labour is devalued and they are regularly 'retrenched' and replaced by a more 'youthful' population of workers (Wright, 2006). This devaluing of women's labour can lead to a more pernicious devaluation of women's bodies and lives, as illustrated by the femicide of female maquiladora workers in Mexico (Salzinger, 2003).

With regards to my methodology, I adopted a qualitative approach, conducting 47 'elite' interviews. Notably I did not interview the women on death row themselves owing to restricted access, as well as the ethical issues related to interviewing vulnerable participants (Bosworth & Kellezi, 2017; Gerlach, 2018). Further, in accordance with a transnational feminist perspective mentioned above, I am more interested in the wider structural issues that result in women's involvement in drug trafficking that leads to the death penalty, rather than focusing on individuals' life histories and 'mining' their personal trauma (Sudbury, 2005b). By interviewing elites, I was also able to explore the relationship between the elites' perceptions and the structural factors which led women to death row. Interestingly, my fieldwork experiences shed light on some of the challenges of the 'southernising' criminology project (Carrington, Hogg & Sozzo, 2016). Namely, the existence of a 'global elite' who have jurisdiction over the criminal justice system in jurisdictions like Malaysia, represent a barrier to widening research participation in the 'south'.

Analysis of my empirical data showed that women who engage in drug couriering that leads to the death penalty in Malaysia are motivated by economic precarity, and drug couriering becomes an extension of the feminised and precaritised labour they were engaged in prior to arrest (chapter 5). They are 'disposable' workers in the Southeast Asian drug trade, who may be 'retrenched' and 'tipped off' to authorities by drug syndicates at whim, leading to their arrests, and their disposability is exacerbated by the fact they are viewed as 'scapegoats' by law enforcement agencies who use them to bolster arrest and conviction statistics (chapter 6). The factual scenarios depicted in the women's defences are characterised by exploitation, leading to the question – posed by civil society groups in the region – are women on death row for drug trafficking in Southeast Asia actually victims of human trafficking (chapter 7)?

In the discussion chapter, I reflect on why the mandatory death penalty for drug trafficking disproportionately affects foreign national women (chapter 8). Here I argue that sociological factors (namely how globalisation has created a situation of economic insecurity for many women in the global south who then turn to alternative and informal means to generate an income) compound the ingredients of the legislation, to cause the 'hyper-sentencing' of foreign national women to death (Wacquant, 2010). The Dangerous Drugs Act 1952, which governs the death penalty for drug trafficking, was introduced during the late 1970s and early 1980s in order to stem the 'drugs issue' caused by foreigners (Harring, 1991). As such, it seems that the law is designed to prosecute so-called 'airport cases' where predominantly foreign nationals are arrested at the airport in Malaysia with drugs concealed in suitcases (or on their person). There is a low standard of evidence required to prove that the accused person had 'custody' and 'control' of the drugs within their suitcase or on their person, and once this has been established there are 'double presumptions' whereby if you are arrested and found in possession in *x* amount of drugs you are automatically assumed to have been trafficking said drugs (rather than the state having to prove possession and then trafficking separately)[46]. Moreover, the particularities of the Malaysian constitution mean it is exceedingly hard to

[46] For the exact amounts of different drug types that constitute 'trafficking' see Appendix 1.

challenge the constitutionality of the mandatory death penalty, and so foreign nationals continue to be sentenced to death in these 'airport cases' unabated (Novak, 2014).

<u>What is the relationship between gender, globalisation and criminalisation here?</u>

To return to my overarching research question: what is the relationship between gender, globalisation and criminalisation in this context? This thesis responds to calls made to consider the relationship between gender and globalisation in criminology, and in so doing it moves beyond cursory comments about the 'female underside' of globalisation and explores in depth the dynamics that lead to women's criminalisation (Franko Aas, 2007). To make sense of these trends, this thesis engages with the concept of 'globalisation of below' which is arguably more relevant to the experiences of the women in the global south featured in this thesis than hegemonic understandings of globalisation:

> [D]efined as the transnational flow of people and goods involving relatively small amounts of capital and informal, often semi-legal or illegal transactions, often associated with "the developing world" but in fact apparent across the globe (Mathews & Alba Vega, 2012:1).

A key example of this phenomenon is 'informal cross-border trading' whereby (predominantly) women are paid to courier items such as gifts, cash, medicine and commodities across international borders via their personal baggage allowance to avoid customs duties – we see examples of this across the global south (Desai, 2009; Ulysee, 2007; Joe Laidler & Lee, 2014). This is an agentive response to exclusion from the mainstream economy, whereby women have found 'alternative routes to economic participation that emerge in the nooks and crannies of globalization' (Gauthier, 2012:138). While other criminological work has explored the policing of 'parallel trading' in Hong Kong (Joe Laidler & Lee, 2014), I am the first to link cross-border informal trading and drug couriering. This finding helps us to make sense of the claims of 73 women from my sample (65%) who stated that they were duped into smuggling drugs after being paid or asked to courier items across an international border to Malaysia.

Further, my thesis also demonstrates that women can become caught up in illicit activities such as drug couriering as a result of the 'feminisation of migration' – with women in my sample claiming they were duped into trafficking drugs as part of the recruitment for their overseas employment (chapters 5 and 7) (Piper, 2008). My findings build upon existing literature on the criminalisation of female migrant workers (Lee, Johnson & McCahill, 2018). As part of this, I explore the possible links between human trafficking and drug trafficking in this context, and while existing work has made comparisons between the human and drug trafficking syndicates' organisational structures (Cornell, 2009; Shelley, 2012), here I evaluate the commonalities in terms of the methods of recruitment, transportation and exploitation of vulnerability of victims. I argue that while drug couriering under duress could be considered a form of human trafficking, there are unintended consequences caused by labelling these women as victims of human trafficking, as demonstrated by feminist criminological work on the surveillance and criminalisation of potential female human trafficking victims at the border. Indeed, arguing that these women are victims of human trafficking could lead to possible restrictions on their right to mobility and right to livelihood, as well as create the conditions whereby women are subjected to preventative detention (Kempadoo, 1998; Jeffrey, 2005; Pickering & Ham, 2014; Lee, 2014).

Further, I explore how these women's cases are characterised by precarity and disposability caused by globalisation. While other criminological studies have explored ontological precarity (Urquiza-Haas, 2017) as well as how punishment itself can be considered 'precarious' (Super, 2019), and others still have explored the 'disposability' of youth in the US criminal justice system (Giroux, 2009), I am the first to interrogate these concepts in relation to gender and globalisation in criminology.

Implications for legal practice and death penalty scholarship

With regard to the implications that my findings have for legal practice in Malaysia: my data first and foremost lends credence to the women's claims of being 'innocent carriers', which is a defence that is rarely accepted by the court (Antolak-Saper et al., 2020). My research explores how women become involved in drug couriering as a result of regional economic and migratory trends, and in so doing shows that their accounts are entirely plausible. So, for example, a judge (1) whom I interviewed referred to cases where someone is sent overseas to carry a bag at the behest of someone else as 'very silly' and further stated that 'unless you are not sound of mind, why would anybody do that?' (chapter 7). In fact, my research on cross-border informal trading has shown that this is an established practice that proliferates across the global south (Desai, 2009; Ulysee, 2007; Joe Laidler & Lee, 2014). Additionally, judges appeared ignorant to the complexities of coercion and duress, and dismissed these defences, with comments such as:

> The keeping of her passport by her bosses, the "overprotectiveness" and restriction of her movement upon arrival at each designated destination, the immediate deliverance of the bag of "cloth samples" and all these other things she mentioned in her evidence should have caused alarm and triggered her curiosity (Court report; Judge; Case 127).

Moreover, it seems that judges have a preconceived idea of a female 'innocent carrier' who appears to be a young, naïve and impoverished woman – a stereotype that many of the precarious drug couriers did not live up to – particularly as members of the 'precariat' may be well-educated, employed (albeit in temporary arrangements) and so they are less readily identifiable than someone living in abject poverty (Standing, 2011). The following quote from a judge reveals this mind-set:

> Her handbag contained make-up, ladies' accessories, a Gucci watch, sunglasses and a wallet containing American Dollars… These items are not a poor lady's possessions, but the items indicate she is a socialiser – a lady of the "world" (Court report; Judge; Case 72).

Clearly, it would be helpful to sensitise judges to the gendered trends identified in this thesis, perhaps through the Malaysian Judicial Academy[47]. Additionally, the Penal Code should be amended so that those facing a capital charge are able to put forward the defence of duress, as they are currently precluded from doing so (English, 1983). Further, my research data bolster claims that the 2017 amendment to the Dangerous Drugs Act 1952 does not benefit ‘couriers’ as it was intended (Antolak-Saper et al., 2020). This is due to the requirement that the accused person possess knowledge that can ‘disrupt’ wider trafficking efforts, when in fact my findings show that many of the women claimed they were duped into drug couriering; they had no knowledge of the wider drug syndicate; they had limited knowledge of their ‘recruiter’; and their travel plans were only revealed to them at the very last minute. Legal reform is necessary to address this oversight, as currently this amendment is not fit for purpose.

In terms of the impact my research has on death penalty scholarship: it builds upon other studies of the death penalty’s disproportionate effect on foreign national defendants, while adopting a gender-lens (Hoyle, 2019; Hoyle & Girelli, 2019). Further, it adds to the literature on the arbitrary and discriminatory nature of the mandatory and discretionary death penalty – which has thus far considered indices such as race and gender of both the accused person and their victim (in cases of homicide) as well as the socio-economic status of the defendant (Williams, Demuth & Holcomb, 2007; Bright, 2014;

[47] Indeed, on 18 August 2018 the Judicial Academy held a training on ‘Adjudication of Habeas Corpus Cases and Amendment to Dangerous Drugs Act 1952’ (Judicial Appointments Commission, 2018).

Bulkan, 2014; Mogwe, 2014; Ramanathan, 2014). Here, however, I examine discrimination at the intersections of gender, economic precarity and citizenship. My research adds to the calls for the total abolition of capital punishment in Malaysia (Amnesty International, 2019; Antolak-Saper et al., 2020; Death Penalty Research Unit (DPRU) & The Death Penalty Project, 2022). Even if the mandatory death penalty were to be abolished in Malaysia there would still be an unhealthy level of arbitrariness and discrimination in its application, as shown by the wealth of research evidence that suggests that 'those who are sentenced to death and executed are much more likely to be among the least powerful of all who are convicted of capital crimes' (Lehrfreund & Hood, 2016:150).

Limitations

Research on the death penalty worldwide is limited by retentionist states' secrecy regarding data on death sentences and executions. I was limited to English language sources, and judges are under no obligation to report judgments, so there may have been some cases that eluded the court record. To overcome this possible dearth of data, I relied upon a number of different sources including interview data, legal files, media articles and civil society reports for a 'triangulation of proof' (Pascoe, 2016:204).

Future research directions

Some reports have emerged from Malaysia of deplorable conditions on death row for women, and so future research should aim to explore these claims and assess the gendered 'pains of imprisonment' for women on death row in this jurisdiction (Berrih & Ngeow, 2020; Sykes, 1958). It would also be helpful to interview the families of the women under sentence of death, particularly in cases where women have dependents, as other research has highlighted that maternal imprisonment has undue impacts on children (Minson, 2020). Indeed, on 10 October 2019 (World Day Against the Death Penalty) it was announced that the annual focus would be on 'raising awareness of the rights of children whose parents have been sentenced to death or executed' (International Federation for Human Rights, 2019). Additionally, it would be useful to learn more about women's (and especially foreign national women's) experiences of the *criminal justice process* when faced with a capital charge in Malaysia. Other research has revealed that foreign nationals in particular receive a low standard of justice when facing a capital charge in Malaysia, for example, they have limited access to language interpretation, and so it would be useful to assess whether this intersects with gender to create a situation of compounded disadvantage (Amnesty International, 2019; Antolak-Saper et al., 2020).

Final remarks

The death penalty for drug trafficking is fatally futile. It is a disproportionate punishment that contravenes international law and unduly affects those most marginalised in society (at the intersections of gender, citizenship and precarious economic status – brought about by globalised economic and migratory trends). It does little to deter female couriers, many of whom are deceived or coerced into smuggling drugs. Nor does it incapacitate and disrupt the regional drug market, given the structural inequalities that give rise to a constant feminised migratory flow of ‘disposable’ and economically precarious would-be couriers.

Appendix

Appendix 1. The amount of drugs that constitute 'drug trafficking' under Section 37 (da) of the Dangerous Drugs Act 1952

Subsection	Drug type	Drug weight (in grams)
(i)	Heroin	15
(ii)	Morphine	15
(iii)	Monoacetylmorphines	15
(iii*a*)	Heroin, morphine & monoacetylmorphines (or a mixture of two of these substances)	15
(iv)	Prepared opium	1,000
(v)	Raw opium	1,000
(v*a*)	Prepared opium & raw opium	1,000
(vi)	Cannabis	200
(vii)	Cannabis resin	200
(viii)	Cannabis & cannabis resin	200
(ix)	Cocaine	40
(x)	Coca leaves	2,000
(xi)	2-Amino-1-(2,5-dimethoxy-4-methyl) phenylpropane	50
(xii)	Amphetamine	50
(xiii)	2, 5-Dimethoxyamphetamine (DMA)	50
(xiv)	Dimethoxybromoamphetamine (DOB)	50
(xv)	2, 5-Dimethoxy-4-ethylamphetamine (DOET)	50
(xvi)	Methamphetamine	50
(xvii)	5-Methoxy-3, 4-Methylenedioxyamphetamine (MMDA)	
(xviii)	Methylenedioxyamphetamine (MDA)	50
(xix)	N-ethyl MDA	50
(xx)	N-hydroxy MDA	50
(xxi)	N-methyl-1 (3, 4-methylenedioxyphenyl)-2-butanamine	50
(xxii)	3, 4-Methylenedioxymethamphetamine (MDMA)	50
(xxiii)	Paramethoxyamphetamine (PMA)	50
(xxiv)	3, 4, 5-Trimethoxyamphetamine (3,4,5-TMA)	50
(xxv)	Any combination of substances from (xi) to (xxiv)	50

Appendix 2. Overview of cases of women sentenced to death for drug trafficking in Malaysia 1983-2019 (- denotes absence of data)

	Year of arrest	Year of death sentence	Latest information on case
Case 1	1982	1985	Executed in 1990.
Case 2	1983	-	Acquitted & discharged by Supreme Court (now Federal Court) in 1994.
Case 3	1984	1986	Executed in 1987.
Case 4	1985	1987	Supreme Court (now Federal Court) reduced sentence to life imprisonment in 1989; received an official pardon & released in 1996.
Case 5	1986	1991	Acquitted & discharged by the (then Supreme Court, now Federal Court) on 11 September 1991.
Case 6	1987	1993	-
Case 7	1988	1991	Executed in 1994.
Case 8	1989	1994	-
Case 9	1997	1998	Acquitted & discharged by Court of Appeal in 2004.
Case 10	1997	1999	Court of Appeal dismissed appeal in 2004.
Case 11	2001	-	Court of Appeal dismissed appeals in 2012 & 2014.
Case 12	2003	-	Court of Appeal dismissed appeal in 2011.
Case 13	2004	2009	-
Case 14	2005	2011	Court of Appeal dismissed appeal in 2013.
Case 15	2005	2010	Received official pardon in 2015 & death sentence reduced to life imprisonment.
Case 16	2005	2007	Court of Appeal dismissed appeal in 2009.
Case 17	2008	2010	-
Case 18	2008	-	Acquitted & discharged by the Court of Appeal in 2015.
Case 19	2008	-	Acquitted & discharged by the Court of Appeal in 2015.
Case 20	2008	2012	Court of Appeal dismissed appeal in 2014.
Case 21	2009	2011	Court of Appeal reduced sentence to 12 years' imprisonment in 2012.

Case 22	2009	2011	-
Case 23	2009	-	Court of Appeal reduced sentence to 20 years' imprisonment in 2012.
Case 24	2009	2010	Court of Appeal dismissed appeals in 2013 & 2014.
Case 25	2009	-	Acquitted & discharged by the Court of Appeal in 2014.
Case 26	2009	2010	Court of Appeal dismissed appeal in 2013.
Case 27	2009	-	Court of Appeal dismissed appeal in 2012.
Case 28	2009	2012	Court of Appeal dismissed appeal in 2015.
Case 29	2009	2012	Court of Appeal dismissed appeal in 2015.
Case 30	2009	2012	Acquitted & discharged by the Court of Appeal in 2015.
Case 31	2009	2012	Court of Appeal dismissed appeal in 2014.
Case 32	2009	-	Court of Appeal dismissed appeal in 2015.
Case 33	2009	2012	-
Case 34	2009	-	Court of Appeal dismissed appeal in 2015.
Case 35	2009	2011	Court of Appeal dismissed appeal in 2014.
Case 36	2009	-	Acquitted & discharged by the Court of Appeal in 2013.
Case 37	2010	-	Court of Appeal dismissed appeal in 2013.
Case 38	2010	-	Court of Appeal dismissed appeal in 2017.
Case 39	2010	2012	-
Case 40	2010	2011	-
Case 41	2010	2013	Court of Appeal dismissed appeal in 2015.
Case 42	2010	2013	Court of Appeal dismissed appeal in 2015.
Case 43	2010	2011	Court of Appeal dismissed appeal in 2015.
Case 44	2010	2011	Court of Appeal dismissed appeal in 2013.
Case 45	2010	2012	Court of Appeal dismissed appeal in 2014.
Case 46	2010	-	Court of Appeal dismissed appeal in 2014.

Case 47	2010	2012	Court of Appeal dismissed appeal in 2013.
Case 48	2010	2012	Court of Appeal dismissed appeal in 2015.
Case 49	2010	2016	-
Case 50	2010	2012	Acquitted & discharged by the Court of Appeal in 2013.
Case 51	2010	2011	Court of Appeal dismissed appeal in 2013.
Case 52	2010	2013	Court of Appeal dismissed appeal in 2015.
Case 53	2010	2013	Court of Appeal dismissed appeal in 2015.
Case 54	2010	2013	Court of Appeal sent case back to High Court for retrial in 2016.
Case 55	2011	2015	Court of Appeal overruled High Court's reduction in sentence & imposed a death sentence in 2015.
Case 56	2011	2012	Court of Appeal dismissed appeal in 2014.
Case 57	2011	-	Court of Appeal dismissed appeal in 2015.
Case 58	2011	2015	Court of Appeal reduced sentence to 18 years' imprisonment in 2016.
Case 59	2011	-	Court of Appeal dismissed appeal in 2014.
Case 60	2011	2014	Court of Appeal dismissed appeal in 2016.
Case 61	2011	2012	-
Case 62	2011	2012	Court of Appeal dismissed appeal in 2015.
Case 63	2011	-	Court of Appeal dismissed appeal in 2015.
Case 64	2011	2012	-
Case 65	2011	-	Acquitted & discharged by the Court of Appeal in 2016.
Case 66	2011	-	Court of Appeal dismissed appeal in 2015.
Case 67	2011	2013	Court of Appeal dismissed appeal in 2015.
Case 68	2011	-	Court of Appeal dismissed appeal in 2015.
Case 69	2011	2015	Court of Appeal allowed appeal & reduced sentence to 3 years & 2 months' imprisonment in 2017.

Case 70	2011	2014	Court of Appeal dismissed appeal in 2014 & Federal Court dismissed appeal in 2017.
Case 71	2011	-	Court of Appeal dismissed appeal in 2015.
Case 72	2012	2014	Court of Appeal dismissed appeal in 2015.
Case 73	2012	2013	-
Case 74	2012	2013	Court of Appeal dismissed appeal in 2015, but the Federal Court held appeal & sentence was commuted in 2016.
Case 75	2012	2014	Court of Appeal dismissed appeal in 2017.
Case 76	2012	-	Court of Appeal dismissed appeal in 2017.
Case 77	2012	2013	Court of Appeal dismissed appeal in 2015.
Case 78	2012	2014	Court of Appeal dismissed appeal in 2015.
Case 79	2012	-	Court of Appeal dismissed appeal challenging the acquittal of co-accused in 2019.
Case 80	2012	2015	Court of Appeal dismissed appeals in 2018 & 2019.
Case 81	2012	-	Court of Appeal dismissed appeal in 2019.
Case 82	2012	-	Court of Appeal dismissed appeal in 2017.
Case 83	2012	2015	-
Case 84	2012	2015	-
Case 85	2012	-	Court of Appeal dismissed appeal in 2015
Case 86	2012	-	Court of Appeal dismissed appeal in 2016.
Case 87	2012	2017	Court of Appeal overturned the High Court's earlier acquittal & imposed a death sentence in 2017.
Case 88	2012	-	Court of Appeal dismissed appeal in 2017.
Case 89	2012	-	Court of Appeal dismissed appeal in 2019.
Case 90	2013	-	Court of Appeal dismissed appeal in 2017.
Case 91	2013	2018	Court of Appeal overturned the High Court's acquittal & imposed a death sentence in 2018.

Case 92	2013	2015	Court of Appeal overturned the High Court's acquittal & sentenced her to death in 2015.
Case 93	2013	2015	Court of Appeal dismissed appeal in 2017.
Case 94	2013	2015	Court of Appeal dismissed appeal in 2017.
Case 95	2013	2015	Court of Appeal dismissed appeal in 2016.
Case 96	2013	-	Court of Appeal dismissed appeal in 2017.
Case 97	2013	-	Acquitted & discharged by the Court of Appeal in 2015.
Case 98	2013	2015	Court of Appeal dismissed appeal in 2018.
Case 99	2013	2017	Court of Appeal overturned the High Court's sentence of 15 years & imposed death sentence in 2017.
Case 100	2013	2017	Court of Appeal dismissed appeal in 2018.
Case 101	2013	-	Court of Appeal dismissed appeal in 2018.
Case 102	2013	-	Court of Appeal dismissed appeal in 2019.
Case 103	2013	2016	Court of Appeal dismissed appeal in 2018.
Case 104	2013	2015	Court of Appeal dismissed appeal in 2017 & Federal Court dismissed appeal in 2020.
Case 105	2013	2017	Court of Appeal dismissed appeal in 2019.
Case 106	2013	2016	Court of Appeal dismissed appeal in 2017.
Case 107	2013	-	Court of Appeal dismissed appeal in 2017.
Case 108	2013	-	Court of Appeal dismissed appeal in 2018.
Case 109	2013	-	Court of Appeal dismissed appeal in 2016.
Case 110	2013	2016	Court of Appeal overturned the High Court's sentence of 18 years' imprisonment & imposed death sentence in 2016.
Case 111	2013	2017	Court of Appeal dismissed appeal in 2019.
Case 112	2013	2015	Court of Appeal dismissed appeal in 2016.

Case 113	2013	2016	Court of Appeal dismissed appeal in 2017.
Case 114	2013	2017	Court of Appeal dismissed appeal in 2019.
Case 115	2013	2017	Court of Appeal dismissed appeal in 2019.
Case 116	2013	2016	Court of Appeal dismissed appeal in 2018, but the Federal Court accepted appeal & reduced sentence to 20 years' imprisonment in 2019.
Case 117	2013	2017	-
Case 118	2013	2017	-
Case 119	2013	-	Court of Appeal dismissed appeal in 2019.
Case 120	2014	2016	Court of Appeal overturned the High Court's sentence of 10 years' imprisonment for possession & increased the charge to trafficking & a sentence of death in 2016.
Case 121	2014	-	Court of Appeal dismissed appeal in 2019.
Case 122	2014	-	Court of Appeal dismissed appeal in 2019.
Case 123	2014	-	Court of Appeal dismissed appeal in 2018.
Case 124	2014	2016	Court of Appeal dismissed appeal in 2017.
Case 125	2014	2016	-
Case 126	2014	2016	Court of Appeal dismissed appeal in 2018.
Case 127	2014	2015	Court of Appeal dismissed appeal in 2017.
Case 128	2014	2016	-
Case 129	2014	2016	Court of Appeal dismissed appeal in 2017.
Case 130	2014	2015	Court of Appeal dismissed appeal in 2017.
Case 131	2014	-	Court of Appeal dismissed appeal in 2017, but Federal Court quashed death sentence & reduced charge to possession in 2019.
Case 132	2014	2016	-
Case 133	2014	2017	-
Case 134	2014	2017	Court of Appeal dismissed appeal in 2019.
Case 135	2014	2016	-

Case 136	2014	2016	Court of Appeal dismissed appeal in 2018.
Case 137	2014	2017	-
Case 138	2014	2018	Court of Appeal overturned the High Court's acquittal in 2018 & imposed death sentence, but acquitted & discharged by the Federal Court in 2019.
Case 139	2015	2017	-
Case 140	2015	-	Court of Appeal dismissed appeal in 2019.
Case 141	2015	2017	-
Case 142	2015	2017	Acquitted & discharged by High Court in 2016, but overturned on appeal & resentenced to death by High Court in 2017. Court of Appeal rejected appeal in 2018.
Case 143	2017	-	Court of Appeal dismissed appeal in 2018.
Case 144	2018	2019	-
Case 145	2018	2019	-
Case 146	-	-	Court of Appeal dismissed appeal in 2015.

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