

ANALYSIS OF HUMAN TRAFFICKING CASES IN MYANMAR

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Abstract

Human trafficking is a form of modern-day slavery and a human right violation that is a crime committed against individuals and the state. The big challenge is that Human Trafficking is increasing day by day due to changes in patterns and flows of human trafficking by using developed internet techniques. From 2017 to 2022, the most common forms of human trafficking are forced marriage and forced labour. Therefore, this paper intends to express how to punish the main traffickers and abettors effectively. It is pointed out that the enforcement actions against human trafficking cases are very few in practice under the decided cases analysis within 2021 and 2022 from the legal perspective. It is also found that the identification and the punishment against human trafficking still have defects in that the main traffickers and abettors were absconding and some traffickers are living in foreign countries under the collected data. It can be asserted that it is very necessary to some extent reciprocal assistance among the countries through bilateral negotiations to eliminate effectively cross-border human trafficking. As a result, without public participation, human trafficking cannot be controlled and awareness-raising is also needed to get valid information in trafficking cases. In addition, training and workshops are needed for the participants involved in the Criminal Justice System to quickly identify human trafficking cases. Thus, Public participation and cooperation are mainly needed in trafficking cases.

Keywords: Human Trafficking, Forced Marriage, Forced Labour.

Introduction

Human Trafficking means the violation of human rights in which humans exploit other human beings. The problem of human trafficking is still threatening mankind in the twenty-first century and nations around the world are combating this issue collectively. Myanmar first became aware of the human trafficking problem around the years of 1995. Human Trafficking is an unacceptable issue that spoils Myanmar's national prestige and dignity. Therefore, Myanmar has adopted combating human trafficking as a national cause by emphasizing anti-human trafficking. On 30th March 2004, Myanmar acceded to the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Moreover, Myanmar has entered and is cooperating internationally with the ASEAN Convention against Trafficking in Persons Especially Women and Children regarding human trafficking.

Kofi A. Annan, former-Secretary-General of the United Nations remarked "Trafficking in Persons" as the worst human rights infringement in the world.²

Myanmar Law's definition of human trafficking derives from Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime commonly referred to as the Palermo Protocol and Article 2 of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, 2015.

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² Han Myint (War Khe Ma), *The Knowledge of Anti-Trafficking in Persons Law*, 1st edition, 2010, Yan Aung Literature, p.48.

Section 3(b) of the Prevention and Suppression of Human Trafficking Law (2022) defines “Human Trafficking” as the recruitment, transportation, transfer, sale, purchase, lending, hiring, harbouring or receipt of persons after committing any of the following acts for the intend to exploit of a person with or without his consent:

1. threat, use of force or other form of coercion;
2. abduction;
3. fraud;
4. deception;
5. abuse of power or authority;
6. abuse of taking advantage of a difficult situation;
7. giving or receiving of money or property or benefit to obtain the consent of a person who can control or influence him in some way.

Exception- Any method in sub-section (b) is applicable or not, whether or not there is any exploitation of children, confiscation, collection, transportation, transfer, selling, purchase, renting, granting asylum or accepting shall be considered as human trafficking.¹

The Republic of the Union of Myanmar recognized the fundamental rights of its citizens in Section 358 of the Constitution of the Republic of the Union of Myanmar 2008 that the Republic of the Union of Myanmar prohibits the enslaving and trafficking in persons. That section shows for State’s aim to protect its citizens and that every citizen should cooperate in the Anti-Trafficking activities of respective bodies in Myanmar.

In Myanmar, in the past, due to poverty and lack of employment opportunities, only people with low education had problems of being trafficked, but now, educated people are also being trafficked. Myanmar citizens are being trafficked annually for forced marriage, forced labour and sexual exploitation to neighbouring countries and other foreign countries as well as locally. Patterns of human trafficking are changing, and it is being observed that recruitment is taking place using evolving technologies.

To combat the new forms of human trafficking, the State Administration Council repealed the Anti-Trafficking Law. Then it promulgated the Prevention and Suppression of Human Trafficking Law in 2022 as Law No. 41/2022 on 16th June 2022. This paper is divided into two parts: the prosecution of the Prevention and Suppression of Human Trafficking Law, and an analysis of human trafficking cases in Myanmar from 2017 to 2022.

Materials and Methods

This paper analyses human trafficking cases in Myanmar from 2017 to 2022 from the legal perspective and uses the collected data from the Central Body for Suppression of Human Trafficking. In this section, related laws and reports are cited.

Findings and Discussion

This paper finds that a significant number of absconders are involved in the decision-making process of human trafficking cases. During 2017 and 2022, most of the cases relating to human trafficking were forced marriages and forced labour cases were caused internally and

¹ The Prevention and Suppression of Human Trafficking Law 2022 s 3(b).

externally. It has been reported that Yangon Region not only has the highest number of human trafficking cases but also the highest number of traffickers, while there have been no reported cases in Kayah State, and Chin State has the lowest number of traffickers. In addition, Yangon Region has the highest place of victims' residences while Chin State has the lowest. It has been discovered that human trafficking is increasing rapidly due to the use of advanced internet techniques, while enforcement actions against human trafficking cases are rarely practised. To effectively eliminate cross-border human trafficking very need to some extent reciprocal assistance among the countries through bilateral negotiations. Therefore, most of the responsible persons need multi-sectoral cooperation to effectively prevent the elimination of internal and transnational human trafficking cases and protect against new forms of human trafficking, which are constantly changing.

Prosecution of the Prevention and Suppression of Human Trafficking Law in Myanmar

Myanmar is implementing to combat human trafficking as a national responsibility. In particular, human trafficking is firmly established and prosecuted to identify the perpetrators and impose effective punishments. The courts are imposing effective punishments on the perpetrators of human trafficking by the law. In the Anti-Trafficking in Persons Law of 2005, the Central Body forms a Working Group on Legal Framework and Prosecuting Measures headed by the Deputy Attorney General to prevent and suppress human trafficking. Then, the Central Body assigns functions and duties to implement human trafficking prosecution measures.

And then, to combat the new forms of human trafficking effectively, the Central Body for Suppression of Trafficking in Persons was amended and formed by the State Administration Council on 7th July 2022 comprising 43 members, headed by the Union Minister of Home Affairs as the Chairperson and the suitable persons as members.¹ Its functions and duties are delegated by the State Administration Council.

Furthermore, a Working Committee on Legal Affairs and Prosecuting comprising 15 members was amended and formed by the Central Body for Suppression of Trafficking in Persons on 26th October 2022.² Its functions and duties are delegated by the Central Body for the Suppression of Trafficking in Persons. Then, a Suppression of Trafficking in Persons Group, Nay Pyi Taw Council comprising 15 members and a Suppression of Trafficking in Persons Group, Region or State comprising 16 members were amended and formed by the Central Body for Suppression of Trafficking in Persons on 26th July 2022.³ Its functions and duties are delegated by the Central Body. According to Section 9 of the Prevention and Suppression of Human Trafficking Law of 2022, Self-Administered Division in a Region or a State Suppression of Trafficking in Persons Group, District Suppression of Trafficking in Persons Group, Township Suppression of Trafficking in Persons Group and Ward or Villages Suppression of Trafficking in Persons Group formed in the relevant Regions, States and Union Territories. Moreover, a Community-Based Trafficking in Persons Screening Group comprising 7 members was formed

¹ Order No.119/2022 issued by the State Administration Council, dated on 2022 July 7.

² Order No.7/2022 issued by the Ministry of Home Affairs, Central Body for Suppression of Trafficking in Persons, dated on 26th October 2022.

³ Order No.10/2022 issued by the Ministry of Home Affairs, Central Body for Suppression of Trafficking in Persons, dated on 26th July 2022.

in the relevant Regions, States and Union Territories on 26th July 2022 under Section 10 of this Law.¹

Analysis of Human Trafficking Cases in Myanmar

Regarding offences and penalties, it is stated that any person who committed human trafficking, especially women and children, shall be punishable with imprisonment a minimum of 10 years to a maximum of imprisonment for life and may also be liable to a fine.²

In studying the case of **“Police Lieutenant Aung Kyaw Myint Vs. Han Oo and one other”**, Ma+++ was convinced her aunt, Ma Zin Mar Htwe and her husband, Han Oo to work in a clothing shop in Karaburi, Thailand during school holidays. They took her to a rubber farm and forced to work as a rubber scraper, and her wages were exploited. Han Oo threatened her with a knife and raped her and sexually exploited her. The Court held that Han Oo was sentenced to imprisonment for life under Section No.24/29 of ATIP Law and 10 years imprisonment under Section No.376(1) of the Penal Code and Ma Zin Mar Htwe was sentenced to 10 years imprisonment under Section No.24 of ATIP Law.³

Similarly, in the case of **“Ywar Kauk Police Station Vs. Ma Pann Lay Pyay Hlaing @ Ma Baby and one other”**, Ma Pann Lay Pyay Hlaing convinced 3 women including Ma+++ were working at KTV that there was a good job at a music bar in Nay Pyi Taw and they would earn 1,000,000 MMK per month. She talked to her again on the phone to go with her if they wanted to work in a modelling show, and they agreed. She gave them 500,000 MMK in Pynmana. Ma+++ is forced to do as a prostitute for a man. The Court held that the arrested perpetrators, Ma Khaing Thazin and Ma Pann Lay Pyay Hlaing were sentenced to 10 years imprisonment for each.⁴

It is prescribed that any person who committed human trafficking other than women and children, shall be punished with imprisonment a minimum of 5 years to a maximum of 10 years and may also be liable to a fine.⁵

Concerning human trafficking for men, in the case of **“Police Lieutenant Nay La Oo Vs. Xiao Hein @ Rang Hong and one other”**, Mr.Reshou Al Cox convinced 4 people including Yan Bin using QQ application that they would receive between 8,000 Yuan to 15,000 Yuan if they worked online shopping in Yuana Province, China and they agreed. They worked about two weeks in an online financial fraud job at a company on a hill at Minelar. Through there, they arrived at Shwe Kokko Township and they worked again about three weeks in an online financial fraud job. When they arrived at Laukkaing Township, Arr Wai planned to sell 4 people including Yan Bin to Xiao Hein with 450,000 Yuan to work in an online financial fraud job. The Court

¹ Order No.10/2022 issued by the Ministry of Home Affairs, Central Body for Suppression of Trafficking in Persons, dated on 26th July 2022.

² The Anti-Trafficking in Persons Law 2005 s 24 and the Prevention and Suppression of Human Trafficking Law 2022 s 35.

³ *Police Lieutenant Aung Kyaw Myint Vs. Han Oo and one other* Dawei [2021] District Court, Criminal Case, No. 2/2021.

⁴ *Ywar Kauk Police Station Vs. Ma Pann Lay Pyay Hlaing @ Ma Baby and one other* [2022] Dakhina District Court, Criminal Case No.132/2022.

⁵ The Anti-Trafficking in Persons Law 2005 s 25 and the Prevention and Suppression of Human Trafficking Law 2022 s 36.

held that the arrested perpetrator, Xiao Hein was sentenced to 7 years imprisonment under Section No.36/44 of the Prevention and Suppression of Human Trafficking Law and the absconder, Arr Wai was issued a confirmation order under Section No.87/88 of the Code of Criminal Procedure.¹

Similarly, in the case of **“Police Lieutenant Aung Kyaw Kyaw Vs. U Yu Ko Aung”**, U Yu Ko Aung convinced two people including Ko+++ that they must work on a foreign fishing boat and they would earn 350 USD per month. They said that they agreed to pay 550,000 MMK for the document fee and for making the SeaMan Book. He took 550,000 MMK from them and sent them to U Aung Theik from Myanmar Kaung San Company. U Aung Theik convinced them that they must go to work on a fishing boat abroad, they would get 350 USD per month for free food cost and they must sign a two-year contract; if they wanted to go to work, he would send them by credit system and they must pay 1,000 USD as a service fee. Therefore, the arrested perpetrator, U Yu Ko Aung was prosecuted at Yangon Southern District Court, which is still pending in trial.²

It is provided that any person is guilty of trafficking in persons with organized criminal group as provided in section 35 shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 20 years to a maximum of imprisonment for life and may also be a fine. In addition, any person who is guilty of trafficking in persons with organized criminal groups as provided in section 36 shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 10 years to a maximum of 20 years and may also be liable to a fine.³

Although stipulated in the above sections, in the case of **“Muse Police Station Vs, Ma Zin Mar Lwin @ Ma Zin and four others”**, Ma Zin Mar Lwin @ Ma Zin (Zin Lay Facebook Account) through a Facebook messenger, convinced Ma+++ 16 years old, Ma+++ 14 years old that there was a job in Laukkaing, 10,000 Yuan per month. She took them to Laukkaing and sent them to Ma Kay Zin Htoo Lwin and her husband, Wai Phyo. They showed them by video call to a female Chinese boss. They took 1,060,000 MMK from her. When they were planning to send them to the prostitution of the female Chinese woman, they ran away. The Court held that the arrested perpetrators, Ma Zin Mar Lwin and Ma Kay Zin Htoo Lwin were sentenced to 10 years imprisonment for each under Section No.24 of ATIP Law and the absconders, Wai Phyo, Thit Lwin Oo and Ma Shee Ze were issued a confirmation order under Section No.87/88 of the Code of Criminal Procedure.⁴

Studying the above cases, it is found that with the evolution of technology, cases of human trafficking have increased, including fraud committed through social networks. Due to poverty, economic decline, low social standards, lack of job opportunities, and political instability, human trafficking through people smuggling is increasing. Therefore, more job opportunities should be raised and the education system needs to be improved.

¹ *Police Lieutenant Nay La Oo Vs. Xiao Hein @ Rang Hong and one other* [2022] Kokang Autonomous Region Court, Criminal Case No.5/2022.

² *Police Lieutenant Aung Kyaw Kyaw Vs. U Yu Ko Aung* [2022] Yangon Southern District Court, Criminal Case No.87/2022.

³ The Prevention and Suppression of Human Trafficking Law 2022 s 38.

⁴ *Muse Police Station Vs, Ma Zin Mar Lwin @ Ma Zin and four others* [2022] Muse District Court, Criminal Case No.29/2022.

Statistical Analysis of Combating Human Trafficking Cases from 2017 to 2022

This paper evaluates the human trafficking cases from 2017 to 2022 through the collected data from the Central Body for Suppression of Human Trafficking.

1. A total of 828 trafficking cases were exposed and 2,484 (male 829 and female 1655) traffickers were prosecuted. Altogether, 1264 (male 218 and female 1046) were rescued in these cases.

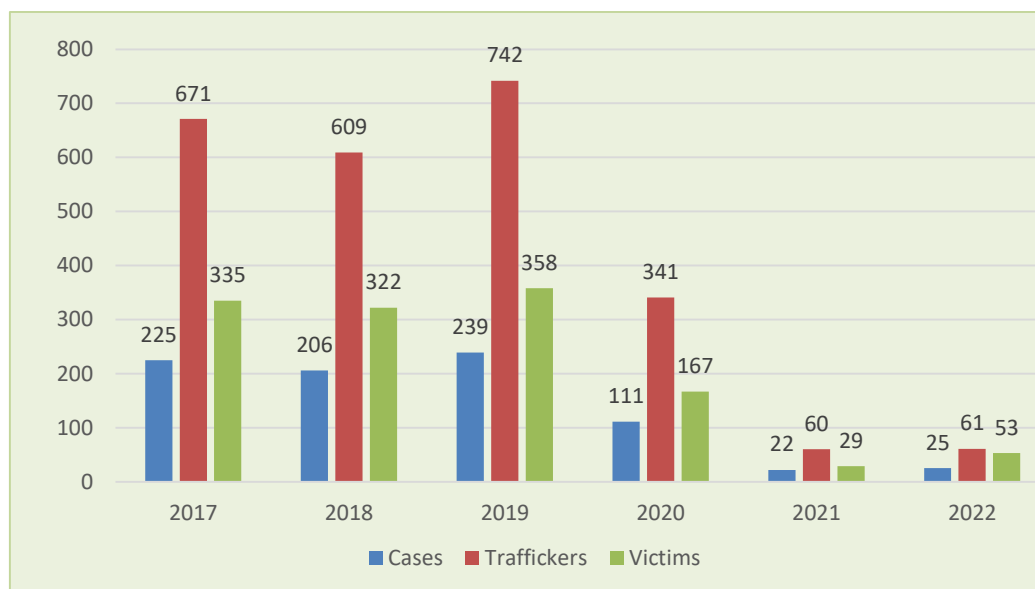


Figure 1: Comparison between cases of trafficking in persons from 2017 to 2022¹

According to Figure 1, the year 2019 had the highest number of human trafficking cases in Myanmar and 2017 followed it. But 2021 had the lowest number of human trafficking cases in Myanmar.

2. From 1st January 2017 to 31st December 2022, it was found that types of trafficking in persons in the following are: -

Table 2: Types of Trafficking in Persons from 2017 to 2022.²

No.	Types of Human Trafficking	2017	2018	2019	2020	2021	2022	Percentage
1.	Forced marriage	153	155	189	87	12	4	72.46%
2.	Forced labour	36	18	30	10	4	13	13.41%
3.	Prostitution	36	28	17	13	4	8	12.80%
4.	Surrogacy	-	4	2	1	-	-	0.85%
5.	Adoption	-	1	1	-	1	-	0.36%
6.	Sexual exploitation	-	-	-	-	1	-	0.12%

¹ The Republic of the Union of Myanmar, Central Body for Suppression of Trafficking in Persons, Myanmar Annual Progress Report on Combating Trafficking in Persons 2022 p-77.

² The Republic of the Union of Myanmar, Central Body for Suppression of Trafficking in Persons, Myanmar Annual Progress Report on Combating Trafficking in Persons 2017,2018,2019,2020,2021,2022.

Table 2 mentions that from 2017 to 2022, the highest number of human trafficking cases is forced marriage. Most girls /women were persuaded for forced marriage. The second highest number of human trafficking cases is forced labour caused internally and externally. Such victims are used in forced labour in factories, plantations or fishing boats, domestic servitude, commercial sexual exploitation, and begging. The third highest number of reported cases is prostitution, both domestically and internationally. The lowest number of reported cases is the adoption case and sexual exploitation case.

3. From 1st January 2017 to 31st December 2022, it was found that trafficking in persons cases by destination countries in the following areas: -

Table 3: Trafficking in persons cases by destination countries from 2017 to 2022¹

No.	Destination Countries	2017	2018	2019	2020	2021	2022	Percentage
1.	China	162	164	196	85	13	3	75.24%
2.	Domestic	49	39	40	22	8	15	20.90%
3.	Thailand	13	3	1	2	1	-	2.42%
4.	Malaysia	1	-	2	2	-	-	0.60%
5.	Singapore	-	-	-	-	-	4	0.48%
6.	Laos	-	-	-	-	-	2	0.24%
7.	UAE	-	-	-	-	-	1	0.12%

Table 3 states that from 2017 to 2022, the most trafficked country is China. Most of the victims of human trafficking to China are young girls or women who are forced to marry Chinese men. The second highest number is Domestic, and they are trafficked in various forms. In addition, trafficking in Thailand began with illegal employment and then turned into trafficking in many ways. Trafficking to Malaysia did not happen directly. Traffickers lure victims of human trafficking to Thailand and send them to Malaysia for forced begging and prostitution. Nowadays, traffickers are trafficked into Singapore, Laos and Dubai in various forms.

4. From 1st January 2017 to 31st December 2022, it was found that 828 Trafficking cases found in the following States or Regions:

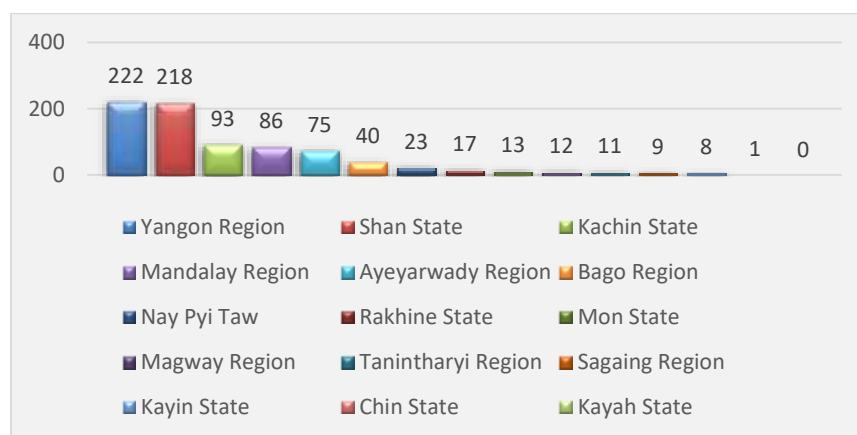


Figure 2: States and Regions where Human Trafficking Cases occur from 2017 to 2022¹

¹ The Republic of the Union of Myanmar, Central Body for Suppression of Trafficking in Persons, Myanmar Annual Progress Report on Combating Trafficking in Persons 2017,2018,2019,2020,2021,2022.

According to Figure 2, from 2017 to 2022, Yangon Region had the highest number of human trafficking cases (222 cases), while Shan Region had the second highest number of cases (218 cases) mainly due to its close location with China and Thailand borders and also Yangon and Mandalay are the main transit route in entering other cities and other countries because of its good transportation and communication system. Kayin State is the place with the lowest number of Human trafficking cases (1 case) and Kayah State is the place where there is no Human trafficking.

5. From 1st January 2017 to 31st December 2022, there were a total of traffickers 2,484 (male 829 and female 1655) involved Chinese citizens 54 (male 48, female 6) and the rest traffickers were found inhabited in the following States or Regions:

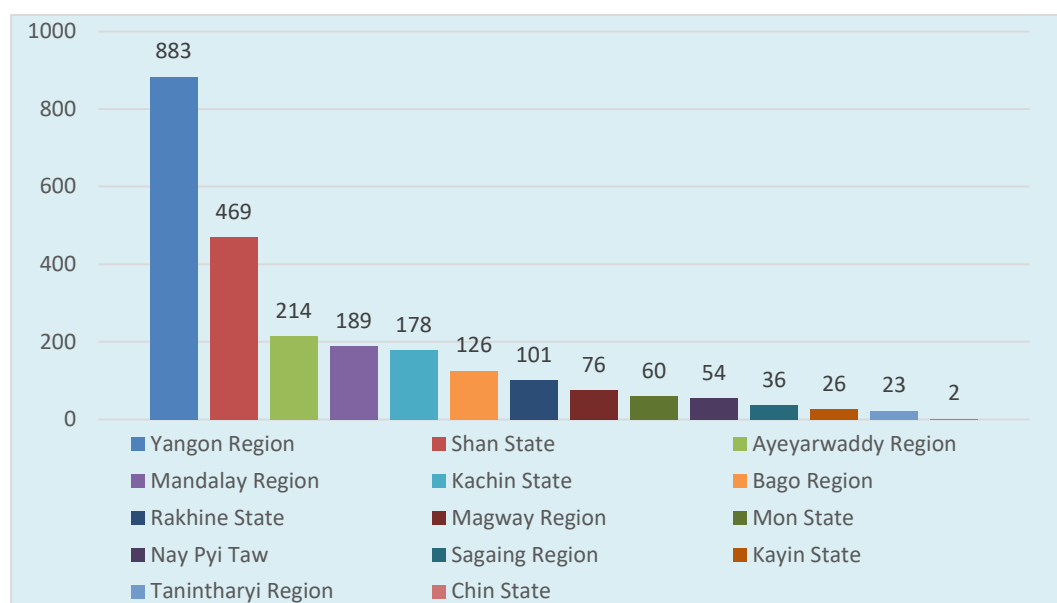


Figure 3: A place of residence of traffickers from 1-1-2017 to 31-12-2022²

Under Figure 3, from 2017 to 2022, Yangon Region had the highest place of residence of traffickers and Shan State had the second highest place of residence of traffickers. Moreover, Chin State had the lowest place of residence of traffickers.

¹ The Republic of the Union of Myanmar, Ministry of Home Affairs, Central Body for Suppression of Trafficking in Persons, Myanmar Fourth Five-Year National Plan of Action to Combat Trafficking in Persons (2022-2026) and Myanmar Annual Progress Report on Combating Trafficking in Persons 2022.

² The Republic of the Union of Myanmar, Ministry of Home Affairs, Central Body for Suppression of Trafficking in Persons, Myanmar Fourth Five-Year National Plan of Action to Combat Trafficking in Persons (2022-2026) and Myanmar Annual Progress Report on Combating Trafficking in Persons 2022

6. From 1st January 2017 to 31st December 2022, it was found that the 1284 trafficked victims (male 220 and female 1064) involved Chinese citizens 4 and the rest trafficked victims were found inhabited in the following States or Regions:

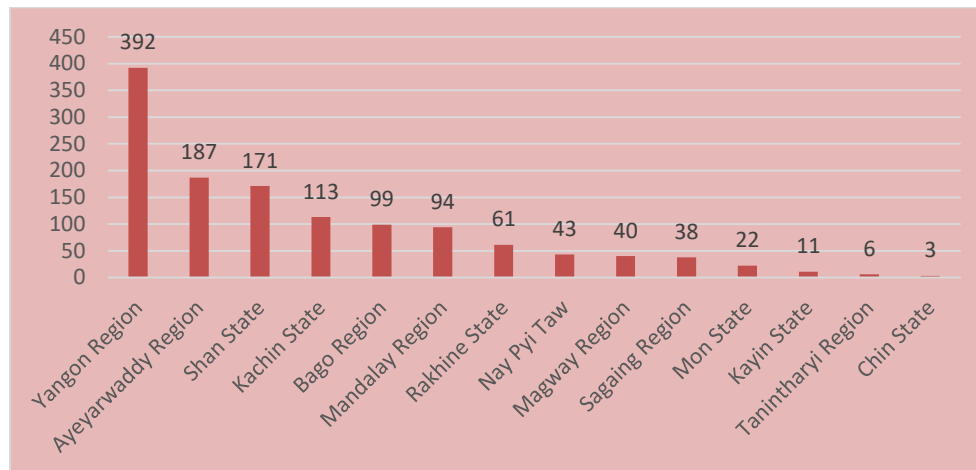


Figure 4: A place of residence of victims of human traffickers from 2017 to 2022¹

According to Figure 6, from 2017 to 2022, Yangon Region had the highest place of residence of victims of human traffickers and Ayeyarwaddy Region had the second highest place of residence of victims of human traffickers. In addition, Chin State had the lowest place of residence of victims of human traffickers.

7. From 1st January 2017 to 31st December 2022, a total of 1849 (male 596 and female 1253) traffickers were convicted.

Table 7: Convicting of Traffickers from 2017 to 2022²

No.	Imprisonment	Male	Female	Total
1	life imprisonment	2	7	9
2	30 years imprisonment	1	-	1
3	25 years imprisonment	2	7	9
4	21 years imprisonment	3	5	8
5	20 years imprisonment	43	81	124
6	16 years imprisonment	1	-	1
7	15 years imprisonment	5	16	21
8	14 years imprisonment	2	5	7
9	13 years imprisonment	1	3	4

¹ Ibid.

² The Republic of the Union of Myanmar, Ministry of Home Affairs, Central Body for Suppression of Trafficking in Persons, Myanmar Fourth Five-Year National Plan of Action to Combat Trafficking in Persons (2022-2026) and Myanmar Annual Progress Report on Combating Trafficking in Persons 2022.

No.	Imprisonment	Male	Female	Total
10	12 years imprisonment	26	44	70
11	11 years imprisonment	13	26	39
12	10 years imprisonment	187	448	635
13	7 years imprisonment	11	2	13
14	6 years imprisonment	2	-	2
15	5 years imprisonment	10	11	21
16	4 years imprisonment	1	4	5
17	3 years imprisonment	2	2	4
18	2 years imprisonment	-	2	2
19	1 year and 8 month imprisonment	-	1	1
20	1 year imprisonment	1	3	4
21	4 months imprisonment	1	1	2
22	Criminal Procedure Code (Sections 87 and 88)	199	476	675
23	Acquitted	59	90	149
24	Released	23	15	38
25	Youth Conservation School	1	4	5
Total		596	1253	1849

Under Table 7: analysis of trafficking cases in 6 years (2017-2022), sentencing 10 years imprisonment is seen more than other imprisonments. And general, female traffickers are found more than male traffickers. Moreover, by looking at these records, a total of 1174 traffickers (397 males, 777 females) are given punishments whereas a total of 675 absconders (199 males, 476 females) are being investigated within six years.

Conclusion

Human trafficking can occur within a country or transnationally. It can be confirmed that enforcement actions against human trafficking cases are very few in practice. In addition, there are still defects in the identification and punishment of human trafficking, many of the main traffickers and abettors are absconding or living in foreign countries. To effectively eliminate cross-border human trafficking very need to extent reciprocal assistance to countries through bilateral negotiations.

According to the human trafficking cases from 2017 to 2022, the forms of human trafficking are that are sold girls or women for forced marriage to Chinese as their wives, and they are subjected to sell to neighbouring countries after persuading them to get a good job. The most common form of human trafficking offence is to marry Chinese men. Some cases find that the trafficked victims agree to do so. The second highest number of human trafficking cases is forced labour caused by internal and external boundaries.

Therefore, preventative measures are more effective than investigating occurrences of human trafficking. It is important to raise awareness in the community. If the public gives information related to human trafficking cases to the respective bodies as soon as possible, the traffickers are also arrested in time and reduce the trafficking cases to some extent. Therefore, training and workshops are necessary to help Criminal Justice System participants quickly identify human trafficking cases. In addition, Human Trafficking awareness-raising within Language Training Centers, Employment Agency, Schools and University, Workshop and Wards and Village should act for promoting activities in cooperation with the Anti-Trafficking Task Forces and Non-government organizations. Finally, to decrease the happening of human trafficking and to suppress it, public participation and cooperation are needed.

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C. Legislation

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Order 7/2022 issued by the Ministry of Home Affairs, Central Body for Suppression of Trafficking in Persons, dated on 26th October 2022

Order No.10/2022 issued by the Ministry of Home Affairs, Central Body for Suppression of Trafficking in Persons, dated on 26th July 2022