

Legal Remedies for Victims of Internal Sex Trafficking in Myanmar

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I. Introduction

There is lots of research about Myanmar as a source and transit country for people subjected to forced labor, sex trafficking, domestic servitude and labor exploitation to neighboring countries like China, Thailand and Malaysia¹ because transnational trafficking is a serious issue for the Greater Mekong Sub-region (GMS) countries.² However, little research has been done on domestic sex trafficking. Internal sex trafficking in Myanmar is usually overlooked due to two factors: the society's perception³ and a substantial gap between Myanmar's obligation under international norms and the actual practice.⁴

¹ See U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *2015 Trafficking in Persons Report: Burma*, accessed March 1, 2016, <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243406.htm>. See also United Nations Action for Cooperation against Trafficking in Persons (UNACT), *Myanmar*, accessed March 1, 2016, <http://un-act.org/countries/myanmar/>.

² The GMS regions are Cambodia, Vietnam, Lao People's Democratic Republic (Lao PDR), Myanmar, Thailand, Yunnan Province and Guangxi Zhuang Autonomous Region of the People's Republic of China (PRC), all of which form a natural economic area bound together by the Mekong River. For more information on the Greater Mekong Subregion, see Asian Development Bank, *Overview of the Greater Mekong Subregion*, accessed April 24, 2016, <http://www.adb.org/countries/gms/overview>. For cross-border human trafficking in GMS including Myanmar frontiers, see Louise Shelly, *Human Trafficking: A Global Perspective* (New York: Cambridge University Press, 2010), 141-173. See generally Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (London and New York: Routledge, 2012). See also Nicholas Farrelly, "Exploitation and Escape: Journeys Across the Thailand-Burma Frontier," in Michele Ford, Lenore Lyons, and Willem van Schendel (eds.), *Labour Migration and Human Trafficking in Southeast Asia: Critical Perspectives* (London and New York: Routledge, 2012).

³ Internal sex trafficking is associated with sex work in Myanmar, and sex workers are highly marginalized by the society due to a combination of the illegal nature of prostitution, perceived close link between sex-work and HIV/AIDS, decades-long political suppression, and social and religious taboos. See Natalia Szablewska and Clara Bradley, "Social Justice Within Transitional Justice: The Case of Human Trafficking and Sex-Work in Cambodia and Myanmar," in Natalia Szablewska and Sascha-Dominik Bachmann (eds.), *Current Issues in Transitional Justice: Towards a More Holistic Approach* (New York: Springer, 2015), 280. See general attitudes towards sex workers in a qualitative study about sex workers in Myanmar's former capital city Yangon in Sue Gillieatt and Luke Talikowski, "Female Sex Work in Yangon, Myanmar," *Sexual Health* 2, No.3 (2005). See that sex workers are also subject to harassment, violence and extortion as stated in Banyan, "Making Sex Work Safe: Stigmata," *The Economist* (October 20, 2010), available from http://www.economist.com/blogs/banyan/2010/10/making_sex_work_safe.

⁴ New Perimeter, Perseus Strategies and the Jacob Blaustein Institute for the Advancement of Human Rights, *Myanmar Rule of Law Assessment* (2013), accessed April 25, 2016, <http://www.jbi-humanrights.org/files/burma-rule-of-law-assessment.pdf>, 27.

Myanmar is party to the *United Nations Convention against Transnational Organized Crime* (hereafter ‘the Palermo Convention’)⁵ and its protocols including the *Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children* (hereafter ‘the Palermo Protocol’).⁶ The Palermo Convention is an international treaty to combat transnational organized crimes including human trafficking,⁷ and the Palermo Protocol is the first international legal instrument with an agreed definition on trafficking in persons.⁸ The Protocol serves as a norm-creating instrument to prevent human trafficking through international cooperation and to protect and assist the victims of trafficking in persons with full respect for their human rights.⁹

Myanmar has incorporated the anti-trafficking principles into its national legal framework according to the international agreements to which it has acceded and has taken measures to combat human trafficking. Despite these measures, the authorities and the government institutions lack effective protection of the victims and do not provide adequate remedies.

Therefore, this research paper seeks to understand what hinders the victims of sex trafficking in accessing legal remedies. This paper investigates the measures taken by the State to combat trafficking and the available legal remedies, the general patterns of sex trafficking in Myanmar, and the obstacles the victims are experiencing to gain access to the remedies.

⁵ United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25. U.N. Doc. A/RES/55/25.

⁶ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25. U.N. Doc. A/RES/55/25. Myanmar acceded to the *Palermo Protocol* on March 30, 2004. Myanmar expresses reservation on article 15 of the Protocol and ‘does not consider itself bound by obligations to refer disputes relating to the interpretation or application of this Protocol to the International Court of Justice.’

⁷ The Palermo Convention, Article 1.

⁸ See United Nations Office on Drugs and Crime (UNODC), *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, accessed April 30, 2016, <https://www.unodc.org/unodc/treaties/CTOC/>, para 3.

⁹ Ibid.

The first part of the paper will discuss the legal framework under which Myanmar is bound to combat trafficking in persons and the measures taken by the State. The second part of the paper will compare Myanmar national laws regarding sex trafficking side by side with the basic principles laid down in the *United Nation Summary Report*¹⁰ (hereafter ‘the UN Guideline’) on the right to effective remedy for victims of trafficking in persons and evaluate the level of compliance. The final section will deal with three typical type of internal sex trafficking cases in Myanmar and how the victims from these typical cases encounter obstacles in gaining access to the legal remedies at both formal and substantive levels.

II. Legal Framework

Myanmar’s Obligation under International Legal Framework

In 1995, Myanmar endorsed the *Beijing Declaration and Platform for Action*¹¹ (hereafter ‘Beijing Declaration’) which is a global blueprint for advancing women’s rights through various actions including anti-human trafficking measures.¹² As part of the commitments¹³ made under

¹⁰ United Nations, General Assembly, Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons: Report of the United Nations High Commissioner for Human Rights, A/HRC/26/18 (2 May 2014), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/140/60/PDF/G1414060.pdf?OpenElement>.

¹¹ A complete package of Beijing Declaration and Platform for Action including Beijing+5 Political Declaration and Outcome can be retrieved at http://www.unwomen.org/~media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf, accessed April 25, 2016.

¹² See generally *Beijing Platform for Action*, §122; *Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action*, §70.

¹³ The Beijing Declaration and Platform for Action is a non-binding international agreement. Hence, commitments made under the Declaration, the Platform for Action and related documents are not legally binding to the States. See the language “hereby adopt and commit ourselves as Governments to implement the...Platform for Action” contained in the Declaration. See Interpretative Statement on the Beijing Declaration submitted by the United States in United Nations, *Report of the Fourth World Conference on Women* (Beijing, September 4-15, 1995), available from <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>, 171.

The non-binding commitments made under the Beijing Declaration are:

- (1) The equal rights and inherent human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, in particular the Convention on the Elimination of All forms of Discrimination against Women and the Convention on the Rights of the Child, as well as the Declaration

the Beijing Declaration, Myanmar adopted a *National Plan of Action for Trafficking in Women and Children*¹⁴ in 1997 followed by a *Five-Year National Plan of Action to Combat Human Trafficking*¹⁵ (hereafter ‘National Plan’) in 2007. The National Plan is the national policy to combat human trafficking by adopting five-pronged approach – policy and cooperation, prevention, prosecution, protection, and capacity building – and by establishing anti-trafficking bodies at all levels and mandating authorities to act accordingly.¹⁶ Consequently, in 2004, the Department against Transnational Crime was established as a department under the Myanmar Police Force to combat human trafficking and other transnational crimes.¹⁷

In the same year, Myanmar became a member state to the *Palermo Convention* and the *Palermo Protocol*. It is also the first country in the region to sign the *Palermo Convention* and its protocols. As a party to *the Palermo Protocol*, Myanmar is obliged to prevent and combat trafficking in persons, especially women and children; to protect and assist the victims of human

on the Elimination of Violence against Women and the Declaration on the Right to Development (Article 8);

- (2) The full implementation of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms (Article 9);
- (3) The actualization of the consensus made at the previous UN conferences and summits – on women in Nairobi in 1985, on children in New York in 1990, on environment and development in Rio de Janeiro in 1992, on human rights in Vienna in 1993, on population and development in Cairo in 1994 and on social development in Copenhagen in 1995 with the objective of achieving equality, development and peace (Article 10);
- (4) Full and effective implementation of the Nairobi Forward-looking Strategies for the Advancement of Women (Article 11); and
- (5) The empowerment and advancement of women, including the right to freedom of thought, conscience, religion, and belief, thus contributing to the moral, ethical, spiritual and intellectual needs of women and men, individually or in community with others and thereby guaranteeing them the possibility of realizing their full potential in society and shaping their lives in accordance with their own aspirations.

¹⁴ See the Union of Myanmar, Ministry of Home Affairs, the Central Body for Suppression of Trafficking in Persons, *Myanmar: Five-Year National Plan of Action to Combating Human Trafficking (2007-2011)*, available from http://www.no-trafficking.org/reports_docs/myanmar/npa_myanmar_eng.pdf, 14.

¹⁵ Myanmar: Five-Year National Plan of Action to Combating Human Trafficking (2007-2011) can be retrieved from http://www.no-trafficking.org/reports_docs/myanmar/npa_myanmar_eng.pdf, accessed April 25, 2016. Myanmar’s Second Five-Year National Plan of Action to Combat Human Trafficking (2012-2016) can be retrieved from <http://myanmarhumantrafficking.gov.mm/content/second-five-year-national-plan-action>, accessed April 25, 2016.

¹⁶ See *Myanmar: Five-Year National Plan of Action to Combating Human Trafficking (2007-2011)*, 3 & 15.

¹⁷ See Andrew Selth, ‘Police Reform and the ‘Civilianisation’ of Security in Myanmar,’ in Melissa Crouch & Tim Lindsey (eds.) *Law, Society and Transition in Myanmar* (Oxford: Hart Publishing, 2014), 275.

trafficking, with full respect for their human rights; and to promote cooperation among State Parties to combat human trafficking.¹⁸ To meet these objectives, Myanmar has a duty to criminalize human trafficking in its domestic legislations¹⁹ and to protect the victims of trafficking in persons by ensuring that the domestic legal or administrative system provide appropriate protective measures.²⁰

Moreover, recently in 2014, Office of the United Nations High Commissioner for Human Rights released a summary report (hereafter ‘the UN Guideline’)²¹ of the rationale and basic principles on the right to effective remedy for victims of human trafficking. According to the UN Guideline, there are three particular circumstances in which countries including Myanmar are obliged to provide remedies to the victims of human trafficking under international law. They are

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¹⁸ The Palermo Protocol, Article 2.

¹⁹ The Palermo Protocol, Article 5.

²⁰ Appropriate protective measures include, but not limited to, measures described under Article 6 of the *Palermo Protocol*. Article 6 stipulates:

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

²¹ *Supra* note 10.

- (a) In the case of violations that are the result of an act of or omission by a State actor;
- (b) In the case of violations that are committed by non-State actors but with the acquiescence, collaboration, knowledge or acknowledgement of the State;
- (c) In the event of failure by the State to exercise due diligence to prevent, investigate or prosecute a violation by private actors.²²

In addition, the basic principles contained in the UN Guideline serve as the normative constituents of the right to an effective remedy for victims of human trafficking. Myanmar should adhere to these principles as they are fundamental to fulfill the commitments Myanmar has made to combat human trafficking under international and regional agreements. They include – 1) rights and obligations; 2) access to the right to a remedy; 3) restitution, compensation, rehabilitation and recovery, satisfaction, and guarantees of non-repetition as the appropriate forms of the right to remedy; and 4) right to remedy for child victims of trafficking.²³

National Legal Framework and Measures against Human Trafficking

In 2005, Myanmar adopted the first national legislation on anti-trafficking – the *Anti Trafficking in Persons Law*²⁴ (hereafter ‘ATIP Law’) in which acts of human trafficking are criminalized. Beforehand, Myanmar had already had provisions which penalize some acts of modern-day trafficking in persons and sex trafficking in the 1861 *Penal Code*.²⁵ Moreover,

²² Supra note 10, para 7. See also United Nations, General Assembly, Fifty-sixth Session Report of the International Law Commission, Supplement No. 10 (A/56/10), para. 77.

²³ Supra note 10, Annex.

²⁴ The State Peace and Development Council Law No. 5/2005 (September 13, 2004), available from <http://www.hsph.harvard.edu/population/trafficking/myanmar.traf.05.pdf>, accessed April 30, 2016.

²⁵ The Penal Code (1861) is still in force in Myanmar. For penalization of some forms of trafficking including import, export, and sale of slaves, and forced labor, see generally, the Penal Code §§358-377. The Penal Code is available from http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf, accessed May 2, 2016.

prostitution is illegal in Myanmar.²⁶ The 1949 *Suppression of Prostitution Act*²⁷ states that it is illegal in Myanmar for a person who sells sex for the purpose of prostitution²⁸ or for a person to aid, abet, or force a woman to become a prostitute or to work in a brothel.²⁹ It was amended in 1998 to increase sentences and provide an expanded definition of what constitutes a brothel to ‘any house, building, room, any kind of vehicle/ vessel/ aircraft or place habitually used for the purpose of prostitution or used with reference to any kind of business for the purpose of prostitution.’³⁰

In terms of the definition of ‘trafficking in persons,’ the Palermo Protocol sets out three main elements:

- 1) Recruitment, transportation, transfer, harboring or receipt of persons (*acts*);
- 2) 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

²⁶ See the Union of Burma, *Suppression of Prostitution Act* (‘၁၉၄၉ ခုနှစ် ပြည်တော်ဆောင်ရွက်ရေးဥပဒေ’), Act No. 24 (April 21, 1949), available from http://www.no-trafficking.org/content/pdf/suppression_of_prostitution_act_1949_myanmar_version.pdf, accessed April 24, 2016.

²⁷ Supplemented by the *Law Amending the Suppression of Prostitution Act*, The State Peace and Development Council Law No. 7/98 (April 6, 1998), available from http://www.no-trafficking.org/content/pdf/prostitution_act.pdf, accessed April 24, 2016.

²⁸ *Supra* note 26, *Suppression of Prostitution Act* (‘၁၉၄၉ ခုနှစ် ပြည်တော်ဆောင်ရွက်ရေးဥပဒေ’), §3.

²⁹ *Ibid.*, §5(b). Regardless of whether a prostitute works in a brothel or not, the criminal liability of a prostitute is either a combination of hard labor and up to one-year imprisonment or a combination of monetary fine and imprisonment. See *Suppression of Prostitution Act* (‘၁၉၄၉ ခုနှစ် ပြည်တော်ဆောင်ရွက်ရေးဥပဒေ’), §3. There is no explicit provision on the age of criminalization of prostitution in Myanmar. The *Penal Code* §372 stipulates that ‘whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution...’ has criminal liability up to ten year imprisonment and a fine. In contrast, the *ATIP Law* defines a child as a person under 16 years old and a youth as a person between 16 and 18 years old (see *ATIP Law* §§3(j) & 3(k)) as does in the 1993 *Child Law* §§2(a) & 2(b) (available from www.no-trafficking.org/content/pdf/the_child_law.doc). Children, youths, and women victims of trafficking in person are entitled to the special protection as laid down in Chapter VI of the *ATIP Law*. As Myanmar being a party to the Child Rights Convention, the UN has urged Myanmar government to increase a child’s age to 18 years old, and Myanmar is preparing to amend its *Child Law* (see <http://www.mmtimes.com/index.php/national-news/3325-myanmar-revises-child-law-childhood-status-extended-to-18.html>) In the law courts, the children’s age and maturity are considered together to impose criminal liability to a juvenile. It is well-known that determination of ‘maturity’ is based on the medical examination of an authorized medical doctor.

³⁰ *Supra* note 27, *Law Amending the Suppression of Prostitution Act*, §2.

receiving of payments or benefits to achieve the consent of a person having control over another person (*means*); and

3) For the purpose of exploitation (*purpose*).³¹

The definition of ‘trafficking in persons’ in the *ATIP Law*³² includes ‘the sale, purchase, lending and hiring’ in addition to ‘the recruitment, transportation, transfer, harboring, or receipt of persons’³³ as stipulated in the *Palermo*. Furthermore, debt bondage³⁴ is formally recognized as a form of exploitation in *the ATIP Law*.³⁵

At the implementation level, *the Central Body for Suppression of Trafficking in Persons* (hereafter ‘the CBTIP’)³⁶ was vested with the mandate under the *ATIP*.³⁷ Three working groups were established under the *CBTIP*: one for the prevention of human trafficking led by the Deputy Minister of Home Affairs, another one for the legal framework and criminal prosecution under the guidance of the Deputy Attorney-General, and another one for the reintegration and

³¹ The Palermo Protocol, article 3.

³² §3(a) of the *ATIP Law* stipulates: **Trafficking in Persons** means recruitment, transportation, transfer, sale, purchase, lending, hiring, harbouring or receipt of persons after committing any of the following acts for the purpose of exploitation 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 of position taking advantage of the vulnerability of a person;
- (6) giving or receiving of money or benefit to obtain the consent of the person having control over another person.

³³ The *ATIP Law*, §3.

³⁴ §3(a) Explanation (1) of the *ATIP Law*: “**Exploitation** includes receipt or agreement for receipt of money or benefit for the prostitution of one person by another, other forms of sexual exploitation, forced labour, forced service, slavery, servitude, debt-bondage or the removal and sale of organs from the body.”

³⁵ §3(a) Explanation (3) of the *ATIP Law*: “**Debt bondage** means the pledging by the debtor of his/her personal labour or services of a person under his/her control as payment or security for a debt, when the nature or length of service is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.”

³⁶ See the Republic of the Union of Myanmar, Ministry of Home Affairs, *Central Body for Suppression of Trafficking in Persons*, available from <http://myanmarhumantrafficking.gov.mm/>, accessed April 30, 2016.

³⁷ The *ATIP Law*, §5.

rehabilitation of victims chaired by the Vice Minister of Social Welfare, Rescue and Resettlement.³⁸

III. Myanmar National Laws: Level of Compliance with the UN Basic Principles

This part of the paper includes a chart which demonstrates the level of compliance Myanmar national laws have reached to the UN basic principles on the right to an effective remedy for victims of trafficking in persons.

UN Basic Principles		Myanmar Laws on Human Trafficking
I. Rights and Obligations	1. The right to an effective remedy	One of the aims of the <i>ATIP</i> stipulated in §4(c) is to ‘enable effective and speedy investigation to expose and take action against persons guilty of trafficking in persons and to prevent further trafficking in persons by passing effective and deterrent punishment.’ ³⁹
	2. State obligation for adequate, effective and prompt remedies	The overall analysis of the relevant national laws ⁴⁰ shows that remedies for the victims of human trafficking in persons include restitution, compensation, rehabilitation, and guarantee of non-repetition by sanctioning the traffickers. ⁴¹
	3. State responsibility under international law	Under international legal framework, Myanmar is responsible to provide appropriate remedies as mentioned earlier in reference to the <i>UN Guideline</i> . However, Myanmar legal system and its weak law enforcement institutions ⁴² do not guarantee that the State would provide and/or facilitate access to remedies as required by binding international law.
	4. Non-discrimination	Apart from the <i>ATIP</i> and the bilateral instruments emphasizing on the women, children and youth’s special right to remedies, ⁴³

³⁸ For the organization chart of these working groups, see the Republic of the Union of Myanmar, Ministry of Home Affairs, *Central Body for Suppression of Trafficking in Persons*, available from <http://myanmarhumantrafficking.gov.mm/content/contact-us>, accessed May 2, 2016.

³⁹ The *ATIP Law*, §4(c).

⁴⁰ The relevant national laws analyzed are: The *ATIP Law* (2005), *Suppression of Prostitution Act* (1949), *Law Amending the Suppression of Prostitution Act* (1998), and the *Penal Code* (1861).

⁴¹ For generally the *ATIP Law* and the *Penal Code* §§358-377.

⁴² Myanmar was under the military rule from 1962 to 2011 and quasi-civilian rule from 2011 to 2015. During the 60 years military rule, the State institutions including the judiciary were totally dependent on the military authorities. Beginning from April 2016, Myanmar got an elected democratic government; however, the country is still lacking rule of law and independent law enforcement institutions.

⁴³ See, for example, *MOU between Myanmar and Thailand on Cooperation to Combat Trafficking in Persons, Especially Women and Children*.

		there is no specific provision that guarantees non-discrimination in accessing the remedies of human trafficking cases.
	5. Substantive and procedural rights to remedies with respect to human rights	There is little evidence that Myanmar has provided an effective remedy which encompasses both ‘the substantive right to remedies and the procedural rights necessary to secure access to them.’ There is also no guideline, either at the formal level or at the implementation level, which focuses on the victim-centered and human rights-based approach in addressing the victims’ rights.
	6. Bilateral and multilateral State cooperation	There are Memoranda of Understanding (MoUs) ⁴⁴ between Myanmar and Thailand, and Myanmar and China as these two neighboring countries are the common channels for human trafficking to and from Myanmar. However, it is not clear how effective these MoUs are in terms of providing adequate remedies to the victims. Myanmar is also a party to the regional agreements like the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) MoU, ⁴⁵ a multilateral cooperation under the United Nations Inter-Agency Project on Human Trafficking (UNIAP).
II. Access to the right to a remedy	7. Procedural rights and preconditions for remedies	(a) The <i>ATIP Law</i> and the <i>Penal Code</i> include legally enforceable right to have access to remedies through criminal and civil proceedings through the law courts and the administrative proceedings through the working groups under the <i>CBTIP</i> . ⁴⁶ (b) Through the <i>National Plan</i> , <i>ATIP Law</i> , and the administrative measures taken in conjunction with other regional

⁴⁴ Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers (June 21, 2003), available from <http://www.myanmarhumantrafficking.gov.mm/content/memorandum-understanding-between-government-kingdom-thailand-and-governmnt-union-myanmar-coo>. Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation to Combat Trafficking in Persons, especially Women and Children (April 24, 2009), available from http://www.no-trafficking.org/content/pdf/thai_my_mou_coop_traf_eng.pdf. Memorandum of Understanding between the Government of the Union of Myanmar and the Government of the People’s Republic of China on Strengthening the Cooperation on Combating Human Trafficking (November 11, 2009), available from <http://www.notip.org.cn/UserImages/00001039.pdf>.

⁴⁵ COMMIT Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region (October 29, 2004), available from <http://www.myanmarhumantrafficking.gov.mm/content/memorandum-understanding-cooperation-against-trafficking-persons-greater-mekong-sub-region>.

⁴⁶ See functions of the working groups under the *CBTIP* in Chapter IV of the *ATIP Law*. Also see the *Penal Code* §§358-377.

		<p>bodies, State officials receive appropriate trainings to deal with the human trafficking cases.⁴⁷ However, it is unclear that how much knowledge the State officials are benefiting from these trainings and if the authorities can, in practice, promptly and accurately identify the victims.</p> <p>(c) Not mentioned in Myanmar law. (d) Not mentioned in Myanmar law. (e) Not mentioned in Myanmar law. (f) §13(b) of the <i>ATIP Law</i> states that the CBTIP has an authority to decide if it is appropriate to take action against the victims of trafficking for any other offence [than the Anti-Trafficking Law] arising as a direct consequence of trafficking in persons. (g) Not mentioned in Myanmar law. (h) Not mentioned in Myanmar law. (i) Not mentioned in Myanmar law. (j) §11(b) of the <i>ATIP Law</i> restricts media coverage at any stage of the investigation, prosecution and adjudication of trafficking in persons cases. Permission from the appropriate body is needed to make the case public. §11(c) restricts the release of court documents to parties not to the case. Moreover, the <i>CBTIP</i> is required to provide security for the victims who contest the case or provide testimony in a case according to §19(e).</p>
<p>III. Forms of the right to remedy</p>	<p>8. Restitution: Restoring the victims to their original position</p>	<p>According to the UN standard, the type of restitutions provided in Myanmar may not be adequate as the only restitutions found in the <i>ATIP Law</i> are the repatriation of the victims to their original place of residence⁴⁸ and the availability of damages for the trafficked victim from money confiscated from the offender, from the proceeds of sale of property of the offender or from a fine.⁴⁹</p>
	<p>9. Restitution: Forms of restitution</p>	<p>The only restitutions in the <i>ATIP Law</i> are, as mentioned above is the repatriation of the victims (UN basic principle 9(c)) to a safe place or the original place and providing damages, if available. Other types of restitutions such as restoration of liberty, enjoyment of human rights and family life, victims' employment, recognition of the victim's legal identity, etc.... are not mentioned.</p>

⁴⁷ See the *ATIP Law* §8(i), §9(f), & §18.

⁴⁸ The *ATIP Law*, §19.

⁴⁹ The *ATIP Law*, §33.

	10. Compensation: Appropriate and proportionate compensation	Not mentioned in Myanmar law.
	11. Compensation: Forms of compensation	§33 of the <i>ATIP Law</i> establishes that the Court may order to pay damages to the trafficked victim from money confiscated from the offender, from the proceeds of sale of property of the offender or from a fine. Under the special protection scheme of trafficked victims, women, children and youth in Chapter VI, §17 stipulates that the CBTIP shall carry out programs of security and other protection for trafficked women, children and youth victims during the period of instituting a suit for compensation for tort by the trafficked victim for the trafficking in persons. So, it is possible that the trafficked women, children and youth are eligible for compensation for tortious damages from the trafficker but not clear how practical these provisions are in accessing the amount of the damages. Apart from that, there is no other guideline for the compensation to correspond with the type and gravity of the harm such as taking account of damages for mental harm, lost opportunities, costs of necessities in relation to the trafficking incident, costs for the legal proceedings, etc... as laid down in the UN Basic Principle 11 (a) to (h).
	12. Compensation: Ensuring access to compensation	The <i>Penal Code</i> §§372-373 on selling and buying minors for the purpose of prostitution imposes fine on the traffickers. According to §17 of the <i>ATIP Law</i> , it is discretion of the CBTIP to decide and carry out programs of security and other protection during the period of prosecution or during the period of instituting a suit for compensation for tort. So, it is possible that the victims can receive compensation from both civil and criminal proceedings. There is the establishment of the Trust Fund as authority vested in Chapter VII of the <i>ATIP Law</i> ; however, it does not say anything about State's compensation from the Fund. The Fund is allocated to be used for repatriation and rehabilitation. ⁵⁰
	13. Rehabilitation and recovery: a means	§19 of the <i>ATIP Law</i> provides a number of means for rehabilitation, recovery and reintegration into the society for the victims such as providing temporary shelter at a safe place or

⁵⁰ The *ATIP Law*, §10(d), §22, & §23.

		appropriate housing (§19(b)), social rehabilitation and vocational trainings (§19(c) and 19(g)), consented medical care (§19(f)), legal aid and linguistic support (§19(d)). It is not clear that if social rehabilitation includes counselling and if medical care includes the psychological aspect.
	14: Rehabilitation and recovery: access to remedies independent to the victims' capacity and willingness	There is no provision that ensures that the access of victims of trafficking in persons to rehabilitation and recovery measures is not dependent on their capacity or willingness to cooperate in legal proceedings.
	15. Satisfaction:	The <i>ATIP Law</i> foreshadows in §4(a) that one of the aims of the Law is to prevent, and suppress the trafficking in persons as a national duty as it damages the pride and pedigree of Myanmar nationalities that should be valued and safeguarded. In my opinion, it does not involve the idea of non-financial form of reparation to the dignity or reputation of the 'individuals' as enshrined in the international human rights law.
	16. Satisfaction: Forms of satisfaction	Not mentioned in Myanmar law.
	17. Measures for non-repetition	Apart from providing the training to the officials in the prevention of trafficking in persons (UN principle 9(c)), relevant Myanmar laws do not acknowledge the effective investigation and sanctioning of traffickers, independent judiciary, ways to blockade re-trafficking, modification of legal, social and cultural practices that cause, sustain or promote tolerance to trafficking in persons, effective poverty alleviation mechanisms, etc....
IV. Right to remedy for child victims of traffick- ing	18. Ensuring access to remedies for child victims	(a) The CBPTI and the working groups will send the child back to the parents or a guardian if it is the best condition for the child. If it is impossible or inappropriate to repatriate the child, they will provide safe and suitable protection (section 16 (b) and (c)) (b) §16(d) of the Anti-Trafficking Law stipulates that the CBPTI and the working groups are required to considerably take account of a child's freedom to express his/her views and freedom of choice in accordance with the child's age and maturity. However, the Law does not mention about the right to information, i.e., whether the State will provide necessary

		<p>information or make the information accessible on all matters affecting the victims as laid down in the General Principles.</p> <p>(c) Myanmar law does not provide any child-sensitive procedure for legal remedies, comprehensive accessibility, and the appointment of legal guardians or representatives in the interests of child.</p> <p>(d) According to §16(e) of the <i>ATIP Law</i>, the CBPTI and the working groups will create special programs which deal with the physical and psychological injuries of the victims and provide vocational education, health check-ups and treatments with their consent. Moreover, section 17 states that there will be security and protection programs for the victims during legal proceedings. The law does not mention about the age, special vulnerabilities, and rights and needs considerations. There is also no provision regarding legal aid and housing assistance.</p> <p>(e) According to §18 of the <i>ATIP Law</i></p> <p>(f) , there will be programs to equip the persons working with child victims of trafficking with necessary training courses.</p>
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IV. Patterns of Internal Sex Trafficking in Myanmar

Cases of domestic sex trafficking in Myanmar generally fall into one of the following categories: commercial sex exploitation, debt bondage, or sex slavery. Sex exploitation is recognized as a form of exploitation in the *ATIP Law* §3(a) explanation (1):

Exploitation includes receipt or agreement for receipt of money or benefit for the prostitution of one person by another, other forms of sexual exploitation, forced labour, forced service, slavery, servitude, debt-bondage or the removal and sale of organs from the body.

Debt bondage is defined in the *ATIP Law* §3(a) explanation (3) as:

...pledging by the debtor of his/her personal labour or services of a person under his/her control as payment or security for a debt, when the nature or length of service is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.

Sexual slavery is not explicitly recognized as a criminal offense in Myanmar law. According to the UN Office of the High Commissioner for Human Rights (OHCHR), sexual slavery is closely

related to forced prostitution but different from sexual exploitation.⁵¹ The element of monetary gain is not necessary to constitute sexual slavery; it is absolute control of a person over another ‘whom any or all of the powers attaching to the right of ownership are exercised.’⁵² Moreover, sexual slavery is ‘the sexual exploitation of individuals through the use or threat of force, often occurring in times of armed conflicts or belligerent occupation,’ which constitutes grave violation of international humanitarian law.⁵³

Due to the fact that selected judicial decisions from the Supreme Court in Myanmar language are made available to public only after late 2013,⁵⁴ but not the decisions from the other courts, it is difficult to gain access to the relevant court cases involving the following scenarios. Therefore, I am using the information from credible media reports and the United Nations Inter-Agency Project on Human Trafficking (UNIAP) reports to analyze the case studies.

Case study 1: Commercial sex exploitation

Virginity of Sixteen-year-old Wut Yee (not her real name) was sold by her mother to a businessman for \$3,000 due to the extreme hardship. Her mom paid some fees to the doctor to inject her anesthetics and asked her to follow the businessman. Later, Wut Yee found herself working at a massage parlor that doubles as a brothel. Then, she quit over disagreements and exploitation by the owner of the massage parlor/brothel.⁵⁵

⁵¹ OHCHR, *Abolishing Slavery and its Contemporary Forms* (2002), accessed May 2, 2016, <http://www.ohchr.org/Documents/Publications/slaveryen.pdf>, para 104.

⁵² *Ibid.* Also *Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926*, League of Nations Treaty Series, vol. 60, p. 253; entered into force on 9 March 1927, article 1(1).

⁵³ *Supra* note 52, para 104-106.

⁵⁴ Myanmar Law Reports of the selected Supreme Court cases are available from the Republic of the Union of Myanmar, the Supreme Court of the Union, <http://www.unionsupremecourt.gov.mm/?q=content/ruling>, accessed May 2, 2016. Apart from the pdf files of these law reports, there is no comprehensive online or paper database to search for a particular case.

⁵⁵ This story was interviewed, published, and awarded for the Lorenzo Natali Media Prize. For full story, see Htet Khaung Lin, *Poverty Drives Myanmar Girls into Underage Sex Work*, Reuters (August 16, 2015), available from <http://www.reuters.com/article/us-myanmar-girls-sex-workers-idUSKCN0QM07K20150817>. For the information

Case study 2: Debt bondage⁵⁶

Girls from the villages are recruited by a chain of individual agents. Due to the economic hardship and the lack of job opportunities in the rural agricultural areas, girls become victims of the chain easily.⁵⁷ They are brought to the major cities like Yangon and Mandalay to be placed in different job industries.⁵⁸ There are loads of cases, most of them unheard, in which girls are sent to brothels, salons, massage parlors and night or day clubs⁵⁹ without consent and are subject to debt bondage to the agents or the employers.

Case study 3: Sexual slavery⁶⁰

In the conflict zones like Kachin and Rakhine States, State armed forces abduct women and bring them to the military camps as sex slaves. For instance, on 28 October 2011, Myanmar military abducted a Kachin woman called Sumlut Roi Ja, along with her husband and her father-in-law, while they were picking corns nearby her village in Kachin State.⁶¹ She was allegedly

about the award, see <https://ec.europa.eu/europeaid/lnp> and <http://mizzima.com/news-domestic/myanmar-journalist-wins-international-journalism-award>.

⁵⁶ This category usually covers not only sexual exploitation but also non-sexual exploitation.

⁵⁷ See “Trafficking in Persons” in U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2005 Country Reports on Human Rights and Practices: Burma*, accessed May 2, 2016, <http://www.state.gov/j/drl/rls/hrrpt/2005/61603.htm>.

⁵⁸ UNIAP, *Strategic Information Response Network (SIREN) Human Trafficking Data Sheet* (2009), accessed May 2, 2016, http://www.no-trafficking.org/reports_docs/myanmar/myanmar_siren_ds_march09.pdf, 2.

⁵⁹ Generally, salons, massage parlors and night or day clubs in Myanmar are associated with prostitution and sex industry in Myanmar.

⁶⁰ Sexual slavery is not only for the situation involving military conflict but also for other situations involving transnational sex trade, for example, between Myanmar and China and Myanmar and Thailand.

⁶¹ See Democratic Voice of Burma, *Investigative Documentary Film on the Abduction of Sumlut Roi Ja* (2015), accessed March 3, 2016, https://www.youtube.com/watch?v=DB8pdYk6wZk&list=PLWbaRNImS_pSucHseDhqnt-3bm2tdmchl. The documentary was sent with an official letter of inquiry to the Myanmar Ministry of Defense, and the Ministry denied the military’s sexual misconduct. Also the writ of habeas corpus submitted to the Supreme Court of Myanmar by Sumlut Roi Ja’s spouse in January 2012 was rejected on the grounds of insufficient evidence. For the UN’s commend on such sexual misconduct, see Situation of Human Rights in Myanmar: Note by the Secretary-General (U.N. Doc. A/69/398), accessed May 2, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/545/25/PDF/N1454525.pdf?OpenElement>, para 39.

raped by the military and disappeared. Similarly in 2013, a woman in Rakhine State was reportedly kidnapped and subjected to sexual slavery on a military installation.⁶²

V. Obstacles to Gain Access to the Legal Remedies Effectively

After evaluating the ATIP and relevant national legislations in the chart above, it is quite clear that the Myanmar national legal framework falls short of providing effective legal remedies for the trafficked victims in Myanmar, even at the formal level. For example, chapter five of the *ATIP Law* titled ‘safeguarding the rights of the trafficked victims’ does not address the legal rights of the trafficked victims to an effective remedy from the human rights perspective.⁶³ The *UN Guideline* suggests that the right to an effective remedy must reflect a victim-centered and human rights-based approach that empowers victims of trafficking in persons and respects fully their human rights.⁶⁴ Limiting open trials and publications regarding human trafficking cases to deter the adverse effect on the victims⁶⁵ and vesting power in the Central Body to make arrangements for the preservation of the victims’ dignity, physical and mental security⁶⁶ and for repatriation and resettlement⁶⁷ alone are not adequate remedies if we consider from the viewpoint of a victim-centered and human rights-based approach.

Although the trafficked victims are not going to be charged with the offences under the ATIP, the Central Body has an authority to determine whether or not the trafficked victims can be charged with any other offence [other than the offences included in this Act] arising as a

⁶² See U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *2014 Trafficking in Persons Report: Burma*, accessed March 1, 2016, <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226691.htm>.

⁶³ See generally the *ATIP Law, Chapter V*.

⁶⁴ See the summary of the consultation in the *UN Guideline* paragraphs 3, 15, 16 & the *UN Basic Principles* principle 3 stating: “The right to an effective remedy reflects a victim-centred and human rights-based approach that empowers victims of trafficking in persons and respects fully their human rights.”

⁶⁵ The *ATIP Law*, §11(a).

⁶⁶ *Ibid*.

⁶⁷ The *ATIP Law*, §14 & §19.

direct consequence of trafficking in persons.⁶⁸ So, for instance, in the case of Wut Yee, she may be charged with prostitution as prostitution is illegal according to the *Suppression of the Prostitution Act* and is not an offence that can be shielded through the *Anti Trafficking in Persons Law* though prostitution is the direct consequence of sex trafficking. In this case, the State is imposing penalty to the victim of sex trafficking instead of providing necessary rights to grant access to the legal remedies.

The right to effective remedy includes ‘restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition’ and the State must ‘encompass both the substantive right to remedies and the procedural rights necessary to secure access to them.’⁶⁹ In reality, many women are in the sex trade due to the unemployment, poverty and low level of education, and it is very easy for them to become victims under the sex trading agents, organized criminal networks, businesses and individual traffickers in Myanmar. Apart from penalizing the traffickers in *the Penal Code* and *the ATIP Law*, Myanmar does not set up any realistic mechanisms for potential preys to gain access to the substantive and procedural right to remedies. The analysis of the chart also interprets that Myanmar touches a little bit of restitution, compensation and satisfaction but they are not sufficient to allow room for the victims to gain access to the system.

One of the most important principles of access to the right to an effective remedy is that the State must make sure that the victims ‘have access to remedies that is not dependent upon their capacity or willingness to cooperate in legal proceedings.’⁷⁰ Prostitution is illegal in Myanmar, and sex work is stigmatized as dirty work or immoral by the general population and the government authorities. In this way, issues arising out of the persons who engage with any

⁶⁸ The *ATIP Law*, §13(b).

⁶⁹ See *UN Basic Principles*, principle 5.

⁷⁰ *Ibid.*, principle 7(i).

kind of work involving sex are unheard or ignored. Also, during the complete military rule, in particular in 1990s and 2000s, the State had constantly distributed propaganda against people who migrated to Thailand-Myanmar border areas including the trafficked victims.⁷¹ Hence, the traditional taboos and the propaganda have made the people discriminate against the sex workers including the trafficked victims as they are difficult to differentiate from sex workers in a layman's eye. In this situation, it is unlikely that the victims are willing to reveal their cases to the people around them, to the community or to the government authorities. So, when Myanmar law makes the remedial system dependent upon the willingness and capacity of the victims, it does not give adequate channel for the victims to access to the procedural rights and the system.

VI. Conclusion

All in all, Myanmar, as a party to *the Palermo Convention* and *the Palermo Protocol* and other international and regional treaties on anti-trafficking through international and regional cooperation, does not fulfill its obligations under international law to providing victims the right to effective remedy. Furthermore, it fails to meet the recommendations for realizing the right to an effective remedy set out in the Basic Principles. Myanmar provides such right at neither formal level nor substantive level. Moreover, strong social stigma and prolonged government policy against sex work in Myanmar expel the victims of trafficking in persons away from the realistic access to the right to effective remedy.

⁷¹ For example, the military regime, under the name of the State Peace and Development Council, "actively discourages people, and especially women, from migrating abroad. One reason for this is that the regime fears that migrants will report on human rights abuses inside the country to opposition groups or other human rights organizations. Major General Kyaw Win has stated that part of the SPDC's "Anti-Human Trafficking Campaign" includes efforts to "teach people about negative consequences of working abroad." This campaign appears to focus less on education than on threats and punishment of people found to have worked, or planning to work, abroad. In a number of states and Divisions the SPDC is creating "Human Trafficking Prevention Committees" which have been ordered to collect data on everyone between 16 and 25 years of age, and to investigate anyone traveling to border areas." See --, 'The Situation of Migrant Workers,' in *Facts on Human Rights Violations in Burma* (2003), accessed May 2, 2016, <http://www.ibiblio.org/obl/docs/HRDU2003-04/Facts%20on%20Human%20Rights%20Violations%20in%20Burma.htm>.