

How Myanmar's Legal System is Failing Migrants



- 🔥 Myanmar experiences high rates of labor migration. Despite recent formalization of migration procedures, especially to Thailand, migrants often rely on informal arrangements for at least part of their migration process.
- 🔥 At the same time, migrants tend not to trust law enforcement and are reluctant to report abuse by brokers, recruiters and employers to police or labor authorities. This stems in part from the belief that no action will be taken or that victims themselves will face negative consequences as a result.

Informal migration and the law in Myanmar

To more effectively manage migration, the Myanmar government along with several key destination countries have introduced clearer formal procedures for legal migration, and these are actively promoted as a prevention measure for human trafficking. Official recruitment agencies are gradually replacing older networks of brokers and local leaders.

The International Labour Organization reports that close to 10% of the Myanmar labor force works abroad, with more than 3 million migrants in Thailand and Malaysia (ILO, 2015).

For the time being, however, most migration continues to happen through informal networks. Accompanying this trend is the ever-present mistrust of law enforcement and a reluctance to report abuse by brokers, recruiters and employers to police or labor authorities, which stems in part from the belief that no action will be taken or that victims themselves will face negative consequences as a result.



Of the 185 human trafficking cases investigated in 2017, only 22 were cases of forced labor and 21 cases related to fishing, manufacturing, agriculture and precious stone mining.

Today
5 million
Myanmar people
live and work abroad, most in
precarious forms of employment.

Key findings



Most migrants face constant attempts at deception and exploitation at every step along their journeys.

1. Though there have been increased efforts in recent years to formalize the migration process, it remains complicated and opaque to most migrants. Most migrants still prefer to trust informal brokers or recruiters and commit to jobs about which they have little information. By avoiding the formal system, migrants also increase their vulnerability to exploitation.

Worker rights groups like the Confederation of Trade Unions of Myanmar (CTUM) estimate that approximately 90% of Myanmar migrant workers are not using formal recruitment agencies due to the expensive, complex and time-consuming procedures required for formal recruitment through licensed agencies. Even though fees are set, migrants report paying more than the official rate to brokers for employment abroad. The old - yet still active - Employment Restriction Act of 1959 poses another barrier by prohibiting recruitment agencies from operating offices outside Yangon. This has resulted in the widespread dependence on agents and brokers.



2. Recruiters typically provide very little or incorrect information to workers about the nature and conditions of their work. As a result, workers often end up in jobs to which they did not knowingly agree and work under conditions they did not expect. The problem is not that migrant workers are making the 'wrong' choices, it is that they are very vulnerable to exploitation regardless of their decisions.

3. Despite legal limitations on recruiting fees of between approximately \$100-\$300, most migrants are still overpaying for recruitment services and taking on debt in order to secure a job. This tendency increases vulnerability to trafficking.





The legal system is currently failing victims of trafficking and exploitation.



4. The legal framework relating to human trafficking and forced labor exists on paper, yet underperforms in practice. Despite the high number of migrants, trafficking cases registered annually by the Myanmar government number in the low hundreds. While the Anti-Trafficking Task Force (within the Myanmar Police Force (MPF)) contributes to the professionalization of how cases are managed, with relatively few officers per region, they can be hard to access. Regardless of their involvement, all cases must be filed with the local station police, who remain hampered by insufficient resources for serious investigations, little training on managing trafficking and labor exploitation cases, and systemic bottlenecks.

Victim identification is generally the responsibility of the local station police or the Anti-Trafficking Task Force (ATTF) within the MPF. The need to develop systematic procedures for victim identification (both for national and foreign victims) is generally recognized but such procedures are not currently widely applied.

5. The law does not provide protection for all victims. Myanmar's 2005 Anti-Trafficking in Persons Law provides for the security and protection of women, children and youth victims "during the period of prosecution" and "during the period of instituting a suit for compensation." There is no mention of protection for victims not involved in legal proceedings – or for the protection of adult male victims at any stage.

6. There is an enculturated mistrust of law enforcement and a reluctance to report problems to authorities. Most cases appear to end with the local police - if they are even reported to police in the first place. Police officers either are not aware of what constitutes trafficking, or feel that they do not have the authority or resources to pursue human trafficking cases proactively.

7. Most migrants and trafficking victims view the legal system as something not accessible or set up to assist them. It is widely perceived that the costs associated with the formal justice system are prohibitive for most people and that the justice system and the courts are for "the elite." Although higher-level justice providers and courts do exist, the general population very rarely uses them. Judges may not adequately know or apply the law. Among law enforcement and community organizations, there is a preference for steering most victims away from the formal justice system.

8. Outside the formal legal system, informal mediation is often preferred but fails at achieving justice in most cases. In many cases, local justice facilitators - who are commonly chosen from among traditional leaders and are almost always male - prefer minimizing disputes. Often they seek to deter cases involving women or minorities from proceeding further. Justice facilitators often have minimal information about the broader context of crimes and the processes to address them. Victims frequently will not receive accurate information about avenues to justice, such as the steps to file complaints within the formal system,

from anyone in the community. Moreover, local justice facilitators are not immune to pressure from interested parties, and are subject to the same influence, including bribes or threats, that criminal perpetrators may exert on law enforcement officials.

Most aggrieved workers prefer to claim compensation by negotiating directly with recruitment agencies outside of court with assistance from trade unions or worker rights NGOs, rather than using the Anti-Trafficking in Persons Law (2005). When received, compensation is often for back pay, or to reclaim excessive fees paid to a broker or recruitment agency.

9. A major impediment to justice is the powerful role that stigma plays for both men and women. Victims of trafficking fear that if they file a formal complaint, they risk ostracization from family and community by being labeled a ‘victim’. Those who escape from trafficking or forced labor will typically want and need to get back to work and generate income.

10. Even after a survivor of human trafficking is identified, filing a case against the trafficker is often a traumatic experience that leads to re-victimization. In the case of women and girls particularly, this is largely due to patriarchal norms, gender discrimination and male domination within the legal system. Women are frequently blamed or even ignored by law enforcement agents.



Recommendations

Accurate information must be available in communities from where migrants are leaving.

At the local level, there is an overall lack of information about safe migration practices or knowledge on human trafficking and forced labor. Migrants are often unaware of the deception and fraud that traffickers employ, such as making false promises regarding employment and wages. Lack of proper information on human trafficking also fuels a misperception that trafficking only involves sexual exploitation and does not include labor exploitation.

Local station police and prosecutors must apply more transparent and systematic procedures in investigating human trafficking cases and providing support to victims. More training on formal victim-friendly procedures should be prioritized, as long legal processes tend to make it difficult for a victim of trafficking to see the case through to a resolution. Intimidation and pressure from traffickers and brokers make victims less willing to maintain their involvement.

Legal assistance and facilitation must be available at the local level. Pro-bono legal assistance is rare in Myanmar, and the legal process is often considered time consuming and demeaning. Without assistance, the opportunity and financial costs of engaging the legal system in a trafficking or labor exploitation case often surpass the potential benefits to victims.

About this study

In mid-2018, IREX undertook a study of the migration and trafficking landscape in Myanmar to prepare for activities under the new Navigator program, made possible through a grant from Walmart Foundation. The study sought to understand how migration and anti-trafficking laws are applied in practice, particularly at the community level, and therefore how interventions could serve unmet needs. IREX conducted the study through a mix of in-person interviews and desk research.

Seeking Justice for Exploitation

A Typical Pathway



1

Making the decision

An exploited person decides to seek assistance from a local Civil Society Organization (CSO), or is identified as a person in need by a community leader and referred to a CSO for assistance. For labor exploitation, this can often be a worker rights organization or a trade union.

The person musters enough courage to identify as a victim of human trafficking or labor exploitation while having a low level of awareness of the actual crimes involved and what to expect under the law and from the legal process.

More often than not, a victim who is able to successfully open a case at the police station is supported by a CSO. Those who have not found or are unable to receive this kind of support have little chance of navigating the process or successfully filing a case on their own. He or she must also overcome deep social and family stigma caused by identifying as a victim of human trafficking.



2

Involving the police

The now identified victim of trafficking may decide to seek justice against his/her perpetrator; and with assistance from a CSO goes to the local police station and files a case in the jurisdiction of his/her residence.

There is a good chance that the police officer has not received specific training on the definition of “human trafficking” or “forced labor” or on how to implement Myanmar’s laws on human trafficking. At this point the police’s Anti-Trafficking Task Force (ATTF) may get involved and assist with the investigation but this does not happen in every case.

The police officer may seek to dissuade the victim from opening a case or refuse to apply the law or put forth any effort to investigate the allegations.



3

Investigating the case

The local station police should be investigating the case and collecting evidence, including witness testimony and building a case file. Often, the police lack the financial resources to conduct a full investigation.

This is also the point where a trafficking case is most likely to be dropped due to some form of harassment or discouragement by the station police. Additionally, others, including labor brokers or family members may intervene and apply pressure to prevent a case from moving forward.



4

Moving the case to the courts

If the investigation is completed without outside interference, then the case is sent to the District Court where the government prosecutor works in conjunction with the police to further build the case file to be heard by a District Court judge.

